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2:00From: Stewart G. PollockTo: Governor ByrneDonald Linky

(Institution or Department)

Date: November 3, 1978Re: Pinelands Policy

Commissioner O'Hern has requested this meeting to discuss policy options relating to the Pinelands in view of the recent federal legislation and the draft report from the Pinelands Review Committee chaired by Craig Yates recommending new State legislation.

DEP believes that prompt State legislative action is necessary to strengthen regulatory controls over the Pinelands. The effect of the DEP water quality standards has been to force developers to use larger lots for homes, but has not prevented new construction. Unless new legislation is passed, DEP feels that there will be substantial immediate development pressure resulting from builders seeking to beat any new, tighter land-use controls without State power to block construction.

I. Status

The federal Act authorized a fund of \$26 million - \$3 million for planning and \$23 million for land acquisition provided on a 75-25 percent matching basis. Within 30 days after the President's expected approval of the bill this week, the Secretary of Interior will request that you establish within 90 days a "planning entity", composed of 7 appointments by the county freeholders boards, seven appointments by you and one Interior representative. The bill directs the planning body to present a final preservation plan within 18 months for federal approval.

The PRC report calls for the creation of a permanent regulatory structure, with strong state powers and local implementation.

II. Issues

1. Appointments to "planning entity"

The Freeholder appointments can be expected to be largely pro-development/pro-local control in orientation. The State appointments may have to balance the process by being more oriented toward preservation.

2. Funding

The Congressional Act is an authorization, not an appropriation. It is unlikely that an appropriation bill for the planning funds will be moved until March, at the earliest, and even then it is unlikely that full funding will be available. We are exploring the feasibility of obtaining interim federal grants or using Green Acres or coastal program funds.

3. Powers

The federal bill calls for the maximum use of state and local governmental authority to manage the Reserve, and imposes a limited freeze on federal projects or funding which might jeopardize the central areas of the Pinelands during the 18-month planning period.

4. Permanent Structure

The federal bill calls for the creation of a plan, with maximum public and local participation, to acquire land and manage a large area. The PRC calls for the creation of a permanent body to protect the Pines, create a planning process, and impose interim controls. The federal bill would require a two-stage process; the PRC proposal envisions a single legislative package. A problem created by the federal legislation is how to reconcile its new planning phase with the PRC recommendations for creation of a new regulatory body.

III. Options

There would appear to be the following major options for your consideration:

1. Appoint seven individuals to serve on an interim planning commission as required by the Federal Act. Do nothing further until the planning commission completes its work within 18 months. This option is simplest, and would be least controversial. It might, however, lead to complaints of inaction; allow substantial development to proceed while the plan is being prepared and reviewed; and defer any State legislative action so long that the Administration would have less political leverage to secure a strong bill.
2. Appoint your representatives as in No. 1; and ask the Legislature for an 18-24 month moratorium on all development in a carefully designated area until the planning process is completed. Ask for no further powers until the planning commission completes its work. This would give the commission some "breathing time" while the planning work was completed, but will generate some political opposition no matter how carefully the moratorium is worded. It would also require two separate approaches to the Legislature - first for the moratorium and second for implementation of the plan's recommendations - on highly controversial issues.
3. Appoint your representatives as in No. 1; and authorize the planning commission to review and regulate local land-use decisions. This authority might be revised after the plan is submitted to the Legislature for review in 18 months. This would consolidate the process into one bill, but be highly controversial and could be criticized as circumventing the planning process created by the federal bill.

RECOMMENDATION: We recommend option No. 3. While this would be the most politically difficult, it would confront the long-term preservation problem directly and decisively. Even if the bill fails to pass, it is a fight worth making now rather than later. Attached is an outline of a bill which could be introduced in January.

Pinelands Planning and Preservation Act

I. Creation of Pinelands Planning and Management Commission

1. Composition identical to that of federal planning entity, i.e. 15 members: 7 Gubernatorial appointments, 7 County appointments, 1 federal appointment.
2. Jurisdiction includes area designated in federal act, possibly delineated into two or more zones with varying levels of land-use review authority.

II. Planning

1. Commissioner to prepare comprehensive plan as required by federal act.
2. Plan to include legislative guidelines.
 - (a) protection of ground water;
 - (b) restriction of piecemeal development;
 - (c) designation of critical environmental and recreational resources.
3. Public hearings and review before submission to Legislature and federal government.

III. Powers of Commission

1. Authorized to intervene to reject any local land-use development approval in central Pinelands area.
2. Coordination of federal, state and local projects and programs.
3. Development of guidelines for local land-use reviews.
4. Acquisition of public lands.

IV. Incentives

1. Special program for payments in lieu of taxes to municipalities with substantial public land areas.
2. Guarantee fund to compensate private landowners who establish State regulation substantially deprives them of property value.