SITE REMEDIATION IN THE HIGHLANDS AND PINELANDS

2014 EBC FALL ENVIRONMENTAL CONFERENCE

NEIL YOSKIN, ESQ.
SOKOL, BEHOT & FIORENZO
THE HIGHLANDS

- Highlands Water Protection and Planning Act (NJSA 13:20-1, August 10, 2004)
- 1343 Square miles (17% of the State’s land area)
- 88 Municipalities in seven counties (Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren)
- The Act divides the Highlands into Preservation and Planning areas
- Establishes 15 Member Highlands Council
- Council’s principle duty is to adopt and oversee implementation of Regional Master Plan

Sokol, Behot & Fiorenzo
New Jersey Highlands

- 859,358 acres
- 1,343 square-miles
- 88 municipalities
- 7 counties
- Divided into Preservation Area and Planning Area in the Highlands Water Protection and Planning Act.
LAND USE CONTROLS

- Highlands Preservation Area Approval (HPAA Section 30)
- Council “callup” of local approvals
- Exemptions (Section 28)
- Waivers (Section 33)
EXEMPTIONS

- 17 Statutory Exemptions, including:
  
  - #15 – The remediation of contaminated sites pursuant to NJSA 58:10B-1 et seg
  
  - #4 – Reconstruction of any building or structure for any reason within 125% of the lawfully pre-existing impervious surface, up to 0.25 acres
Required for any “major development”, ie:

- Any non-residential development in the Preservation Area
- Any residential development requiring a DEP permit of any kind; and/or
- Any development resulting in one acre of land disturbance or 0.251 acres of new impervious cover

Sokol, Behot & Fiorenzo
HIGHLANDS

HPAA REVIEW STANDARDS

- 300’ buffer from open waters and wetlands
- 3% impervious cover limit
- 25 or 88 acre minimum lot size for projects on septic

Sokol, Behot & Fiorenzo
WAIVERS

- A waiver to permit development if determined to be necessary by DEP in order to protect public health and safety

- A waiver to avoid the taking of property without just compensation

- A waiver to permit redevelopment of designated brownfield sites with existing lawful impervious cover of 70% or more

Sokol, Behot & Fiorenzo
THE PINELANDS

- Pinelands Protection Act (NJSA 13:18A-1, June 28, 1979)
- Pinelands National Reserve = 1718.75 square miles (approx. 20% of the State’s land area)
- Pinelands Area = 1465 square miles
- Home to 17 trillion gallon Kirkwood cohansey aquifer
- 446,000 acres (47% of Pinelands area) is permanently protected

Sokol, Behot & Fiorenzo
Pinelands Management Areas

- Preservation Area District
- Forest Areas
- Special Agricultural Production Areas
- Agricultural Production Areas
- Rural Development Areas
- Pinelands Villages
- Pinelands Towns
- Regional Growth Areas
- Military and Federal Installation Areas
PINELANDS PROTECTION ACT

- Delineates Preservation Area and Protection Area
- Implements Section 502 of National Parks and Reservation Act
- Establishes 15 Member Pinelands Commission
- Directs commission to prepare and adopt Comprehensive Management Plans (CMP)

Sokol, Behot & Fiorenzo
PINELANDS PROTECTION ACT (cont’d)

- Requires that all local and county master plans and land use ordinances be consistent with CMP

- Requires consistency between CMP and “environmental design” for overlap area with DEP regulated coastal area

- Authorizes Commission to review all local development approvals
Applications in certified municipalities are filed locally subject to “callup” by Commission for direct review.

Development applications in uncertified municipalities or by state or local public agencies subject to direct Commission review.

If direct Commission review is required, staff issues recommendation, Commission takes final action.
CMP STANDARDS

- No site remediation standards other than those used by the DEP
- Stringent development standards for wetlands, vegetation, fish and wildlife
- Stringent controls over forestry, agriculture, resource extraction and waste management

Sokol, Behot & Fiorenzo
WAIVERS OF STRICT COMPLIANCE

- Available in cases where strict compliance with the CMP will result in extraordinary hardship or when necessary to serve a compelling public need

- Relief will be the minimum necessary and must be consistent with the protection of Pinelands resources

Sokol, Behot & Fiorenzo
DEVELOPMENT TRANSFER PROGRAMS

- PDC Program for transfer of credits for residential development from Preservation and Agricultural Areas to Regional Growth Area

Sokol, Behot & Fiorenzo