

ORDINANCE NO. 24-19-OA **B**

AN ORDINANCE AMENDING CHAPTER 35, LAND DEVELOPMENT, OF THE CODE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 35, LAND DEVELOPMENT, ARTICLE XVIII, PINELANDS AREA USE

April 15, 2024

WHEREAS, the Pinelands Protection Act (N.J.S.A. 13:18A-1) requires that the municipal master plan and local land use ordinances of the Township of Berkeley implement the objectives of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) and conform with the minimum standards contained therein; and

WHEREAS, the Pinelands Comprehensive Management Plan incorporates by reference certain stormwater management regulations contained at N.J.A.C. 7:8; and

WHEREAS, the New Jersey Department of Environmental Protection adopted amendments to certain stormwater management regulations contained at N.J.A.C. 7:8, effective July 17, 2023; and

WHEREAS, the Pinelands Commission adopted amendments to the Pinelands Comprehensive Management Plan, effective December 4, 2023.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Berkeley, County of Ocean and State of New Jersey, as follows:

SECTION 1: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-155.3, Stormwater Management Requirements, is hereby amended by revising subsection d. as follows:

- d. Tables 1, 2, and 3** below summarize the ability of stormwater best management practices identified and described in the New Jersey Stormwater BMP Manual to satisfy the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity standards specified in **§35-155.3n, o, p, and q**. When designed in accordance with the most current version of the New Jersey Stormwater BMP Manual and this Section, the stormwater management measures found in **Tables**

1, 2, and 3 are presumed to be capable of providing stormwater controls for the design and performance standards as outlined in the tables below. Upon amendments of the New Jersey Stormwater BMP Manual to reflect additions or deletions of BMPs meeting these standards, or changes in the presumed performance of BMPs designed in accordance with the New Jersey Stormwater BMP Manual, the NJDEP shall publish in the New Jersey Registers a notice of administrative change revising the applicable table. The most current version of the BMP Manual can be found on the NJDEP website at: https://njstormwater.org/bmp_manual2.htm—<https://dep.nj.gov/stormwater/bmp-manual/>.

SECTION 2: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-155.3, Stormwater Management Requirements, is hereby amended by revising subsection o. as follows:

o. Groundwater Recharge Standards

1. (No change.)
2. For all major development, the total runoff volume generated from the net increase in impervious surfaces by a the current 10-year, 24-hour storm, as defined and determined in §35-155.4h, shall be retained and infiltrated onsite.
3. For minor development that involves the construction of four or fewer dwelling units, the runoff generated from the total roof area of the dwelling(s) by a the current 10-year, 24-hour storm, as defined and determined in §35-155.4h, shall be retained and infiltrated through installation of one or more green infrastructure stormwater management measures designed in accordance with the New Jersey Stormwater BMP Manual. Appropriate green infrastructure stormwater management measures include, but are not limited to dry wells, pervious pavement systems, and small scale bioretention systems, including rain gardens.
4. -- 5. (No change.)

SECTION 3: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-155.3, Stormwater Management Requirements, is hereby amended by revising subsection q. as follows:

q. Stormwater Runoff Quantity Standards

1. (No change.)

2. In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at **§35-155.4**, complete one of the following:
 - (a) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the current and projected 2-, 10-, and 100-year storm events, as defined and determined in **§35-155.4h and i**, do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;
 - (b) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the current and projected 2-, 10- and 100-year storm events, as defined and determined in **§35-155.4h and i**, and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;
 - (c) Design stormwater management measures so that the post-construction peak runoff rates for the current and projected 2-, 10- and 100-year storm events, as defined and determined in **§35-155.4h and i**, are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed; or
 - (d) (No change.)
3. -- 5. (No change.)

SECTION 4: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-155.4, Calculation of Stormwater Runoff and Groundwater Recharge, is hereby amended as follows:

§35-155.4. Calculation of Stormwater Runoff and Groundwater Recharge

- a. Stormwater runoff shall be calculated by the design engineer using the USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in Chapters 7, 9, 10, 15 and 16 Part 630, Hydrology National Engineering Handbook, incorporated herein by reference as amended and supplemented, except that the Rational Method for peak flow and the Modified Rational Method for hydrograph computations shall not be used. This

methodology is additionally described in Technical Release 55 - Urban Hydrology for Small Watersheds (TR-55), dated June 1986, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the Natural Resources Conservation Service website at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044171.pdf <https://directives.sc.egov.usda.gov/viewerFS.aspx?hid=21422> or at United States Department of Agriculture Natural Resources Conservation Service, 220 Davison Avenue, Somerset, New Jersey 08873.

- b. (No change.)
- c. For the purpose of calculating ~~runoff coefficients~~ curve numbers and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term “curve number” applies to the NRCS methodology at a. above. A ~~runoff coefficient~~ curve number or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover has existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
- d. -- g. (No change.)
- h. The precipitation depths of the current two-, 10-, and 100-year storm events shall be determined by multiplying the values determined in accordance with items 1 and 2 below:
 - 1. The applicant shall utilize the National Oceanographic and Atmospheric Administration (NOAA), National Weather Service’s Atlas 14 Point Precipitation Frequency Estimates: NJ, in accordance with the location(s) of the drainage area(s) of the site. This data is available at:

https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=nj; and
 - 2. The applicant shall utilize **Table 5: Current Precipitation Adjustment Factors** below, which sets forth the applicable multiplier for the drainage area(s) of the site, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

Table 5: Current Precipitation Adjustment Factors

	Current Precipitation Adjustment Factors		
	<u>2-year</u> <u>Design Storm</u>	<u>10-year</u> <u>Design Storm</u>	<u>100-year</u> <u>Design Storm</u>
<u>County</u>			
<u>Ocean</u>	<u>1.00</u>	<u>1.01</u>	<u>1.03</u>

- i. Table 6:** Future Precipitation Change Factors provided below sets forth the change factors to be used in determining the projected two-, 10-, and 100-year storm events for use in this chapter, which are organized alphabetically by county. The precipitation depth of the projected two-, 10-, and 100-year storm events of a site shall be determined by multiplying the precipitation depth of the two-, 10-, and 100-year storm events determined from the National Weather Service's Atlas 14 Point Precipitation Frequency Estimates pursuant to **h.1.** above, by the change factor in the table below, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development and/or its drainage area lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

Table 6: Future Precipitation Change Factors

	Future Precipitation Change Factors		
	<u>2-year</u> <u>Design Storm</u>	<u>10-year</u> <u>Design Storm</u>	<u>100-year</u> <u>Design Storm</u>
<u>County</u>			
<u>Ocean</u>	<u>1.18</u>	<u>1.19</u>	<u>1.24</u>

SECTION 5: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-155.5, Sources for Technical Guidance, is hereby amended as follows:

§35-155.5. Sources for Technical Guidance

- a.** Technical guidance for stormwater management measures can be found in the documents listed below, which are available to download from the NJDEP's website at:
http://www.nj.gov/dep/stormwater/bmp_manual2.htm
<https://dep.nj.gov/stormwater/bmp-manual/>.
- (No change.)
 - Additional maintenance guidance is available on the NJDEP's website at:
https://www.njstormwater.org/maintenance_guidance.htm
<https://dep.nj.gov/stormwater/maintenance-guidance/>.
- b.**
- Submissions required for review by the NJDEP should be mailed to:

The Division of ~~Water Quality~~ Watershed Protection and Restoration, New Jersey Department of Environmental Protection, Mail Code 401-02B501-02A, PO Box 420, Trenton, New Jersey 08625-0420.

2. (No change.)

SECTION 6: Chapter 35, Land Development, Article II, Definitions and Word Usage, Section 35-3, Definitions, is hereby amended by adding the following definitions:

DIVERT or DIVERSION – Means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

HYDROLOGIC UNIT CODE-11 or HUC-11 – Means an area within which water drains to a particular receiving surface water body, also known as a subwatershed, which is identified by an 11-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

NONCONSUMPTIVE USE – Means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

SECTION 7: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-153, Resource Extraction, is hereby amended by revising subsection b. as follows:

b. Any application filed for approval of resource extraction operations in the Pinelands Area shall include at least the following information:

1. – 15. (No change.)

16. If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all

existing or proposed resource extraction operations and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

SECTION 8: Chapter 35, Land Development, Article XVIII, Pinelands Area Use and Development Standards, Section 35-159, Water Quality, is hereby amended by repealing and replacing subsection e. as follows:

e. Water Management.


1. Water shall not be exported from the Pinelands except as otherwise provided at N.J.S.A. 58:1A-7.1.
2. A diversion within the Pinelands Area portion of Berkeley Township that involves the interbasin transfer of water from sources within the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at **(a)** and **(b)** below, or outside of either basin, shall be prohibited.
 - (a)** The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection.
 - (b)** The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection.
3. A diversion within the Pinelands Area portion of Berkeley Township involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic Basin or Delaware Basin as defined at **2(a)** and **(b)** above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at **4.** below.
4. Within the Pinelands Area portion of Berkeley Township a new diversion or an increase in allocation from either a single existing diversion source or from combined existing and new diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at **4(c)** through **(f)** below and the water management standards of the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.86(d). "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.


- (a) When evaluating whether the proposed diversion meets the criteria set forth at 4(c) through (f) below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.
- (b) The standards set forth at 4(c) through (f) below shall not apply to:
- (1) A new well that is to replace an existing well, provided the existing well is decommissioned in accordance with N.J.A.C. 7:9D-3 and the new replacement well will:
 - [1] Be approximately the same depth as the existing well;
 - [2] Divert from the same aquifer as the existing well;
 - [3] Have the same or lesser pump capacity as the existing well; and
 - [4] Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well;
 - (2) Any proposed diversion that is exclusively for agricultural or horticultural use; or
 - (3) Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel.
- (c) A proposed diversion shall be permitted only in the following Pinelands Management Areas: Regional Growth Area; Rural Development Area; and Agricultural Production Area.
- (d) A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at <https://www.nj.gov/pinelands/>.
- (e) A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at N.J.A.C. 7:50-6.86(d)6 and 7, respectively. A proposed diversion deemed to have an adverse local impact in the Pinelands Area is prohibited. A proposed diversion deemed to have an adverse regional impact shall only be permitted if an applicant permanently offsets the diversion in accordance with N.J.A.C. 7:50-6.86(d)6i.

- (f) An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

SECTION 9. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 10. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.


John A. Bacchione, Mayor


Keith Buscio, Council President
Angelo Guadagno, Council Vice President

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on April 15, **2024**, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the **20th day of May 2024**, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.



KAREN STALLINGS, RMC
Township Clerk, Township of Berkeley