IN RE: BERKELEY TOWNSHIP

Decided July 25, 1980

Initial Decision

SYNOPSIS

Berkely Township sought a permit to construct an industrial park within the protected area of the Pinelands, as that area is defined in the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.

The administrative law judge assigned to the case found that the Township had expended $38,459 to cut, clear, grade and gravel the roads on the site of the proposed industrial park which qualified as physical improvement to the land and a substantial commitment of the town's funds to the project. In light of this, the judge concluded that the township had established that it was suffering an extraordinary hardship. While noting that he did not have to reach a conclusion on the issues, the judge determined that a compelling public need existed for the development of the project and that the project did not constitute piecemeal and scattered development.

While the administrative law judge determined he could not conclude that the site was an eventual habitat for the endangered northern pine snake, he did conclude that the petitioner had failed to meet its burden of establishing by a preponderance of the evidence that development on the site would not substantially impair this resource of the Pinelands.

Accordingly, the judge concluded that the proposed project did qualify for approval under the applicable standards for determining extraordinary hardship; however, the application would be denied since it had not been established that the project would not impair a resource of the Pinelands, specifically, a potentially eventual habitat for the endangered northern pine snake.

John S. Pehlvanian, Esq., for the petitioner
Richard M. Hluchan, Deputy Attorney General, for respondent,
(John J. Degnan, Attorney General of New Jersey, attorney)

MASIN, ALJ:
This matter involves a proposal by Berkely Township, a municipal
corporation of the State of New Jersey, to construct an industrial park. The site of the park, to be known as the Arthur L. Newman, Berkeley Township Industrial Park, lies within the Protection Area of the Pinelands, as that area is defined in the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. In view of this location, the Township first applied to the then existing Pinelands Review Board for an exemption from Executive Order No. 71, the Governor's moratorium on construction and development in the Pinelands. The application was dated March 27, 1979. The Review Board denied the exemption by letter dated June 1, 1979. On June 28, 1979, the Pinelands Protection Act became effective and pursuant thereto, the Pinelands Commission was established to succeed the Review Board. The petitioner had appealed the Review Board's denial by letter to the Commissioner of the Department of Environmental Protection dated June 13, 1979, and the appeal was converted to a de novo review of the project by the Pinelands Commission. The matter was then the subject of ongoing discussions between the petitioner and the Pinelands staff during which time further data was submitted by Berkeley and reviewed by the staff. A Prehearing Conference was held on March 6, 1980, and a Prehearing Order issued on March 11, 1980. Pursuant to the direction of the administrative law judge, the Executive Director of the Pinelands Commission issued letters expressing the reasons for his intended recommendation of denial on March 17 and March 28, 1980. The hearings were held on April 29, May 13 and 20, 1980. On the 29th, at the request of the petitioner the administrative law judge conducted a field inspection of the site. Following the hearings, counsel submitted written closing statements and the record closed on June 13, 1980.

THE ISSUES

The Executive Director has objected to the proposed development on several grounds which are summarized as follows:

1. The petitioner failed to demonstrate the existence of an extraordinary hardship such as would require approval.

2. The proposed development was not consistent with the policies and provisions of the Pinelands Protection Act.

3. The area in which the development was proposed is undeveloped and development therein would constitute scattered and piecemeal development inconsistent with the policies and provisions of the act.
4. Approval of this proposed development during the planning period would violate the intent of the act.

5. The proposed location is a habitat for the Northern Pine Snake, a threatened species.

6. As a part of its claim that the petitioner had failed to demonstrate extraordinary hardship, the Executive Director objected that the petitioner had failed to establish it had made a substantial commitment of monies or other resources in connection with actual physical improvements to the site prior to February 8, 1979.

7. The petitioner failed to address alternatives available to meet an alleged compelling public need which the petitioner saw as requiring approval of the project.

8. The petitioner had failed to establish that there would be no detrimental affects resulting from storm water run-off.

Several of the above issues allege violations of the standards contained in the Interim Rules and Regulations for review of applications established by the Pinelands Commission pursuant to the Act (N.J.A.C. 7:1G-1.1, et seq.). Testimony was received from witnesses as to each of the above issues and will be summarized below. Initially, a general description of the location of the site seems in order. This description will be further supplemented by references to the testimony.

THE SITE

The site of the proposed Arthur L. Newman Industrial Park is on Pinewald-Keswick Road in Berkeley Township, Ocean County. It is situated west of the Garden State Parkway and slightly to the northwest of the Robert Miller Air Park, the entrance to which is on the south side of Pinewald-Keswick Road. An aerial photograph best shows the location of the air park, industrial park, and the Jersey Central Power and Light truck facility also located south of Pinewald-Keswick Road to the east of the air park. The photo also shows the locations of the Pine Ridge Motor Home development located to the west of the site at issue on the northwest side of the road which divides Berkeley and Manchester Townships. The aerial also reveals the Silver Ridge development to the northeast of the site, the old railroad line crossing almost straight across the photo north of the site about a quarter of the way down the picture, and the Davenport Branch, a waterway west of the site. It should be noted that although the
Township intends to develop the industrial park at locations both north and south of Pinewald-Keswick Road, the present application and the issues raised concerning it deal only with the northern portion of the tract.

**TESTIMONY ON THE EXTRAORDINARY HARDSHIP, COMPELLING PUBLIC NEED, AND SCATTERED AND PIECMEAL ISSUES**

The petitioner first witness was Lorraine Andren, Secretary of the Board of Taxation for 18 years and the Industrial Commission for 20 years. She testified that the Industrial Commission was created in 1960 to encourage the location of industry in the Township, thereby creating jobs. At that time, the Township had little in the way of employment to offer the local work force and was in "dire straits" with 83 percent of the work force having to commute out-of-town to their places of employment. Nine percent of the local work force was unemployed. The Commission created the Industrial Park. Inadequate funding, however, prevented development for a long time. In 1977, the Township foreclosed on an 80 acre sub-division, known as Lakewood Keights, which adjoined the Robert J. Miller Air Park. The appropriateness of this site for an industrial park was determined due to its location away from residential areas and near the airport, which would serve as an incentive to industry to locate in the park. The site was divided by Pinewald-Keswick Road with the northern part, the subject of this hearing, somewhat smaller than the southern.

In conceiving the plan for the use of the site as an industrial park, the witness claimed that the Industrial Commission was mindful of the natural state of the site and determined to keep the area park-like. Thus, substantial buffers and plenty of trees would be maintained. Further, the Commission determined to be very selective as to the tenants it would permit in the park. Rules and regulations were drawn up and given to prospective tenants. These were intended to be made into restrictive convenants in the deed with a reverter clause if the tenant did not use the land as planned and approved.

Since 1977, over a dozen firms have inquired about the park. One, Abex Corporation, has built a brake testing facility on the park site. This facility was described as a lab-type operation. Other interest firms included a pre-cast concrete company which was denied approval as not being the type of operation desired, several warehouse operations (furniture, construction), an assembly facility for aluminum and/or
steel components and a boat builder. A fuel oil storage facility also was denied approval as being inappropriate. The aluminum assembler, A.J. Miller, Inc. gave a deposit but this had to be returned undue to the inability of the Commission to deliver a site approved for building due to the moratorium.

Ms. Andren described the air park as having a 5,000 foot runway. She is a member of the Civil Air Patrol which is located on the southern portion of the air park. A county maintenance building is also located on the park site and voting machines and civil defense materials are stored therein. Recreation areas are located to the immediate west of the air park.

On cross-examination, the witness stated that the park is the only one which the Commission had sought to develop although it had considered other sites. They had determined that they did not want a park cast of the Garden State Parkway or Route 9 where the large bulk of the residential and commercial areas of the town are located. Since all lands near the railroad were privately owned, the location of the site near the air park became the significant criteria in selecting the location. The air park had been constructed in the mid-1960's. No actual studies had been done as to any other sites.

Ms. Andren noted that the air park provided options to a company such as air freight. Other industrial parks do not have this option. Abex uses the park for executive planes, its nurses, etc. The airport has the capability of receiving business jets.

Al L. Messano, Township Engineer, testified next. He is a professional engineer and land surveyor and also a professional planner. In October 1975, the Township Committee authorized him to survey the Lakewood Heights tract, which had been on file in the County Clerk's Office since 1907. In June 1976, $25,000 was authorized to lay out roads, drainage, and a proposal for sanitary sewers. A topographic survey was done. In 1977, an ordinance for capital expenditures of $50,000 was passed which provided for the commencement of physical development on the northern side of Pinewald Keswick Road. Contracts were awarded to Manzo Construction Company for $38,000 and roads were then laid out. When the work was completed, the money, $38,459, was paid to the contractor. Ledger sheets showing pre-construction costs respectively were placed in evidence.

Jersey Central Power and Light was paid $3,804 for temporary overhead electrical service because the underground wiring desired would have cost $95,000. Abex filed its application in September of 1976 and received approval for construction. Abex constructed its
facility on 3.36 acres about 210 feet off Pinewald-Keswick Road.

On cross-examination, Mr. Messano identified the ledger sheets introduced into evidence, as showing survey work, topographic and boundary work, and attorneys' fees for acquiring parcels as well as design costs. On the ledger sheets, Mr. Messano could only identify the Manzo payment to construct the gravel roads. He did not know if the $3,804 was reimbursed and was not sure if the Township was committed to provide electrical service.

Mr. Messano stated that the Abex application anticipated the employment of 5 persons at the site. Abex' parking lot is made of impervious bitumen concrete. The site leaves much of the land undisturbed. The Abex building covers 3 percent of its lot, with an additional 8 percent for driveway and parking lots, for a total of 11 percent coverage. The maximum lot coverage permitted is 35 percent of the given site.

The witness referred to the provision made on-site to handle storm water run-off. He stated that the drainage plan is designed to limit or eliminate the adverse effects of any drainage run-off. In fact, all will be retained on the site. The water goes from the parking area to the driveway to the gravel road and then into the ground. No drainage structures are located in the streets. If the roads were paved, a drainage structure would be required to handle the run-off from Abex. Thus, catch basins, inlets, and drainage pipes will be installed. A change in the plans has been made so that a detention basin becomes a recharge basin. This eliminates a problem raised as to earlier plans to have the detention basin out-fall into the Davenport Branch.

The approval process which an applicant must pass through in order to receive all local approvals was described as including review by both the Industrial Commission and the Planning Board. This provides control by way of site-plan, zoning, sub-division, soil erosion, floodways and floor-hazard ordinance and other standards set up by the Township. Each prospective tenant at the industrial park must comply with all of these requirements as well as the regulations of the Industrial Commission. The Township also has jurisdiction over sewers, soil borings, and percolation tests as required.

Mr. Messano never recommended an alternative site for the industrial park and did not know of any consideration of such.

R. Lee Hobaugh, a consulting professional engineer and licensed planner, was the next witness dealing with the extraordinary hardship and compelling public need issues. He had prepared a report for the
Township which reviewed the prospective site, the Township Master Plan, and the needs of the Township for industrial growth vis-a-vis environmental protection.

Hobaugh testified that Berkeley Township adopted its Master Plan in December 1974 and updated it in December 1979. The witness used a road and street map of Berkeley Township for identification as a basis for reviewing the area of the site. He pointed out that the county owns land both east and west of the air park and uses it for recreational purposes. The area east of the air park and south of Pinewald-Keswick Road is zoned for light industry as is the area north and south of Pinewald-Keswick Road to the west of the air park. This area includes the site of the industrial park. The Township Master Plan provides for conservation areas linearly along stream corridors. East of the air park, the county owns all of the land up to Dover Road.

According to the witness, the population of Berkeley is approximately 19,000 (figures from the Department of Labor and Industry). The resident labor force, either employed or seeking employment, is 4,200-4,500. Employment provided within the town is about 1,750 (Bureau of Employment Security statistics). The occupational characteristics of the resident work force is approximately 13 percent in the construction trades, compared with 10 percent county-wide. Eleven percent are professional and technical types, as compared to 15 percent county-wide (1970 census). The September 1979 unemployment rate was 8.4 percent as compared with 6.3 percent county-wide. In January 1980, the unemployment rate was 12.7 percent versus 9.7 percent in the county. The mean income level was $10,006 versus $10,312 for the county and the median was $8,392 versus $9,246 in the county. The educational level indicates that 30 percent of the population of the Township had a less than 8th grade education versus 13.2 percent in the county.

The Township has 2,5000 acres zoned for industrial use which constitutes about 9 percent of the land in the town. Three percent of the 2,500 acres is located in the industrial park. Two-thirds of the industrially zoned land is in the vicinity of the air park. Mr. Hobaugh stated that the area near the air park was the most likely to be industrially useful in the nearest time.

With respect to alternate sites for the park, the witness saw none as being as attractive as the site in question. Some of the industrially zoned land in the town is virtually inaccessible. A large area is used by New Jersey Pulverizing, which uses the area to extract a rare silica.
About 100 acres remain in the area near New Jersey Pulverizing but it is difficult to get to this site and it is remote from the air park.

Mr. Hobaugh stated that there had never been any intensive attempts by industry to develop the Township. If the industrial park were not built, the town would have to start all over again. Since the town was sub-divided very early on, it would be difficult to overcome problems caused by diverse ownership and assemble another bulk property for industrial park development. The burden would fall on the entire Township, particularly on the unemployed and on families, since new tax ratables would not be produced.

Mr. Hobaugh expressed his professional opinion that there was a public need for the industrial park and that it both comports with the Township master plan and would provide additional jobs for residents of the general area. Further, he did not see this project as scattered and piecemeal development because it was consistent with a rational plan for development of the Township. The use of the planning process and ordinances available was sufficient to control the nature of the facility, its uses and effects, and would serve to identify problems before approval.

On cross-examination, Mr. Hobaugh described the area northwest of the site to the Township line about one mile away as undeveloped, heavily treed (pine) containing two streams which cross Pinewald-Keswick Road. No buildings are in the northern area. South of Pinewald-Keswick Road going west to the border with Manchester Township there exists one Getty station about four to seven residences. The area is basically covered with pine trees.

East of the site from Pinewald-Keswick Road to Dover Road, a distance of about two to one and one-half miles, the north side shows a large undeveloped area owned by Leisure Technology Corporation and intended for development. This area is presently a pine forest. South of Pinewald-Keswick Road are the air park and county garage. East of the air park to Dover Road the area is wooded. The Jersey Central Power and Light truck yard lies about mid-way between the air park and Dover Road.

In 1970, the population of Berkeley was 7,900 with 500-1,000, at most, living in retirement units. The present population is 18,000-19,000 and 50 percent of that total reside in senior citizen communities.

Mr. Hobaugh stated that he had recommended the area as the best and most logical place for the industrial park although not necessarily encouraging the specific site itself above any other in that general area.
He did not believe he had recommended any alternative site.

In connection with alternatives, Hobaugh stated that only about 100 acres or 4 percent of the industrially zoned land in the Township lies east of the Garden State Parkway. Sixty percent of the industrially zoned land is undeveloped. One site lies just west of Double Trouble State Park and constitutes about 10 percent of the total industrially zoned lands. This site also lies in the Protection Area of the Pinelands. Outside of the Pinelands area the industrially zoned land amounts to 1,000 acres, 900 of which are used for extracting by New Jersey Pulverizing.

Hobaugh conceded that one of the land contiguous with the northern portion of the industrial park (the only part under consideration in this case) is developed. The nearest building lies about 3/4 of a mile away. He also agreed that it was impossible to tell who would work in the park or where they would reside.

The Executive Director of the Pinelands Commission, Mr. Terrence D. Moore, was the first Commission witness presented on the issues of compelling public need, extraordinary hardship, and piecemeal and scattered development. Mr. Moore's educational and employment background has been in the area of planning for large land areas, having previously served as the Executive Director of the Newark Watershed Conservation and Development Corporation during which time he was responsible for developing plans for the use of some 35,000 acres in the Pequannock watershed. Mr. Moore is not a licensed professional planner.

Mr. Moore explained that under the Pinelands Protection Act, once the Comprehensive Management Plan is adopted and becomes effective, all local master plans, zoning and other related ordinances of municipalities within the Pinelands must within one year, be made to conform with the Plan. He saw the definition of piecemeal and scattered development as being a relatively simple one, that is, development not within or adjacent to existing development. In order to be compatible, development should be in areas with same or similar types of development in such concentrations as to constitute a major development.

Mr. Moore expressed his idea as to the relationship between the Comprehensive Management Plan and the interim period prior to its adoption. During the interim, the Commission has identified critical areas for preservation so as to be able to plan without preempting options.

After reviewing his knowledge of the proposal and the aerial photo-
graph, Mr. Moore expressed his opinion that the proposal constituted a classic example of scattered and piecemeal development, or in other terms, leap-frog development. Development was not tied to any meaningful developed area. Moore defined leap-frog development as that which "leaps" over existing developed areas and is set in undeveloped areas. Here, there is no adjacent development.

On cross-examination, Mr. Moore noted that he had driven by and flown over the site, although at the time he did not go specifically to the specific area. He knew of Abex and the maximum coverage permitted of 35 percent. He had not reviewed any restrictive covenant but had seen the zoning ordinances and the master plan.

Mr. Moore expressed the opinion that the country air park, which is used by light aircraft, is not consistent with usage of the site as an industrial park. He conceded that the terms "infill" and "adjacent" were somewhat nebulous in that infill does not necessarily imply a requirement that the area be surrounded by well-defined developed areas but should be in some pattern within such areas. Adjacent means close enough to a major area to reasonably flow out of it. Moore would not have recommended approval of the air park and its location it if no were before the Commission for approval.

One of Mr. Moore's additional criteria for leap-frog development is that which may lack access to transportation. He then stated that in order to determine whether the site was suitable for an industrial park, it was necessary to study the air park in detail.

The witness opined that if development was scattered and piecemeal it did not matter whether it was a well-planned proposal. He also stated that even if the use of the site was consistent with the presence of the air park, he would still recommend the application be denied in order to leave open the planning options available to the Commission. Since it stands relatively alone, approval of the site would serve to preempt options with respect to the surrounding area. Land use in a particular area has an affect on a wider area. Such approval impacts on the adjacent land. Moore conceived of the act as required that approval be held off except where development is in or adjacent to existing developed areas.

William Harrison, Assistant Director for Development Review, testified that he is responsible for reviewing all applications for development with respect to claims of extraordinary hardship or compelling public need. In this case the expenses of the petitioner for cutting, clearing, grading and graveling roads was $38,000. He then stated that in practice the Commission interpreted the extraordinary
hardship standard as required that an applicant have made actual physical improvements to property which could not be "turned back," i.e., storm sewers, mains, pavement, in other words, irreversible improvements.

As to compelling public need, the witness stated that it was essential to show explicitly that there were no alternatives available to meet the need. On cross-examination, he admitted that the "policy" guidelines used by the Commission have not been published. Thus, the distinction between graved and paved roads as applied to an extraordinary hardship is not published. An initial level of paving would be sufficient to come within the irreversible improvements category. The term physical improvements has not yet been defined except in discussion between the staff and the Commission.

**ANALYSIS OF THE COMPELLING PUBLIC NEED, EXTRAORDINARY HARDSHIP, AND PIECEMEAL AND SCATTERED ISSUES**

Under the Pinelands Protection Act, an applicant for approval for construction in the Protection Area must demonstrate that the proposed development either: (1) is designed to meet an existing compelling public need, or (2) is necessary in order to alleviate an extraordinary hardship, or (3) is consistent with the purposes and provisions of the Act and will not result in substantial impairment of the resources of the Pinelands. Satisfaction of any one of the three alternative requirements plus a showing that no substantial impairment will occur is sufficient. In the present case, the petitioner has sought to demonstrate the existence of an extraordinary hardship and a compelling public need which this project will meet.

The Interim Rules and Regulations set out several situations which the Commission views as being of the type which the extraordinary hardship exemption seeks to meet. The applicable section reads as follows:

Applications for development or construction will be considered as meeting the requirements of extraordinary hardship in the following instance:

1. Application where it may be demonstrated that a substantial commitment of monies or resources directly associated with physical improvements to the were made in good faith reliance on local approvals received prior to February 8, 1979.

In this case, the Township has spent $38,000 of taxpayers money to
clear, cut, grade and gravel the streets into and within the site. Neither the Pinelands Protection Act nor the regulations anywhere define what either a "substantial commitment of funds" is or what an "improvement" is. As to the former, it is recognized that placing a dollar figure on the term below which the commitment is insubstantial and above which it is difficult if not next to impossible. The method of arriving at a judgment on substantially must seemingly include a look at the dollars spent, source of the funds, nature of the applicant, type of improvement, value of the improvement to the facility, etc. Here, the site is obviously totally useless without some form of streets for ingress and egress to the nearby main road. The system of roads is an essential and significant feature of an industrial park.

The testimony of William Harrison, which was intended to present "agency practice," is crucial to a determination of this issue. Harrison stated that the Pinelands Commission has adopted a policy, albeit unpublished anywhere, of treating gravel roads as not being a form of improvement "sufficient" in nature to constitute a basis for a finding of extraordinary hardship. The distinction asserted, between gravel roads and roads which have received an initial layer of paving, is certainly not supported by a reading of the published Pinelands regulations. Paragraph one of the extraordinary hardship standards refers only to physical improvements, not "substantial physical improvements" or "irreversible" physical improvements. The regulation contains no examples of the types of physical improvement contemplated, as for instance does Standard four of the standard for determining consistency and avoidance of substantial impairment which contains a definition section which notes that improvements therein includes such as, "roads, water and sewer systems, and other utilities." No limitation on the type of road or degree of development thereof is stated in this definition.

That an unpaved road may constitute an improvement without paving seems implied by such statutory references as N.J.S.A. 40:55D-3, which while dealing with guarantees assuring installation of improvements, lists those types of improvements for which such performance guarantees may be required as including streets, grading, pavement, gutters, curbs, sidewalk, etc.

It seems clear that had the Pinelands Commission intended to place limits on the type or substantiality of the improvement which would qualify under paragraph 1 of the extraordinary hardship standard it could have done so within the standards themselves. For whatever reason, this was not done. While Mr. Harrison's testimony is en-
lightening as to the policy of the Commission, that policy is an unpublished standards. In this regard it is significant to note that the Commission adopted these standards because of a legislative mandate to formally and publicly do so. N.J.S.A. 13:18A-13e requires the Commission to adopt rules and regulations which specify the standards for determining extraordinary hardship, after public hearing thereon.

Having been ordered to adopt standards and having done so, in a document which not only encompasses the standards themselves but comments and rationale for them as well, the Commission now seeks to impose another layer of standards through unpublished policy and interpretations. While an agency must, out of necessity, often interpret statutory and regulatory language, where it has provided public standards and guidelines it should, as much as possible, stick to them.

I FIND that Berkeley Township has expended the sum of $38,459 of public monies to cut, clear, grade, and gravel the roads on the site of the proposed industrial park. I CONCLUDE that a fair application of the publicly announced standards for determining the existence of an extraordinary hardship requires that the Commission accept these improvements as sufficient to qualify as "physical improvements to the land."

As to the substantiability of the commitment, I believe that this expenditure does constitute a "substantial commitment" of funds. The money involved is taxpayer money which comes from a relatively small and apparently less than affluent citizenry. The monies do not represent funds from the coffers of a private corporation raised through commercial ventures and from willing investors seeking to build in pursuit of profit. While it is true that not every expenditure of taxpayers funds will be significant enough to automatically qualify as a substantial commitment, I am convinced that in this case $38,459 is substantial enough and I so FIND.

The remaining question under the extraordinary hardship issue is whether the petitioner has demonstrated that no alternate means are available to alleviate the hardship during the planning period. Here, the petitioner's witnesses, particularly Mr. Hobaugh, have testified as to the location and condition of various portions of the industrially zoned land in the Township. East of the Parkway most of the approximately 1,000 acres of such land is used by New Jersey Pulverizing. According to Mr. Hobaugh, the remainder is not readily accessible. This testimony stands undisputed. West of the Parkway, the land is all in the Protection Area and thus each site therein would be subject
to the same need for proof of extraordinary hardship, or other qualifying ground, in order to qualify for approval. Thus, during the planning period, any attempt to alleviate the hardship by building at another site west of the Parkway would face the same objections.

From the testimony, it appears that the Township has given careful thought to the best and most viable location for the park. The fact that it was easily acquired and is located very close to an air park were pluses over which the Executive Director too lightly passes.

I CONCLUDE that the Township has demonstrated that there exists no reasonable alternative means to alleviate the extraordinary hardship during this interim period, a hardship upon it where it is prevented from developing the park where it has in good faith physically improved the land through a substantial commitment of monies.

In light of the above findings and conclusions, I CONCLUDE that the Township has established by a preponderance of the evidence that it suffering an extraordinary hardship which qualified for the grant of an approval under the terms of the Pinelands Protection Act and the applicable regulations; subject, of course, to determinations on substantial impairment issues.

In view of the finding that an extraordinary hardship exists, the petitioner is not required to establish either of the other two alternative grounds for approval, i.e., compelling public need or consistency. Because the statute does not require that a proposal to be consistent with the purposes and provisions of the Pinelands Protection Act and the Federal Act, there is no statutory requirement which imposes on an otherwise qualified Protection Area applicant any necessity not to be engaged in piecemeal and scattered development. Such is clearly not the case in Preservation Area situations where the act requires both proof of extraordinary hardship or compelling public need and consistency. In the Preservation Area the planning policy against piecemeal and scattered, random and uncoordinated development applies regardless of the establishment of an extraordinary hardship or compelling public need. In the Protection zone the Legislature no doubt because it realized the less critical need for extreme regulation, has deemed it appropriate to waive the necessity for planning consistency in extraordinary hardship/compelling public need cases. The other portion of the consistency standard, i.e., no substantial impairment of the resources of the Pinelands, which may be dubbed the “environmental aspect” of consistency, still applied and remains to be addressed below. However, because I FIND the petitioner to have proven extraordinary hardship, I do not deemed it statutorily necess-
ary to determine either the compelling public need or piecemeal and scattered questions. Nevertheless, because this decision is subject to both agency and possible judicial review and since the testimony on these subjects has been presented, I will comment upon them in order that my views be clear so as to avoid the necessity for any future reconsideration of the case in the Office of Administrative Law.

In considering the compelling public need issues, one can begin with the general proposition that a fundamental concern of a governmental body in this era is the establishment of a climate and conditions which will enable the free enterprise economy to provide employment for the citizenry. Such activity benefits the public welfare and the encouragement of such opportunities for employment is, I believe, nothing short of a compelling public need, which is perhaps general in most areas. Surely, if Berkeley Township has an unemployment rate which was 8.4 percent in September 1979 and 12.7 percent in January 1980 (and quite possibly greater now in ligh of the recent sharp nationwide rise in unemployment, particularly centered in the construction trades) it is almost inconceivable that one can argue that a compelling public need does not exist to provide these unemployed with jobs in some fashion. However, while there may be a compelling public need for employment opportunities, in order for this project to fulfill the need, there must be a reasonable showing that the person who will benefit will be those affected by the need, i.e., the unemploye who live in Berkeley Township. While the development scheme may provide jobs, these may go to outsiders, non-municipal or even non-county residents, or persons already employed who may change their employer or be transferred to the new site. Although it is recognized that such may develop a ripple affect and that the creation of job opportunities anywhere will in the broad sense be in the public interest, a rational approach to the statute requires that the project be such as to be likely to meet a localized compelling public need. The question then becomes whether Berkeley has established by a preponderance of the evidence that the jobs provided by both construction and by occupants of the park will in some significant percentage be filled by local residents. While this may occur in fact, I am constrained to find that the evidence presented herein does not sufficiently prove the likelihood of this occurring. No witness or piece of evidence presented was able to state that the people of Berkeley would fill the jobs, as Mr. Hobaugh candidly agreed. Perhaps the matter does not admit of such proofs. It is quite possible perhaps even probable, that the high concentration of construction tradespeople in Berkeley will
result in a significant employment of localities at the site during construction, but what proof is there of this? All that has been provided is a statistic from which I am asked to draw a reasonable inference. Is such an inference enough to meet the Township's burden? I think not. The petitioner has presented no information by way of surveys of contractors, historical data, employment records, etc., which might have given better clues as to the likelihood of local residents receiving these jobs. Of course, as to the jobs with occupants of the site, nothing has been presented to who who is likely to receive these jobs.

I CONCLUDE that a compelling public need exists for the creation of employment opportunities for residents of Berkeley Township and that in theory the creation of a local source of jobs could serve to meet a portion of that need. However, I must reluctantly conclude that the evidence before me does not establish by a preponderance of the credible evidence that the project will in fact serve to satisfy the compelling public need for the unemployed citizens of Berkeley Township.

If the air park were not located at its present site, a fact Mr. Moore would change if he could, the placement of the Industrial Park at the proposed location would surely and simply be an example par excellence of piecemeal and scattered, random and uncoordinated development. One look at the aerial photograph shows how isolated the site is from even the closest significant development. However, the air park does exist and that fact must be included in the analysis of the piecemeal and scattered issue. The petitioner has argued that its decision to go for the proposed site was influenced to a substantial degree by what it saw as the reasonable relationship between the site and the air facility. The proximity to a transportation area was cited by witnesses as being an inducement to prospective occupants, indeed one which other parks did not offer. Even Mr. Moore agreed that access to transportation was one indicia of development which was not scattered or piecemeal or leapfrog.

The Executive Director argues that if the facility is approved, such approval will in essence result in a preemption of planning options for the entire area near the site and will, in effect, preplan the comprehensive management plan. Such is not necessarily the case. Here, if the existence of an extraordinary hardship requires approval (subject to substantial impairment issues), future use of adjacent and surrounding lands by others not so situated, i.e., suffering recognized forms of extraordinary hardship, etc. can still be controlled, curtailed and/or
prevented by use of the Comprehensive Management Plan and if necessary, the power of eminent domain. Merely because an otherwise qualified development will be located in an area which may under the plan be generally preserved does not mean the qualifying proposal must be rejected of deffered until such date in the future when the proposed Management Plan becomes effective.

I believe Mr. Moore again too lightly rejects the significance of the air park in deciding the piecemeal and scattered issue. Even he concedes the need to assess whether its capabilities will establish a rationality to the plan to develop the subject site. While the ability to forecast the actual use of the park by future, presently undetermined, occupants, its concededly limited, I CONCLUDE that the development of the site for the proposed use is a rational outgrowth and extension of the preexisting air park development. Thus, the proposal does not constitute piecemeal and scattered development.

THE IMPAIRMENT ISSUES

The most significant substantial impairment issue concerns Standard seven of the Interim Rules and Regulations which states that among sites which may not be approved are:

Sites or parts of sites which are determined by field inspection to contain habitats which are essential to the survival of animals identified as “threatened” or “endangered” . . .

In this case, the Executive Director contends that the site of the proposed industrial park is a habitat for the Northern Pine Snake, a threatened species. In the denial letters of March 17 and 28, the Executive Director further states that development of the site will “eliminate the habitat.”

Of course, the burden of proof is upon the petitioner to establish that the development of the industrial park will not “eliminate the habitat” or else show that the area is not a habitat or, if it is, is not essential to the survival of the Northern Pine Snake. Although the petitioner presented testimony on this matter before the Executive Director did, I believe it best in this case to first set forth the testimony of the Executive Director’s witnesses on the subject. The first of these was Robert T. Zappalorti, Executive Director of Herpetological Associates, a consulting firm located in Staten Island, New York. Mr. Zappalorti has for many years conducted research in the pine barren area both under the direction of his mentor, Dr. Carl Kauffeld, and
on his own. He serves as a consultant to the Pinelands Commission and the Department of Environmental Protection in its study of Endangered and Non-Game Species.

Mr. Zappalorti testified that the Northern Pine Snake is an endangered species listed on the official list, which became official on March 29, 1978. Endangered is defined as a status where a species prospects for survival is in immediate danger. This determination is made after a review of the literature. Mr. Zappalorti defined a habitat as a place where an animal finds all that it needs to survive, i.e., shelter, food, water and cover, a place to hibernate. Without each of these an animal cannot survive. With these, if the habitat is protected and not seriously altered, the animal should survive.

Mr. Zappalorti testified that he is familiar with the Northern Pine Snake and that its nesting area is usually, but not always, in open areas with plenty of sunlight and little or no trees. The snake is found in areas of pitch pine or pine oak forest, sometimes in pitch pine lowlands. Normally, the snake is found on ridges or slightly elevated areas from 40 to 120 feet in elevation. Part of the snake’s home range will lie below the 40 foot level but not its nesting area. The snake will be observed in open sandy areas with no vegetation, basking in the sun. It will also be found in areas containing Pennsylvania sedge, a grassy short plant with deep roots. This plant grows in area with a fair amount of sunlight. The snake will burrow under the roots using them as support for the roof of the burrowing tunnel. Another plant of this type is Hudsonia.

The pine snake is a constrictor which feeds on whitefooted mice, fence lizards, chipmunks, small rabbits, birds, birds’ eggs and moles. It is a large, powerful snake, heavybodied and growing up to seven feet long.

Mr. Zappalorti identified the Northern Pine Snake as a secretive animal, very well covered with camouflages and thus hard to see when it lies in white sand. It is best observed when crossing a road or trail.

The nesting characteristics of the snake are that it constructs a long nesting tunnel in open sandy areas, returning to the same area each year. The tunnel may be about twelve inches below the surface and up to seven and a half feet long.

The witness next discussed the home range of the snake. The hibernaculum constitutes the center of the home range. Mr. Zappalorti has been conducting research with his associates for some time and for the past three years snakes have been captured and permanently marked. Mr. Zappalorti stated that the home range is the area essen-
tial to the snake. He based his estimate of home range on conversations with other herpetologists, his experience with the removal and return of snakes, and his knowledge of Dr. Kauffeld's experiences. Dr. Kauffeld had estimated the range to be two to three miles a day. Being conservative, Zappalorti put the range at one to two miles.

Mr. Zappalorti placed a red line on a map of the Pinelands Protection area which shows the study area of his group. This area has been used for such studies for many years going back at least to the 1930's. The primary site for research has been an area running along the old bed of the Pennsylvania Railroad known as Crosley, an abandoned mining camp. This site is located on the map at the red outlined letters CA in CAFRA. Zappalorti reported that the pine snake would turn up in the Crosley area in June and July, heading in the general direction to nest. Between 1977 and the fall of 1979, 40 individual adult snakes have been taken and marked in the cleared area of the railroad bed between the Pine and Silver Ridges. Two hundred and fifty eggs have been noted. Zappalorti termed Crosley as a significant area of pine snake activity.

Mr. Zappalorti visited the proposed building site twice in 1980. Although there was no evidence in the record that he was an expert in vegetation, he did describe the area as a pitch pine lowland and pine oak forest. The Davenport Branch lies about a quarter mile to the west of the site. Some natural openings exist just to the side of the sandroad in the northwest corner of the site. The witness saw evidence of small mammal activity, mole burrows, chewed pine cones lying on top of logs and sandy mounds. He saw two fence lizards on the site and heard birds. He also observed a box turtle. He noted Pennsylvania sedge and Hudsonia along the back boundary of the site.

Mr. Zappalorti identified the soil in the area of the site as Lakewood and Lakehurst soil. He apparently identified the soils from the Ocean County Soil Survey. He said that these soils have suitable characteristics for potential nesting sites. The entire site has the characteristics necessary for being a pine snake habitat.

On September 22, 1978, Mr. Zappalorti observed a dead pine snake on Pinewald-Keswick Road, one quarter mile east of the Davenport Branch. The snake had been hit by a car. A bottle containing the preserved remains of the snake was marked in evidence and returned to Mr. Zappalorti by consent of the parties. He saw no snakes on the site when he inspected it in April of this year but felt this was not unusual in light of the time of year, as the snakes begin to wander
in mid-May, after the temperature has reached 65 degrees.

Zappalorti expressed his opinion that there was little difference between the industrial park and the Crosley area. He felt that snakes could move to and from these areas in search of food in the summer. The industrial park area has some large pine trees and stumps on the ground which "might offer" some holes for the snake to hid in. The distance from Crosley to the industrial park is one and a quarter miles. This would be within the home range of the snake.

The witness opined that the area of the industrial park is essential to the survival of the northern pine snake. Development will increase traffic, noise, lighting and movement of people and will disorient the snakes who may come onto the site. Further, while he acknowledges that at this time the effects of such development upon the pine snake are unknown, "it stands to reason that increased activity can only add to habitat deterioration, increased animals being killed on the road."

On cross-examination, the witness stated that the pine snake is found in large numbers in Virginia and the Carolinas. The New Jersey pine barrens represent the northernmost range for the animal. There is a small representation in Maryland. In order to find pine snakes, Zappalorti will normally go along the Pennsylvania Railroad sand roadbed and look for areas with little or no trees as well as turning over railroad ties.

He again defined the home range, speaking of it as the amount of distance within which the animal travels to find food, nesting sites and hibernaculum. The pine snake can cross streams and occasionally is found in close proximity thereto. The nesting site is generally but not always in soft sand. In sand, the typical nest goes down twelve inches to the bottom of the chamber; in sedge, six inches. The snakes have been found in thicker woods.

Zappalorti identified the vegetation on the site as being a primarily pine oak forest, rather dense in some portions. There are a few relatively open areas in the area in question.

At present, Mr. Zappalorti termed the site of the industrial park a suitable habitat but could not predict what effect development would have. In order to keep the site compatible with that of a habitat, it should be left alone. The Abex site was, in his view, not compatible.

He acknowledged that when he walked the site on April 18 and 28, he observed no nesting sites or hibernaculum but said that he never really looked for one. Mr. Zappalorti admitted that he had never contacted anyone in Berkeley Township regarding the possible presence of snakes at the site.
The other witness produced by the Executive Director was Susan Hullings, a staff member with expertise in biology and an educational background and course of study which was heavily geared to the Pinelands.

Miss Hullings first visited the Berkely site in September 1979 and again in March and on April 28 and May 15, 1980. She stated that the site was not in pitch pine lowland. The soil type was not appropriate for such classification. Certain types of trees indicative of a pitch pine, pine oak or oak pine forests. The forest here is, in her opinion, a pine oak forest.

On April 28, May 15 and an undetermined day in March, Miss Hullings visited the site and carefully noted the wildlife observed. She saw mole tunnels and a red squirrel at areas near the edges of the man-made cul de sac. She saw brown thrasher birds flying across the site and saw and heard warblers. She noted deer feces in the trial at the back of the site. Insects were also present; mosquitoes, flies, etc.

On cross-examination, Miss Hullings stated that although she had seen birds and other signs of animal life at the site prior to May 15, it was on that day that she went to the site at the request of Mr. Harrison to look for signs of animal life in response to testimony given on a prior hearing date by John Seldak, an expert witness for the petitioner. She described in detail the areas where she had observed signs of life during her traverse of the site.

Miss Hullings also observed fence lizards and saw what she described as good nesting sites for pine snakes but no actual nests or habernaculae. She saw Pennsylvania sedge on the site northwest of Abex as well as pine barrens heather and Hudsonia.

The applicant's witness with respect to the pine snake issue was John F. Seldak, the Township Soil Conservation Officer and an expert in agronomy. Mr. Seldak is not an expert in herpetology although he had some limited exposure to the subject in zoology courses in college and has had some exposure to snakes in his work in the Pequannock River area and Central America.

Mr. Seldak described the northern portion of the industrial park tract as having wood-mansi and Lakewood soils, not Lakehurst sand as he said is incorrectly listed in the Ocean County Soil Survey. In his hours on the site, amounting to about 40 over several months, covering all seasons and hours, he probed for pine snakes and found none. What is more, he testified that he observed a "noticeable absence" of bird and animal life, such as toxicity in the soil; however, he had never conducted any tests to determine if this condition existed. He stated that he had attempted to find snakes as findings regarding
the animal life on the site would help to classify the soil types present. He looked for burrow holes, overturned decaying pine logs, open grassy areas and mounding areas. He saw no tracks in the sand.

Mr. Sedlak stated that his knowledge of the characteristics of the pine snake was all drawn from the Herpetological Associates reports he had received through counsel.

Mr. Sedlak was asked to compare the habitat requirements set forth in the Herpetological Associates report of March 31, 1979, with his observations of the site. He stated that the site contained predominantly dense pitch pine lowland forests with understory at the firetrails and roads, no open grassy areas, no small prey, was located 1,300 to 1,500 feet from the nearest stream and had no man-made structures, other than Abex, in which the snakes could conceal themselves. Further, he described both wood-mansi and Lakewood soils as having clay layers beneath the surface which would make burrowing difficult for the snakes. He described the site as being a transaction area from pitch pine lowland with a succession understory of pitch pine scrub-oaks at the periphery. Crosley contains a mature pine-oak forest. In summary, Sedlak did not feel that either the soil or vegetation was sufficiently similar to the Crosley area which was a preferred habitat site.

On cross-examination, Mr. Sedlak reviewed his visits to the site. He began to look for wildlife in the fall of 1979, specifically, for snakes. He again looked in early March. He had not observed movement or signs of wildlife on any occasion. He denied ever seeing Hudsonia on the site. Pennsylvanian sedge was observed at the periphery along the fire trail (referred to as a sand road in the testimony) but not in great profusion.

Interrogatories answered by the Executive Director were introduced into evidence. These deal mainly with the habitat issue.

ANALYSIS OF THE HABITAT ISSUE

A review of the testimony dealing with the alleged existence of a habitat for the northern pine snake shows that the center of activity for the snake in the general area east of the Berkeley Township-Manchester Township line is along the railroad bed at Crosley. This site, which has been the subject of intense investigation over a lengthy period, is an identifiable actual habitat for the snake. The industrial park site is not, on the basis of the evidence before me, identifiable as an actual area of snake habitation, either as a nesting zone or
hibernaculum location. While this is not to say that intense investigation of the entire site might not turn up snakes and/or evidence of nests and/or hibernaculae, the relatively insignificant inspections conducted to date do not support any finding that the site supports a pine snake population. Further, the only evidence that supports a finding that the pine snake ever even passes through the site is Mr. Zappalorti’s thesis that the snake moves between the site and Crosley in the spring and summer and his discovery of the dead snake on the side of the road in 1978. The latter occurrence might well have been the result of a car hitting a snake which had just left the site, but it could also have been a snake which entered the road at a place other than the site. Possibly the snake was even dropped at the site by someone and then hit. There is, of course, no way to know the actual facts. However, the reasonable inference appears to be that in all likelihood the snake either came from the site of someone other area nearby. This tells us nothing about the frequency of such visits.

Since there is at most minimal evidence that the pine snake actually exists on the site, the question that really must be faced is whether the area is a potential habitat and if so, is it essential to the survival of the pine snake. As to the habitat question, the respondent’s witness, Mr. Zappalorti, an extremely credible expert in the field of herpetology with substantial experience both in connection with the pine snake itself and the pinelands area particularly, testified that the site and nearby areas offer all of the things necessary for the pine snake to survive: food, shelter, water, and cover. Water is found at the Davenport Branch a quarter of a mile from the site. Evidence exists, both circumstantial and direct, of small wildlife activity on the site itself. Some areas on or very near the edge of the site contain Hudsonia and Pennsylvania sedge. There are logs available to cover. The site itself contains both the sand trail in the back and the open road cut areas where the snake may come out and bask in the sun and/or conceivably nest.

The testimony of Mr. Sedlak attempting to distinguish this site from Crosley did not convince me that the site could not be a reasonable habitat for the snake. Mr. Sedlak strongly asserted that there was a noticeable absence of small mammal activity on the site. He hypothesized that this was as a result of an aluminum toxicity problem. As noted above, he made no tests to confirm this and, in fact, Mr. Zappalorti and Miss Hullins’ testimony refutes his thesis. I find the testimony of these latter witnesses credible with respect to their observations of actual small animal activity as well as significant signs
pointing to such a presence. Thus, I FIND that small animals do appear on the site and I CONCLUDE that the industrial park site does provide necessary source of food for the pine snake. I further FIND that areas either on or at the periphery of the site do contain Pennsylvania sedge and Hudsonia which are available for the pine snake to use as cover and potentially for the construction of hibernaculae. While it is true that Mr. Zappalorti is not an expert in vegetation, the combination of the testimony of this witness, who clearly has a great deal of knowledge with respect to the characteristics of soil and vegetation as they affect his primary interest in snakes, and the testimony of Miss Hullings, convinces me by a preponderance of the evidence that the vegetation is as they describe it. Thus, I FIND that the area is essentially a pine-oak forest.

While I certainly credit the testimony of Mr. Sedlak in his area of expertise that the soils are wood-mansi and Lakewood and that Lakehurst sands are not present on the site, Mr. Zappalorti's testimony with respect to the strength of the snake indicates that the snake may well be able to construct burrows and hibernaculae in these types of soil. Even if the snake does not do so, this does not mean that the snake does not use the site as a source of food and cover.

I CONCLUDE that the industrial park site is a potential habitat for the northern pine snake because it provides available sources of food, shelter, and cover and is located reasonably near a source of water. I also CONCLUDE that the evidence is insufficient to establish that the snake, in fact, uses this potential habitat.

Standard seven identified as one basis for the finding of a substantial impairment on a particular site the existence of a habitat essential to the survival of an endangered species. There is no requirement that the habitat be in actual use by the animal. As Mr. Zappalorti testified, habitat implies an area which provides the necessities required by the animal. Whether the animal uses those necessities at that site is not determinative of whether it is a habitat. The crucial question thus is whether this habitat is essential for the survival of the pine snake. This is a most difficult determination. Mr. Zappalorti expressed the opinion that the site was essential while at the same time admitting that there was no evidence available to him to show that the snake used the site and further, that he could not with any certainty predict what the effect of restricted construction on the site would be on the snake. Thus, he could not say, as a matter of expert opinion, that construction on the site would result in the complete elimination of this habitat.
Since there is no evidence as to what if anything, the snake does on this site it is really impossible to come to a conclusion as a matter of law that the site is essential since essentially implies necessity. If the snake does not, in fact, use the site then at least at present it does not appear to need the site, since it seems to find its requirements in other habitats.

The burden placed on the petitioner in this matter is extremely heavy. It is required that the petitioner demonstrate that its proposal will not result in substantial impairment of the resources of the Pinelands. Surely, if construction eliminates this habitat and if this habitat is essential to the snake, then such development would substantially impair a resource of the Pinelands, i.e., an endangered living species. In order to meet its burden, it appears necessary that the petitioner establish by a preponderance of the evidence that the site is not either: (a) a habitat or (b) an essential habitat. Since I have found that this site does constitute a habitat, the burden is then on the applicant to show that it is not essential. I fully recognize that in light of the secretive nature of this animal and the fact that it may use this site on only some occasions during the year that it may be very, very difficult for anyone to ever say that this site is essential. At the same time, there is no evidence in this case on behalf of the petitioner which would in any way establish a basis for my concluding as a matter of law that this site is not essential. Had an expert witness for the applicant testified that while the site was a habitat it was not essential because other areas were available within which the animal could find everything it needed and further that his examination of the site had indicated that the snake was not using it, I might perhaps be able to find in the applicant's favor. However, the state of the proof in this case is that the applicant has presented no herpetiological expert and has presented no one who could come to any expert conclusion that this site, which I have found to be a habitat, was not essential. Therefore, although I recognize the difficulties of proof, and while I cannot conclude that the site is essential, I am constrained to CONCLUDE that the petitioner has failed to meet its burden of proof and has not established by a preponderance of the evidence that the construction of the proposed industrial park on the present site will not substantially impair a resource of the pinelands, i.e., a potentially essential habitat for the pine snake.

In the light of the conclusion that a substantial impairment may occur if the industrial park proceeds through development, the regulation requires that a determination be made by the Pinelands Com-
mission as to whether this type of substantial impairment is such as to require denial of the application. As noted above, the finding of a substantial impairment under one of the nine standards set forth in the Interim Rules and Regulations may result in a denial. This clearly implies that the agency has discretion to allow construction even where a substantial impairment will occur. In this particular case, the substantial impairment that may occur is the elimination of the habitat of an endangered animal species. The question that must be faced is whether the elimination of such a habitat is sufficiently significant to require a denial. As Mr. Harrison testified, that is a most sensitive question. While it is perhaps true that eliminating this habitat does not pose the danger to the citizens of the area or of the State that might exist if, for instance, a pollution problem were established, the elimination of a habitat for an already endangered species of animal poses other potential dangers which are perhaps both moral and practical.\(^1\) It is my considered judgment that the concept of the Pinelands Protection Act and of the Federal Act implies that where it is not absolutely necessary, for other reasons, to eliminate habitats available to threatened or endangered animal life these sites would be preserved. While I fully recognize that one can strongly argue that such a conservation approach is unduly restrictive of other needs of society, I believe that a reasonable interpretation of the statute requires this type of protection.

**STORM WATER RUN OFF**

As previously noted, the Executive Director initially objected to this project because the petitioner did not submit percolation test results in the area of the proposed recharge basin or the storm water calculation.

The testimony of Mr. Messano as it touched on the drainage system has been noted above. In addition, Chester DiLorenzo, a Civil Engineer employed by Messano, testified on this subject. He described the site, the calculations made to determine if the drainage system was adequate and the characteristics of the soil relevant to such decisions. This testimony was supplemented by John Sedlak's. The detailed analysis of calculations is contained in the record and will not be repeated here. The Pinelands Commission has not presented any evidence on this issue, and has not argued it in its closing remarks.

\(^1\)See the discussion in *TVA v. Hill*, 437 U.S. 153 (1978).
Suffice it to say that the proof presented by the petitioner appear credible and sufficient to indicate that no adverse impact is likely to occur from storm water runoff and that arrangements to properly dispose of run-off appear adequate. Therefore, I FIND no violation of Standard two.

CONCLUSION

In summary, I CONCLUDE that the proposed project does qualify for approval under the applicable standards for determining hardship; however, the application must be denied since it has not been established that it will substantially impair a resource of the Pinelands, specifically, a potentially essential habitat for the endangered northern pine snake.

While determinations are not legally necessary on the compelling public need and scattered and piecemeal-consistency issue, I would FIND the project not to be scattered and piecemeal development and also not to have been shown to be an effective way to meet a compelling public need for employment for local residents.

I CONCLUDE that the project will not violate Standard 2 of the Interim Rules and Regulations as to storm water run-off.

The application for approval of this development in the Pinelands is DENIED.

After reviewing this Initial Decision the New Jersey Pinelands Commission on September 24, 1980, issued the following Final Decision:

The Pinelands Commission did not act on the administrative law judge’s initial decision in the 45 day time period. Thus, the Initial Decision has become the Final Decision in this matter in accordance with N.J.S.A. 52:14B-10.