

**OBJECTORS' MEMORANDUM #1**

From: William L. Horner, Esq. *W.L.H.*  
To: Monroe Township Zoning Board Chair and Members c/o Dawn Farrell, Secretary  
Cc: Richard P. Coe, Jr., Esq.  
Pamela J. Pellegrini, P.E., P.P.  
Martin S. Sander, P.E.  
Edward J. Hovatter, Esq.  
Date: January 22, 2021  
Re: **Objections to Application of Wood Management LLC, et al.**  
**Use Variance/Site Plan/Minor Subdivision Application**  
**(Monroe Township Block 14301, Lots 4, 4.01, 7, 8, 9 and 10)**

**Introduction:**

In reviewing this new application it is important to understand that a variety of extremely disruptive activities, including numerous zoning violations, have been conducted over the past seven years on four parcels of land (Block 14301, Lots 4, 8, 9 and 10) by the three affiliated applicant companies (Fred Smith Orchards, Inc., Loring, Inc., and Wood Management, LLC) (hereafter referred to as the "Peach Country affiliates"). Although the activities might be appropriate in a heavy industrial zoning district, or perhaps in a very remote rural region, they are entirely inappropriate at the Peach Country properties.

All of the current problems at the Peach Country properties began with a 2012 Planning Board approval.

**Prior Planning Board Approval:**

On December 6, 2012, the Monroe Township Planning Board granted preliminary and final site plan approval to "Peach Country Tractor, Inc." for a retail garden center, and an "exempt" recycling facility, on Lot 10. Lots 4, 8 and 9 were not included in that application. The Board's resolution of approval (PB-51-12, adopted on December 13, 2012) states in paragraph 9 on page 7 that the applicant would be "subject to Class B Recycling Center exceptions and permitting."

This requirement was also reflected in the hearing minutes, as emphasized by the Board's Engineer and confirmed by the applicant's attorney.

**“Exempt” Recycling Facilities Requirements:**

Under the NJDEP regulations, an “exempt” recycling facility is a small, part-time facility that must be operated within specified limits. A facility that does not operate within the exemption limitations is a solid waste facility (“SWF”) that must be licensed as such.

A facility that intends to operate under an SWF “exemption” must file a Notification of Exempt Recycling Activities with NJDEP. The Notification that was filed on July 14, 2014 by Steve Smith (as President of Peach Country Tractor) states that Peach Country's exempt activities will be those specified in *N.J.A.C. 7:26A-1.4(a)3.* and 22 (hereafter referred to as “Subsection 3” and “Subsection 22”), which regulate the periodic receipt and processing of woody tree parts, brush, leaves, and grass clippings in limited volumes and durations. See copy of Peach Country “exempt” Notice attached as **Exhibit A**.

The Subsection 3 exemption, which involves woody tree parts and brush, allows as follows:

3. Recycling activities in which tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts are to be received, stored, processed or transferred provided that:

- i. Only the amount of unprocessed material which the equipment on-site or as may be readily available is capable of processing within a one-week period up to a maximum of 7,500 cubic yards is stored on-site;
- ii. Storage of material on-site shall not exceed one year;
- iii. Storage of processed material on-site shall not exceed 7,500 cubic yards; and
- iv. Processing is limited to four times per year and each processing event shall be limited to a two-week time period, unless prior approval is received from the Department.

The Subsection 22 exemption, which involves leaves and grass clippings, allows as follows:

22. The receipt of less than 3,000 cubic yards of leaves per year, and/or 1,000 cubic yards of grass clippings per year, at a site for transfer to a recycling center holding

a general approval pursuant to *N.J.A.C. 7:26A-3* for the receipt and processing of leaves and/or grass, or to other sites exempted from the requirement to obtain a general or limited approval to operate pursuant to *N.J.A.C. 7:26-1.4*, or other specific use approved in writing by the Department where the receipt and transfer activity meets the criteria below:

- i. Leaves shall be removed from the site within 45 days of receipt;
- ii. Grass shall be placed promptly in nonleaking containers, such as roll-offs, upon receipt at the facility. The container shall be covered immediately following loading and shall remain fully covered until removed from the site;
- iii. No grass clippings or leachate shall remain on the ground after loading into non-leaking containers as specified in (a)22.ii. above;
- iv. Containers shall be removed from the site within two days of the placement of any grass in the container; and
- v. Records of the daily volume of leaves and grass clippings received and transferred, including the name and address of the site to which the leaves are transferred, shall be kept and maintained at the facility for three years from the date that the records were generated. The required records shall be made available to the Department during an inspection and shall be submitted to the Department upon request.

**Peach Country’s NJDEP Violations:**

Despite claiming the above exemptions under Subsections 3 and 22, the Peach Country affiliates have failed to comply with the regulatory “exemption” requirements, and consequently they have been cited for several violations, some of which have been “satisfied,” but several of which remain “pending.” See NJDEP document “Violations at the Peach Country Garden Center” attached as **Exhibit B**.

The NJDEP violations that have been “satisfied” were discovered in September 2016 and May 2017, and involved failing to conduct operations in a manner consistent with the protection of public health, safety and the environment; failing to place leaves and grass in non-

leaking/covered containers; and failing to remove containers of leaves and grass clippings in a timely manner.

The NJDEP violations that remain “pending” are more fundamental and more serious:

1. May 18, 2017: Failure to conduct operations in a manner consistent with the protection of public health, safety and the environment (specifically, partially processed mulch was on fire during the inspection).
2. May 18, 2017: Failure to provide notice of facility operation pursuant to exemption (specifically, the allegedly “exempt” operation is being conducted on Lots 4 and 10, not “Lot 1,” and the corporate structures of the three Peach Country affiliates as owners of Lots 4, 8, 9 and 10, and their business relationships to “Peach Country Tractor,” must be explained).
3. May 18, 2017: Failure to obtain an SWF permit prior to constructing or operating a solid waste facility (specifically, receiving unapproved ID # 27 sludge waste from Gemini Linen in Palmyra, Burlington County “for about two years,” and having a full container of type 10/13/13C waste on-site).
4. May 18, 2017: Onsite storage of more than 7,500 cubic yards of processed woody tree parts and brush (approximately 45,000 cubic yards of this material was discovered onsite during the NJDEP inspection).
5. May 18, 2017: Onsite storage of more than 7,500 cubic yards of un-processed woody tree parts and brush (approximately 32,000 cubic yards of this material was discovered onsite during the NJDEP inspection).
6. February 6, 2018: Failure to provide notice of facility operation pursuant to exemption (specifically, failure to inform NJDEP of the intention to operate under exemption Subsections 3 and 18 on Lot 10). (Note: Subsection 18, which was not referenced in Peach Country’s Notification to NJDEP, provides an exemption and operational criteria for “the receipt of yard trimmings for composting where the finished compost product is applied on site on land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, and consistent with the State Agriculture Development Committee ‘agricultural management practice’ for on-farm compost operations operating on commercial farms, or on mined lands being restored under an approved restoration plan.”)

7. February 6, 2018: Failure to obtain an SWF permit prior to constructing or operating a solid waste facility (specifically, several locations of “C&D” – construction and demolition – waste, and “bulky waste” were discovered throughout the facility during the inspection). (Note: The NJDEP defines Type 13 “bulky waste” as including “large items of waste material, such as appliances and furniture, discarded automobiles, trucks and trailers and large vehicle parts, and tires.” *N.J.A.C. 7:26-2.13(g).*)
8. February 6, 2018: Failure to comply with an approved agricultural management plan, mining area restoration plan, or other plan defining appropriate methods of on-site compost product use and rates of application (this violation pertains to the above referenced “Subsection 18” composting exemption for which the Peach Country affiliates gave no NJDEP notice).
9. February 6, 2018: Failure to incorporate a composting method that results in the aerobic biodegradation of the yard trimmings received (this violation pertains to the above referenced “Subsection 18” composting exemption for which the Peach Country affiliates gave no NJDEP notice).
10. February 6, 2018: Failure to place yard trimmings in windrows within the week of receipt (this violation pertains to the above referenced “Subsection 18” composting exemption for which the Peach Country affiliates gave no NJDEP notice).
11. July 24, 2019: Onsite storage of more than 7,500 cubic yards of processed woody tree parts and brush (wood chips – out of compliance with Subsection 3 limitations).
12. May 27, 2020: Failure to obtain an SWF permit prior to constructing or operating a solid waste facility (specifically, applying unscreened “overs” on the Lot 4 farm fields at the property containing litter such as bottle caps, plastic bags, plastics, wrappers, paper, wood, etc.). (Note: The term “overs” is not defined in the NJDEP waste management regulations; however, the context provided in the non-compliance description suggests that “overs” are the “leftover” unusable waste materials from a mulch recycling process – that is, materials that are not classified as mulch or topsoil.
13. May 27, 2020: Failure to apply for and receive an SWF permit prior to engaging in the disposal of solid waste (similar to the foregoing violation).
14. May 27, 2020: Failure to provide records necessary to determine exemption compliance.

15. May 27, 2020: Processing woody tree parts and brush more than four time per year and/or each processing event being more than a two-week time period (specifically, the Peach Country affiliates appear to be processing more than four times per year, and failed to produce records of processing in a timely manner).
16. May 27, 2020: Onsite storage of more than 7,500 cubic yards of processed woody tree parts and brush (specifically, the Peach Country facility had more than 7,500 cubic yards of material and records were unavailable for review).

In addition to the above, the Inspection Summary Report for the May 27, 2020 inspection states in the NJDEP inspector's narrative (page 2) that "during the inspection" the inspector observed waste being disposed of on the Peach Country property "by a landscape company," which waste specifically included "a wooden pallet, plastic, and trash bags with construction debris including bricks." See NJDEP document "Inspection Summary Report for Peach Country Tractor" attached as **Exhibit C**.

**Another Incident – Monroe Police Report (re: "Ben Franklin Bridge Millings"):**

Another incident indicates that the Peach Country affiliates are illegally receiving other types of solid waste that are not covered under Subsections 3, 18 or 22 exemptions. The incident involved late-night dumping of "millings" from the Benjamin Franklin Bridge. Specifically, on May 18, 2020, my clients called the police about late-night traffic and noise at the Peach Country properties – large trucks going in and out through the automated retail store gate. The investigating officer's Report Summary, which indicates that his investigation occurred between 11:00 and 11:15 p.m. that night, states that the police dispatcher spoke to "peach tree" who said that "south state" would be dumping millings from the Ben Franklin Bridge at the property until midnight. See Police Report Summary attached as **Exhibit D**.

**Illegal Expansion of Uses:**

While perpetrating these NJDEP violations the Peach Country affiliates were also establishing an ever-expanding zoning-violative business model that involves much more than the mere processing and selling of mulch. Numerous walk-in shipping containers were brought onto

the property to be used as storage facilities for independent landscaping companies.<sup>1</sup> The landscaping companies are permitted to park their landscaping vehicles, trailers and equipment at the Peach Country properties overnight. Each morning the landscaping companies' work crews arrive at the Peach Country properties in their private vehicles to park there during the day while heading out to their respective landscaping jobs in the landscaping company vehicles. At the end of the day the reverse happens – the landscaping vehicles and equipment are re-parked at the Peach Country properties and the workers head home in their personal automobiles. These and other storage activities have spread to all of the lots comprising the Peach Country properties, including the outdoor storage of vehicles, equipment and materials in the areas surrounding the retail store (outdoor storage was not contemplated or approved in connection with the retail store site plan). An automated gate, that appears to be operated by a keypad or remote-control, was installed to allow the contractors to enter and exit the Peach Country properties through the retail store parking lot before and after permitted business hours, and the gate's location along North Tuckahoe Road results in dangerous and disruptive vehicle queuing when more than one vehicle approaches it from either side. None of these activities were approved as part of the Lot 10 site plan application, and no business activities (except perhaps "agriculture" in 2014, as noted in the Board Planner's letter) have ever been approved for Lots 4, 8 or 9.

Another component of Peach Country's business model, which creates serious problems as it serves to exacerbate the above-described NJDEP violations, is that the landscaping companies are permitted to bring trash and debris from their off-site jobs back to the Peach Country properties for disposal and, in the case of vegetative debris, conversion into mulch or composted material. Presumably, as more landscapers utilize the Peach Country site for storage and job-staging, more debris and raw material is delivered to Peach Country's illegal solid waste facility, which in turn causes the facility operations to increase and intensify to an even greater extent beyond the NJDEP's "exempt" limitations. The landscaping companies also purchase mulch from the Peach Country affiliates.

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<sup>1</sup> These types of shipping containers are referred to in the shipping industry as "ISO containers." (The applicant refers to them as "Sea Boxes.") An ISO container is an international intermodal container that is manufactured according to the specifications outlined by the International Organization for Standardization (ISO). ISO containers are suitable for ship, rail and truck. Container capacity is usually communicated in twenty-foot equivalent units (TEU's), with typical dimensions being 8'W x 8.5'H x 20' or 40' L. Sources: <https://blog.intekfreight-logistics.com/iso-container-defined-and-facts> and <https://westerncontainersales.com/shipping-container-dimensions/>

**Municipal Court Enforcement:**

The Monroe Township zoning officer and prosecutor have been attempting to enforce against all of the above violations for the past year but the municipal court case has been delayed by court conflicts and pandemic-related scheduling problems. A case management conference was conducted on January 7, 2021, at 1:00 p.m. (via Zoom) in which the fines for the currently ongoing violations was generally estimated to be \$1.2 million based on \$1,000 per day for each of the four Peach Country lots for 300 days. A settlement may be in the works but meanwhile the violations continue. My clients observed the case management conference and have informed me that Mr. Hovatter and Mr. (Steve) Smith were in attendance as well.

**Use Variance Application # 1 (2019 Denial):**

**Relief Requested – “Eight Contractor Storage/Warehouse Units with Overnight Parking”:**

In late 2019 Wood Management LLC, in collaboration with the other Peach Country affiliates, applied to the Monroe Township Zoning Board for use variance approval of “Eight (8) Contractor Storage/Warehouse Units of 6,000 Square Feet Each (48,000 Sq. Ft. Total) With Overnight Vehicle Parking.” The application hearing took place on October 29, 2019 and December 3, 2019, whereupon the application was denied as memorialized by Resolution #46-2019, dated January 7, 2020.

**Contractor Storage/Parking Use *Not Permitted* in BP District:**

The 2019 application proposed for the contractor units to be constructed, and the overnight parking to take place, on Lots 8 and 9. One of the reasons cited by the applicant in support for the requested relief, as reflected on page 2 of the Board’s denial resolution, was to “take the fourteen contractors that are currently parking on Lot 10 and move them over to [Lots 8 and 9].”

The Board’s Planner confirmed that the proposed use is not permitted in the BP zoning district in which the Peach Country properties are located, and that “the combination of the intended use and function is not specifically addressed in the zoning code nor are there any specific standards to mitigate the impacts and intensity of the proposed use.” The added intensity of the proposed use, in terms of its traffic impacts (compared to regular self-storage facilities), was



confirmed by the applicant's own traffic engineer in response to questioning by the Zoning Board Solicitor. (See Resolution pages 2 and 4.)

The Board's Planner also confirmed that the then-occurring contractor activities on Lot 10 included "equipment storage, crew- and job-staging, and commercial employee parking for various landscaping businesses" (which is consistent with the zoning-violative activities described above in this memorandum that are ongoing at the Peach Country properties). (See Resolution page 5.)

Members of the Board raised questions as to whether the proposed units (and areas outside the units) would be used for storage of dangerous or combustible materials, and how such storage could be effectively controlled and monitored by the Peach Country affiliates and the Township. (See Resolution page 5.)

Applicant's Planner Testimony:

The applicant's planner testified that the positive criteria for the use variance was satisfied because, in her opinion, the applicant's proposed use would promote the purposes set forth in subparts g. and m. of *N.J.S.A. 40:55D-2* ("sufficient space in appropriate locations for a variety of uses according to environmental requirements," and "coordination of public and private procedures for lessening the cost of development and efficient land use"). She also testified that, in her opinion, the negative detriments and impacts of the applicant's proposed use were not "substantial" or could be sufficiently mitigated by establishing buffers and setbacks that would shield the facility from view. Finally, the applicant's planner testified that in her opinion, "as a combination of two permitted uses," the applicant's proposal could be reconciled with its omission from the Township Master Plan (thus presumably satisfying the "enhanced burden of proof" for the requested use variance).

Objectors' Planner's Testimony:

My clients' planner testified that, in her opinion, the applicant's proposed use would NOT promote ANY purposes of the Municipal Land Use Law, but in fact would actually contradict eight of fifteen MLUL purposes (i.e., those specified in subparts *N.J.S.A. 40:55D-2.a., b., c., g., h., i. and j.*). My clients' planner testified that the detriments of the proposal would be substantial, citing the invasiveness of the use in terms of its traffic and environmental impacts. She testified that the proposed use cannot be reconciled with its omission from the Master Plan and the BP

zoning district, which promotes “business park” uses rather than “industrial park” or “heavy industrial” usage. She testified that for all of these reasons the applicant failed to satisfy the burden of proof for the proposed use variance, and she recommended denial of the application.

**Denial of Application:**

Based on the foregoing, as reflected in the findings and conclusions set forth in the Resolution, the Board denied the application, determining that the applicant had failed to show that the proposed use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance, because the intensity of the proposed use is much greater than a “self-storage facility,” a “vehicle storage facility,” or any other uses that are permitted in the BP zone. Further, the Board determined that the applicant’s proposed use would have a substantial negative impact on surrounding areas given the nature and intensity of the proposed business operations and vehicle traffic coming in and out of the site. Finally, the Board determined that the applicant had not adequately addressed “special reasons” why the proposed use carries out a purpose of zoning, or how refusal to allow the project would impose an “undue hardship” on the applicant’s use and development of the property.

**Litigation – Appeal of 2019 Denial (and Allegations of “Bias and Prejudgment”):**

The applicant challenged the Board’s denial in court, and accused “certain zoning board members” of bias and prejudgment of the application due to alleged “professional and personal relationships” with my clients, the objectors. These challenges were unfounded and, at the direction of the applicants’ new attorney, Edward J. Hovatter, Esq., they have been withdrawn and the case has been dismissed.

**Discussions with Mr. Hovatter:**

Mr. Hovatter contacted me in the fall and expressed an interest in working out an alternate development plan that might be acceptable to my clients. We spoke by phone a few times and visited the Peach Country properties together, and Mr. Hovatter provided me with a copy of his clients’ then-proposed concept plan for the site. Mr. Hovatter made it clear that, although he hoped

to come up with an acceptable solution, he might be constrained by his clients' objectives and directives.

At Mr. Hovatter's request I sent him a memorandum dated November 13, 2020, setting forth my clients' concerns and requests as to the Peach Country properties, but he did not get back to me. See Memorandum to Edward J. Hovatter, Esq., with marked-up concept plan detail attached as **Exhibit E**. When I followed up by phone a few weeks later Mr. Hovatter was polite but non-committal. He had received the memorandum but was not prepared to offer a response. Then, a month later, while observing the January 7, 2021 municipal court case management conference, my clients learned that Mr. Hovatter had filed the current new use variance application on his clients' behalf. We promptly requested and obtained the application materials from the Zoning Board Secretary on January 11, 2021.

**Use Variance Application # 2 (Current Application):**

In reviewing the applicant's second application and plans (which again request approval for eight contractor storage/warehouse units with overnight parking) my clients could see that their concerns and requests as expressed in my memorandum to Mr. Hovatter had been ignored. Also, upon comparison of the currently proposed plan with the plan that the zoning board denied last year, my clients could see that the applicants' current proposal involves much more intense development and use of Lots 8 and 9 than previously proposed. (Compare site plans from application #1 and application #2, attached as **Exhibits F and G**.) Most importantly, my clients have realized that, in light of such increased intensity, and given the Township's current difficulties in enforcing against the fourteen or more contractors who are already creating problems by misusing the Peach Country properties, it would be impossible to cause the Peach Country affiliates to implement my clients' requests or address their concerns in any meaningful way.

Generally speaking, when my clients authorized me to write the memorandum to Mr. Hovatter, they had wanted everything behind the Peach Country retail store to be separated from the retail store and its parking lot and driveway with a new fence and gate that would prevent ANY traffic relating to the recycling and landscape contractor activities from utilizing the retail store driveway for access to and from North Tuckahoe Road. In other words, they had hoped that the Peach Country affiliates' numerous objectionable rear-property activities might be tolerable if ALL rear-property traffic were routed to North Tuckahoe Road via "Airport Drive." In view of

the applicant's current plan, though, my clients realize that such limitations would be impossible to accomplish or enforce, particularly given the size and intensity of the proposed expanded usage of the Peach Country properties.

Indeed, the only currently-permitted usage of the Peach Country properties is confined exclusively to Lot 10, and includes only the Peach Country retail store and a small "exempt" recycling operation that is allowed by NJDEP regulations to run only four times per year for two weeks at a time, processing less than 7,500 cubic yards of material. The applicants' activities have far exceeded those approvals for many years, and yet it has taken the Township more than a year just to get to a preliminary case management conference in municipal court in its attempt to stop the zoning violations that have spread unabated across all four of the Peach Country lots. The applicant's current plan clearly shows that my clients' previous hopeful requests and concerns have been rejected outright (perhaps despite Mr. Hovatter's best efforts in advising his clients), and based on this rejection, and the intensity of the current proposal, my clients have decided that ANY expansion of activities at the Peach Country properties, regardless of whatever well-intentioned conditions of approval might be imposed, would be endlessly disruptive, unmanageable, and intolerable, and set the stage for perpetual Township enforcement headaches. Accordingly, my clients have given up on the idea of a "workable solution" and are resigned to objecting, again, to the applicant's new, but essentially identical, expanded proposal, in hopes that the Board will again deny it.

**The Second Application Should Be Denied Under the Doctrine of *Res Judicata*:**

The term *res judicata* means "a matter that has been decided." The doctrine of *res judicata* provides that a legal matter may not be relitigated once it has been judged on the merits.

Although the doctrine of *res judicata* originated in courts of law, the New Jersey Supreme Court has confirmed that it applies to decisions of administrative agencies such as planning and zoning boards, and that its purpose is to avoid the burdens associated with re-hearing and re-deciding an application that has already been heard and decided:

As a general rule, an adjudicative decision of an administrative agency should be accorded the same finality that is accorded the judgment of a court. Underlying the doctrine of *res judicata* is concern for the stability of results. The application of *res judicata* to adjudicative decisions of administrative agencies, like its application to

judicial decisions, rests on policy considerations such as “finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness....”<sup>2</sup>

The principle of *res judicata* has evolved to prevent the same claims involving the same parties from being filed and brought before a court or land use board repeatedly. If an applicant files an application that is similar or substantially similar to a prior application; if the application involves the same parties or parties in privity with them; if there are no substantial changes in the current application or conditions affecting the property from the prior application; or if there was a prior adjudication on the merits of the application and both applications seek the same relief, the second application may be barred from further decision. It is for the Board to make that determination in the first instance.<sup>3</sup>

So, the question for a planning or zoning board, when presented with a second application for a variance concerning the same property, is whether there has occurred a sufficient change in the application itself or in the conditions surrounding the property to warrant entertainment of the application. This requirement should be liberally construed in favor of the applicant, but whether the requirement has been met is for the board to determine. This finding, as any other made by a planning or zoning board, will be overturned on review only if it is shown to be unreasonable, arbitrary or capricious.<sup>4</sup>

What all this means is that, with respect to the current Peach Country application, the Board should determine whether there has been a “sufficient change” from the Wood Management, LLC use variance application that the Board denied a year ago. If there has been no “sufficient change” then this second application should be denied based on the *res judicata* doctrine.

New Jersey courts have provided guidance as to what constitutes a “sufficient change” in a land use application and, despite the “liberal construction” that must be afforded to applicants, there are limits. Indeed, there have been instances where the changes in a second development have been found insufficient, and the doctrine has been applied to support denial. Most notably in the context of the second Peach County application, there have been instances where changes that

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<sup>2</sup> *Bressman v. Gash*, 131 N.J. 517, 526-27 (1993) (citations omitted – underlined emphasis added).

<sup>3</sup> *Ten Stary Dom Partnership v. Mauro*, 216 N.J. 16, 39 (2013) (citations omitted).

<sup>4</sup> *Russell v. Board of Adjustment of Borough of Tenafly*, 31 N.J. 58, 66-67 (1959) (citations omitted).

increase the intensity of a previous proposal have been effectively barred under the doctrine of *res judicata*.

The leading New Jersey case on the subject of *res judicata*, which I have cited above, is *Russell v. Board of Adjustment of Borough of Tenafly*, which was decided by the New Jersey Supreme Court in 1959. In that case the applicant filed an initial zoning board application for setback and lot area variances to build a house. After that application was denied the applicant submitted a new application with reduced intensity, proposing a larger setback and a smaller building footprint (i.e., an application that involved less deviation from ordinance requirements). The zoning board approved the second application and on appeal the Supreme Court ruled that the second proposal was not subject to *res judicata* because of the changes that had reduced the extent of requested variance relief. The change in *Russell* was therefore “sufficient” for the second application to be heard and decided by the board. (A similar analysis was applied by the Supreme Court in 1993 in the case of *Bressman v. Gash*, cited above, in which no *res judicata* preclusion was found where the same land owner requested similar variance relief to build a house on his vacant lot, but where the nature, degree and extent of variance relief requested in the second application had been reduced from what was requested in the first application.)

A few years after *Russell*, however, in 1961, the New Jersey Supreme Court decided the case of *Pieretti v. Mayor and Council of Town of Bloomfield*, in which an applicant’s second more intensive land use application was barred by the doctrine of *res judicata*.<sup>5</sup> In that case the applicant owned two adjoining tracts of land that had been previously developed with buildings that were being used for commercial and residential purposes. In 1944 the Pierettis had applied for a variance to build another building on one of the tracts for expansion of their business. The zoning board denied the application, determining that the expansion would be detrimental to surrounding properties. Fourteen years later, in 1958, the Pierettis applied to the zoning board for variance approval again to build a larger new building and additional improvements on both lots comprising the property. The second application was denied and the denial was appealed. In affirming the denial the Supreme Court found that the doctrine of *res judicata* applied because the second application involved the same land and the same applicants, and because the second application was “clearly much more objectionable than the 1944 one.”<sup>6</sup> Specifically, the Supreme Court noted

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<sup>5</sup> *Pieretti v. Mayor and Council of Town of Bloomfield*, 35 N.J. 382 (1961).

<sup>6</sup> *Id.* at 389.

that “the 1958 application covers more residentially zoned land to be used for enhanced industrial purposes; the proposed building is larger and would have two stories, containing more than three times the amount of floor space as set forth in the 1944 application; and, in addition to the extra size of the building, there was to be a 32 car parking lot, new water facilities installed, and an apparent reduction in the buffer zone between it and the residential properties in the area.”<sup>7</sup> (A similar analysis was approved by the Appellate Division in the 2010 opinion of *DeLevi v. Zoning Bd. of Adjustment of Tp. of Marlboro* where a second application by the same applicant to build a house on the same property involved a four-foot smaller deviation for the front yard setback, but also a two-foot greater deviation from the rear yard setback, an additional request for a side yard setback variance, and an increase in the size of the proposed house.<sup>8</sup>)

The takeaway from the above decisions is that where the nature and extent of requested variance relief in a second application is intensified or increased from a previously denied application involving the same proposal on the same land by the same applicant, the application should be denied under the doctrine of *res judicata*. This means that the current Peach Country application, which involves the same kind of contractor storage, job-staging, and vehicle parking on Lots 8 and 9 that was proposed by Wood Management LLC in 2019, but which is now being proposed in buildings that have been enlarged from 48,000 to a total of 76,800 square feet (or 78,000 s.f. per the Board’s Planner’s report), with a much larger parking area that has simply been relegated to an adjoining isolated lot, should be denied as *res judicata* under the Supreme Court’s *Pieretti* analysis.

As discussed above, and as reflected in the Board’s previous denial resolution, this Board has already conducted a thorough review and created a full record as to all aspects of the applicant’s proposal, and the Board has rightly concluded that the applicant failed to show that the proposed use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. Further, this Board has determined that the applicant’s proposed use would have a substantial negative impact on surrounding areas given the nature and intensity of the proposed use, and that the applicant had not adequately addressed “special reasons” why the proposed use carries out a purpose of zoning,

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<sup>7</sup> *Id.* at 388-89.

<sup>8</sup> *DeLevi v. Zoning Bd. of Adjustment of Tp. of Marlboro*, 2010 WL 909513 (App.Div. 2010).

or how refusal to allow the project would impose an “undue hardship” on the applicant’s use and development of the property.

We should not now have to do it all again. Fortunately, the *res judicata* doctrine makes it possible not to have to. In the words of the *Bressman* court, the Zoning Board and my clients should be entitled to rely on the Board’s 2019 denial for purposes of “finality and repose; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness.” The Board should deny this second application as *res judicata*.

**Additional Questions and Issues of Concern:**

The following questions and issues of concern are being presented as additional reasons to deny the application:

1. The applicant’s overall proposal is the same as before, just on different lots (with larger buildings and a larger parking area), and it should be denied for the same reasons as before.
2. The vehicle parking component of the proposal is not “vehicle storage” as contemplated in the BP district, but rather involves parking of fully operational and active “vehicle fleets” on a twice-daily rotating basis for job-staging purposes.
3. The vehicle parking component of the proposal is not a separate “conditional use” as contemplated in the BP district despite the fact that it is now being proposed on a separate tax lot. The parking is intrinsically related to the overall contractor storage and job-staging use on the other lots, and also to the systematic delivery of debris and vegetative material to the illegal solid waste facility that is being operated on the other lots.
4. Lot 4.01, on which the private easement known as “Airport Drive” is located, should be shown in its entirety on the application plans, with complete depictions and descriptions of all existing and proposed structures and uses on that lot, including other current users of the private “Airport Drive” easement.
5. The plans should include complete depictions of Lots 4 and 10, and the depictions should include all existing and proposed structures and uses on the properties in order



to ascertain current compliance or non-compliance with existing approvals and to serve as a benchmark for future compliance and enforcement.

6. If the applicant's proposal is supposed to approximate a "business park" then the drive and parking areas should be paved, not gravel, and there should be other internal improvements such as lighting, curbs and sidewalks, which are customary incorporated into business parks to create an open, orderly, safe, publicly accessible and attractive environment.
7. Failure to direct all Lot 7, 8 and 9 contractor storage and parking traffic onto Airport Drive will overburden the Lot 10 retail entrance to an even greater extent. The retail store entrance should not be an accessway for the solid waste facility and the contractor storage, vehicle parking, and job-staging uses.
8. The office for the Lot 7, 8 and 9 contractor storage, vehicle parking and job-staging facility should be on Lot 7, 8, or 9 with those facilities as an accessory use/structure, and not on Lot 10.
9. The recycling and other rear-lot activities on Lots 4 and 10 (i.e., behind the retail store) should be fenced and gated from the retail store front parking area and entrance, and all roadway access for such rear-lot activities should be via Lot 4's frontage with Airport Drive.
10. The gate at the retail store's North Tuckahoe Road entrance should be removed to prevent vehicle queuing from occurring within the retail store driveway entrance and or outside the gate along North Tuckahoe Road.
11. There should be no outdoor storage of equipment and materials in the front areas of the retail store. All such storage should occur behind the store and, most critically, behind a closed gate/fence barrier that separates the rear-lot activities on Lots 4 and 10 from the retail store's front parking area and entrance. No outdoor storage was proposed or approved in connection with the original Planning Board approval.
12. The recycling activities on the rear portion of Lot 10 and Lot 4 should be required to comply with the limitations of "exempted" recycling per NJDEP regulations. As explained above, the recycling activities are currently alleged by NJDEP to be in violation of NJDEP requirements and constitute illegal solid waste facility operations and a violation of Peach Country's original Planning Board approval.

13. The Board's Engineer and Planner should ascertain whether, as alleged by NJDEP, the recycling activities on Lot 10 exceed the applicable "exemption" limitations and are thus in violation of the original planning board approval. Similarly, the Board's Engineer and Planner should ascertain whether those activities have been illegally extended onto Lot 4.
14. Architectural drawings and elevations should be provided for the proposed storage buildings, and there should be no electricity or other utilities in the units that would invite their usage as offices or workshops. (The Township will have great difficulty enforcing against these sorts of uses even without utilities.)
15. There is no "special reason" to allow shipping containers to remain on any of the Peach Country properties. The shipping containers constitute long-standing zoning violations and as such they should be removed immediately.
16. My clients have learned during municipal court proceedings that the Peach Country affiliates have refused to permit the Township Zoning Officer onto the properties for inspections. As part their review of this application the Board's professional consultants, and perhaps even the Board members themselves, should visit and inspect all of the lots (although Board members should NOT attempt to conduct inspections without first receiving advice from the Zoning Board Solicitor).
17. The applicant's new term "atypical self-storage" is just a new way to refer to "Eight (8) Contractor Storage/Warehouse Units With Overnight Vehicle Parking," which is the same use that was denied by the Zoning Board in 2019.
18. The "ruin" that is referred to in the Planner's reports should be depicted and described on the plan with specificity, and investigated as necessary.
19. The "greenhouse" depicted on the plan is actually a frame-and-tarpaulin storage structure that has been installed without necessary land use approvals. It should be depicted on the plan as such and its use should be investigated.
20. The shipping containers and other structures on Lots 4 and 10 should be depicted and described on the plans and investigated.
21. The "water tanks" on Lots 4 and/or 10 have been installed without necessary land use approvals. They should be depicted and described on the plans and their usage should

- be investigated. If they are used for solid waste facility operations in a manner that is inconsistent with the NJDEP “exemption” limitations, they should be removed.
22. Neither “composting” nor any other type of recycling or solid waste facility operations have been approved for Lot 4. Accordingly, all Lot 4 composting areas, structures and activities should be depicted and described on the applicant’s plans and indicated for cessation and removal.
  23. Given the potential impacts of the illegal dumping of non-vegetative trash and debris, composting, and excessive recycling at the site, and also given the presence of a pond and the use of water from “water tanks,” a thorough and meaningful environmental impact statement (EIS) should be provided for ALL of the Peach Country lots.
  24. The access permission letter from QEI is vague and insufficient. It should take the form of a proposed easement and specify what is meant by “some” traffic, and it should indicate whether and to what extent traffic from all of the lots besides Lot 4 (which, along with nearby Lots 4.02, 4.03 and 4.04, already has private easement rights over privately-owned Lot 4.01) can utilize the “Airport Drive” easement for access to and from North Tuckahoe Road.
  25. The Board should continue to carefully consider whether and how the Township could enforce against toxic, combustible materials in and around the storage units, prevent maintenance and servicing of vehicles, and monitor overall contractor access to and usage of the site. Lots 4, 8, 9 and 10 are predominantly undeveloped in their present state and no contractor storage is currently allowed; nonetheless, the Township’s enforcement efforts have been ignored and largely ineffective. To introduce 76,800 s.f. of storage buildings and 120 associated contractor parking spaces to the properties will only make Township enforcement more complicated and difficult, and as noted above, will serve to increase the growth and intensity of the illegal solid waste facility operations that are threatening the environment and causing enforcement problems for NJDEP.
  26. The applicant owns and controls sufficient land to create a one-acre residential lot from part of Lot 7. What is the “special reason” for making that lot less than one acre?
  27. What sort of hours of operation can be imposed on such vast parking and storage areas, particularly when there are keypad-operated gates? How can the Township enforce

such hours, when currently it cannot even stop a road contractor from dumping bridge millings at the properties after 11pm?

28. The applicant must indicate how many individual storage units are proposed within the eight buildings, and the dimensions (width, depth and ceiling height) of each.
29. How many contractors are currently utilizing the Peach Country properties for vehicle and equipment storage and job-staging, and who are they? If the applicant will not reveal this information now, how can the Board determine what increased number might be workable? Moreover, if the applicant won't disclose this information now, what hope is there of the Township obtaining such information in the event of future violations if these uses are further expanded? Without knowing who is actually using the properties, all potential perpetrators of zoning violations (including the property owners) can effectively blame some unknown "other" whenever there are problems.
30. The Peach Country affiliates have already illegally erected berms around parts of the property that can be easily seen from Airport Drive. The berms are very high, and are composed of unsightly material that appears to resist naturally-occurring vegetation. These piles might be formed from debris ("overs"?) that result from Peach Country's solid waste facility operations rather than from regular soil. The Board's Engineer and Planner (and Board members, subject to the Board Solicitor's advice) should investigate this.
31. "Buffering" in the form of giant berms should not be permitted in a manner or to an extent that can hide illegal activities from Township enforcement authorities. For this reason, traditional fencing and ample open spaces might be preferable to berms, particularly if the berms are intended to be composed of waste material that cannot be attractively grassed and landscaped.

**Conclusion:**

As stated above, although the Peach Country affiliates' activities might be appropriate in a heavy industrial zoning district, or perhaps in a very remote rural region, they are entirely inappropriate at the Peach Country properties. This new application should be denied.

**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

# **EXHIBIT A**

**Peach Country Notification of “Exempt” Recycling Activities**

Exhibit A

NOTIFICATION OF EXEMPT RECYCLING ACTIVITIES

NAME: STEVE SMITH TITLE: Pres  
 CORPORATION / COMPANY: PEACH COUNTY TRACTOR  
 MAILING ADDRESS: 749 MULTICA Hill ROAD  
 MUNICIPALITY: MULTICA Hill STATE: NJ ZIP: 08062  
 TELEPHONE NUMBER: (area code) 609 : 410 9986 FAX NUMBER: (area code) 609 : 582 9682

WHICH EXEMPTION FOUND AT N.J.A.C. 7:26A-1.4(a) WILL YOU BE OPERATING PURSUANT TO?  
(Check all that apply and circle the exemption for primary) 2, 22

LOCATION WHERE ACTIVITY IS TO BE CONDUCTED: (If activity is to be conducted at more than one location, you must complete this section for each location.)

MUNICIPALITY: MONROE COUNTY: Gloucester  
 STREET ADDRESS: 1463 N. TUCKAHOE RD BLOCK #: 14301 LOT #: 1

LOCATION DESCRIPTION: (construction or control and/or shipping etc.) (land, material etc. etc.)

DATE ACTIVITY WILL COMMENCE: 8 / 1 / 2014  
Month Day Year

ANTICIPATED COMPLETION DATE (if applicable): 1 / 1 / Year  
Month Day Year

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I further certify that the operation described herein satisfies the criteria for exemption as set forth in N.J.A.C. 7:26A-1.4. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for termination of any exemption.

Name (print): STEVE SMITH Title (print): Pres  
 Signature: [Signature] Date: 7 / 14 / 2014  
Month Day Year

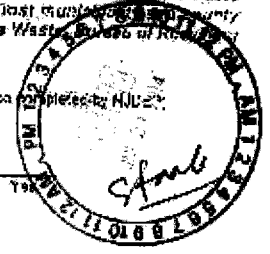
\* An unofficial copy of the Recycling Regulations, N.J.A.C. 7:26A-1.4, can be obtained from the Department's internet website at: [www.state.nj.us/ehp/fds/wr/resource/njrecs.htm](http://www.state.nj.us/ehp/fds/wr/resource/njrecs.htm)

Please complete and mail this form to your host municipality and host county health department and solid waste coordinator. Please then mail the completed form along with proof of mailing to your host municipality and county to: New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling & Financing, P.O. Box 414, Trenton, New Jersey 08625-0414.

Received by NJDEP Solid & Hazardous Waste Program (This section to be completed by NJDEP)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

PC# 652656



**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

# **EXHIBIT B**

**NJDEP Violations at the Peach Country Garden Center**

**Violations at the PEACH COUNTRY GARDEN CENTER Site - ID Number: 489500  
discovered between 1/1/2013 and 1/15/2021**

Jan 15, 2021 02:30

**NOTE:** The information contained in this report will be limited to the date each program began using the Department's integrated database, NJEMS. The programs began using the system for this information as follows: Air - 10/1998; Hazardous Waste - 1/2000; Water Quality - 7/2000; Water Supply (limited information for Safe Drinking Water and Water Allocation) - 7/2000; Lab Certification (limited information) - 7/2000; Right To Know - 11/2000; TCFA - 12/2001; Land Use 12/2001; DPCC - 1/2002; Solid Waste - 1/2002; Site Remediation - 4/2002; Pesticides - 4/2002; Radiation (limited information) - 7/2006. For complete information prior to these dates, please submit an official OPRA request form to the Department. If printing this report, select landscape orientation.

**Disclaimer:** All listed violations have been included in Effective enforcement actions. This report lists alleged violations based on facts and information known to the Department at the time the violation information was determined. Errors or omissions in the factual basis for any violation may result in a future change in classification as a violation when such information becomes known. Persons cited for violations may contest the Department's enforcement action or penalty assessment. The resultant final decision may uphold, negate or modify the original violation findings or penalty.

<b>Program Description:</b>	<b>Solid Waste</b>	<b>Program Interest Type:</b>	<b>RECYCLING CENTER</b>
<b>Program Interest Name:</b>	<b>PEACH COUNTRY TRACTOR</b>		
<b>Location Address:</b>	<b>1463 N TUCKAHOE RD</b>		
<b>Activity Number:</b>	<b>PEA 160001</b>	<b>Program Interest ID:</b>	<b>652656</b>
<b>Document Type:</b>	<b>CEHA - NOV</b>		
<b>Responsible Organization:</b>	<b>PEACH COUNTRY TRACTOR INC</b>		



<p>Facility failed to ensure the receipt, storage, processing or transfer of recyclable material was conducted in a manner consistent with the protection of public health, safety and the environment in light of the nature, scale and location of the exempted activity.</p>	<p>BCI 160004</p>	<p>9/21/16</p>	<p>[N.J.A.C. 7:26A- 1.4(b)1]</p>	<p>Satisfied</p>	<p>11/2/16</p>	<p>11/14/16</p>	<p>Inspection Info</p>	<p>Enforcement Actions Info</p>
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Activity Number: PEA 170001      Program Interest ID: 652656

Document Type: NOV

Responsible Organization: PEACH COUNTRY TRACTOR INC

<p>Facility accepting less than 3,000 cubic yards of leaves per year and/or 1,000 cubic yards of grass clippings per year failed to ensure containers were removed from the site within two days of the placement of any grass in the container.</p>	<p>BCI 170002</p>	<p>5/18/17</p>	<p>[N.J.A.C. 7:26A- 1.4(a) 22iv]</p>	<p>Satisfied</p>	<p>2/6/18</p>	<p>Inspection Info</p>	<p>Enforcement Actions Info</p>
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<p>Facility accepting less than 3,000 cubic yards of leaves per year and/or 1,000 cubic yards of grass clippings per year failed to promptly place grass in nonleaking containers, such as roll-offs, upon receipt at the facility and/or ensure the container was covered immediately following loading and remain fully covered until removed from the site.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26A-1.4(a) 22ii]	Satisfied	2/6/18			Inspection Info	Enforcement Actions Info
<p>Facility failed to ensure the receipt, storage, processing or transfer of recyclable material was conducted in a manner consistent with the protection of public health, safety and the environment in light of the nature, scale and location of the exempted activity. Specifically, partially processed mulch was on fire during our inspection.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26A-1.4(b)1]	Pending				Inspection Info	Enforcement Actions Info
<p>Facility operating pursuant to an exemption in N.J.A.C. 7:26A-1.4(a) failed to provide a written notice of such operation to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, P. O. Box 414, Trenton, New Jersey 08626-0414, the host municipality, and host county prior to the commencement of operations. Specifically, according to internet tax records, Peach Country does not own block 14301, lot 1 and failed to notify the Department that it was operating on block 14301, lots 4 &amp; 10. Further, please explain the corporate structures and business relationships of Loring Inc. (lot #4), Fred Smith Orchards, Inc. (lots #9 &amp; 10), and Wood Management (lot #8) to Peach Country Tractor.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26A-1.4(b)5]	Pending				Inspection Info	Enforcement Actions Info

<p>Failing to obtain a SWF permit prior to constructing or operating a solid waste facility. Specifically, the facility has been receiving unapproved ID # 27 sludge waste from Gemini Linen in Palmyra, Burlington County for about two years. Also, the facility also had a full container of type 10/13/13C waste on-site.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26-2.8 (f)]	Satisfied	2/6/18				Enforcement Actions Info
<p>Recycler of tree branches, tree limbs, tree trunks brush and wood chips derived from trees limit stored more than 7,500 cubic yards of processed material onsite. Specifically, Peach Country had approximately 45,000 cubic yards of processed recyclable material on-site during our inspection.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26A-1.4(a) 3iii]	Pending					Enforcement Actions Info
<p>Recycler of tree branches, tree limbs, tree trunks brush and wood chips that could be processed by equipment within a one week period and/or stored more than 7,500 cubic yards onsite. Specifically, Peach Country had approximately 32,000 cubic yards of unprocessed recyclable material on-site during our inspection.</p>	BCI 170002	5/18/17	[N.J.A.C. 7:26A-1.4(a)3I]	Pending					Enforcement Actions Info

Activity Number: PEA 180001

Document Type: AONOCAPA

Program Interest ID: 652656

Responsible Organization: BEACH COUNTY TBACTOB INC

<p>Facility operating pursuant to an exemption in N.J.A.C. 7:26A-1.4(a) failed to provide a written notice of such operation to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, P.O. Box 414, Trenton, New Jersey 08626-0414, the host municipality, and host county prior to the commencement of operations. Specifically, Peach Country did not yet notify the Department that it is operating exemption # 3 &amp; 18 on block 14301, lot 10.</p>	<p>BCI 180002</p>	<p>2/6/18</p>	<p>[N.J.A.C. 7:26A-1.4(b)5]</p>	<p>Pending</p>				<p>Inspection Info</p>	<p>Enforcement Actions Info</p>
<p>Failing to obtain a SWF permit prior to constructing or operating a solid waste facility. Specifically, Peach Country has several locations of C&amp;D and bulky waste throughout the facility.</p>	<p>BCI 180002</p>	<p>2/6/18</p>	<p>[N.J.A.C. 7:26-2.8 (f)]</p>	<p>Pending</p>				<p>Inspection Info</p>	<p>Enforcement Actions Info</p>
<p>Failure of exempt compost operator to have the on-site use of the final compost product as the subject to an approved agricultural management plan, mining area restoration plan, or other plan defining appropriate methods of compost product use and rates of application, developed by the Natural Resources Conservation Service, or other applicable local, State or Federal agency.</p>	<p>BCI 180002</p>	<p>2/6/18</p>	<p>[N.J.A.C. 7:26A-1.4(a) 18vii]</p>	<p>Pending</p>				<p>Inspection Info</p>	<p>Enforcement Actions Info</p>
<p>Failure of exempt compost operator to incorporate a composting method that results in the aerobic biodegradation of the yard trimmings received.</p>	<p>BCI 180002</p>	<p>2/6/18</p>	<p>[N.J.A.C. 7:26A-1.4(a) 18vi]</p>	<p>Pending</p>				<p>Inspection Info</p>	<p>Enforcement Actions Info</p>

Failure of exempt compost operator to place yard trimmings in windrows within the week of receipt.	BCI 180002	2/6/18	[N.J.A.C. 7:26A-1.4(a) 18i]	Pending				Inspection Info	Enforcement Actions Info
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**Activity Number:** PEA 190001      **Program Interest ID:** 652656  
**Document Type:** NOV  
**Responsible Organization:** PEACH COUNTRY TRACTOR INC

Failing to obtain a SWF permit prior to constructing or operating a solid waste facility. Specifically storing over 7,500 cubic yards of processed material (woodchips). Currently out-of-compliance with exemption #3.	BCI 190001	7/24/19	[N.J.A.C. 7:26-2.8 (f)]	Pending	8/23/19			Inspection Info	Enforcement Actions Info
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**Activity Number:** PEA 200001      **Program Interest ID:** 652656  
**Document Type:** NOV  
**Responsible Organization:** PEACH COUNTRY TRACTOR INC

Failing to obtain a SWF permit prior to constructing or operating a solid waste facility. Specifically for land applying over's on the farm fields on the property. The over's aren't screened and have litter (bottle caps, plastic bags, plastics, wrappers, paper, wood, etc.).	BCI 200001	5/27/20	[N.J.A.C. 7:26-2.8 (f)]	Pending	12/5/20			Inspection Info	Enforcement Actions Info
Failure to apply and receive approval of a SWF permit prior to engaging in the disposal of solid waste in this State. Specifically for land applying over's on the farm fields on the property. The over's aren't screened and have litter (bottle caps, plastic bags, plastics, wrappers, paper, wood, etc.).	BCI 200001	5/27/20	[N.J.A.C. 7:26-2.8 (e)]	Pending	12/5/20			Inspection Info	Enforcement Actions Info
Failure to provide records necessary to determine compliance for exemptions on this property.	BCI 200001	5/27/20	[N.J.A.C. 7:26A-1.5(a)]	Pending	12/5/20			Inspection Info	Enforcement Actions Info
Processing of tree branches, tree limbs, tree trunks brush and wood chips derived from tree parts was conducted more than four times per year and/or each processing event was more than a two week time period. It appeared the facility is processing more than 4 times a year. Facility failed to produce records of processing in a timely manner.	BCI 200001	5/27/20	[N.J.A.C. 7:26A-1.4(a) 3iv]	Pending	12/5/20			Inspection Info	Enforcement Actions Info
Recycler of tree branches, tree limbs, tree trunks brush and wood chips derived from trees limit stored more than 7,500 cubic yards of processed material onsite. It appeared the facility had over 7,500 cubic yards of material. Facility records were unavailable for review.	BCI 200001	5/27/20		Pending	12/5/20			Inspection Info	Enforcement Actions Info



**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

# **EXHIBIT C**

**NJDEP Inspection Summary Report for Peach Country Tractor (05/27/2020)**



Jan 15, 2021 02:22

Inspection Summary Report for PEACH COUNTRY TRACTOR - Activity Number BCI  
200001

NOTE: The information contained in this report will be limited to the date each program began using the Department's integrated database, NJEMS. The programs began using the system for this information as follows: Air - 10/1998; Hazardous Waste - 1/2000; Water - 7/2000; TCPA - 12/2001; Land Use 12/2001; DPCC - 1/2002; Solid Waste - 1/2002; Right To Know - 3/2002 and Pesticides - 4/2002; Site Remediation - 3/2003 and Radiation (limited information) - 7/2006. For complete information prior to these dates, please submit an official OPRA request form to the Department. If printing this report, select landscape orientation.

Disclaimer: Only final inspection reports are listed in this report. Inspections for which a report has not been finalized by the Department will not appear in this report. Also, inspections which yield violations but where the inspected entity has not yet been notified of the violation are not listed in this report. For inspections indicating Out of Compliance, this means that violations were observed during the inspection, based on facts and information known to the Department at the time of the inspection. Errors or omissions in the factual basis for any violation may result in a future change in classification as a violation when such information becomes known.

Activity Number: BCI 200001      Inspection Type: \*Brief Compliance Inspection      Program Interest ID: 652656

Inspection Start Date: 5/27/20      End Date: 5/27/20      Lead Investigator: Elliott, Aaron

Program Interest Name: PEACH COUNTRY TRACTOR

Address: 1463 N TUCKAHOERD      Monroe Twp      NJ      08062      County: Gloucester - Monroe Twp

Block(s) and Lot(s): Block 14301 Lot 10

**Comments:**

A representative of the NJDEP Bureau of Solid Waste C&E (A. Elliott) conducted a compliance evaluation of this facility's exempt solid waste activities. The details of this inspection are as follows:

Smith's Exempt Recycling Facility is located on Barnshoro Road and claims exemption from the solid waste regulations for a Class B/C Recycling Center requirements codified at NJAC 7:26A-1.4(a) 3, & 22 and NJAC 7:26A-1.4(b).

Current authorized activities consist of the receipt and storage of brush. The facility processes the brush by grinding the brush into woodchips. This recycling center is also approved to receive yard trimmings where the finished compost is land applied on agricultural fields or sold.

The exempt Class B/C Recycling is limited to block 14301, lot 10, as listed in Masterfile of NJEMS and is located on N. Tuckahoe Road, Monroe Township, New Jersey.

**Site Observations:**

Upon arrival Aaron Elliott (NJDEP) was met with owner Steve Smith and informed him of the inspection. Mr. Elliott requested records for active exemptions on Block 14301 Lot 10. Mr. Smith said that he would email the records via email.

Elliott observed the unprocessed wood pile and observed it was over the allowed 7,500 allowed on site. Elliott asked Steve and Jeff Smith and they both agreed it was over capacity. Mr. Smith had two wood grinders onsite at the time of the inspection to note.

Elliott walked the property and observed the farm fields containing screening "over's" being disposed and spread in the farms fields. These over's are solid waste as they contain litter. The over's are being directly applied to the farm fields. Mr. Smith stated he can land apply over's to his farm without screening them.

During the inspection, Elliott observed waste being disposed on this property by a landscape company. Specifically, a wooden pallet, plastic, trash bags with construction debris, including bricks. This area had other solid waste dumped in this area. Pictures will show this dumping.

NJDEP will be issuing a Notice of Violation for non-compliance items observed during this inspection and of N.J.A.C. 7:26-2.8(f) -- for operating an illegal Solid Waste facility. Specifically for land applying over's to his farm fields. Second for over capacity of unprocessed wood pile over 7,500 cubic yards. Lastly 7:26A-1.5(a) Failure to provide records necessary to determine compliance for exemptions on this property.

A post inspection meeting was held with Mr. Smith. All the above violations were discussed.

This concludes my inspection

Subject Item: SW61 0 - Exempt Recycling Center - Tree Parts

<p>Maintain on-site processed volumes of wood chips and mulch to 7,500 cubic yards within 30 days from receipt of this notice. [N.J.A.C. 7:26A- 1.4(a)3iii]</p>	<p>Out of Compliance</p>	<p>Recycler of tree branches, tree limbs, tree trunks brush and wood chips derived from trees limit stored more than 7,500 cubic yards of processed material onsite. It appeared the facility had over 7,500 cubic yards of material. Facility records were unavailable for review.</p>	<p>PEA 170001</p>
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<p>Is the processing of tree branches, tree limbs, tree trunks brush and wood chips derived from tree parts limited to four times per year and is each processing event limited to a two week time period, unless prior approval is received from the Department? [N.J.A.C. 7:26A-1.4(a)3iv]</p>	<p>Out of Compliance</p>	<p>Processing of tree branches, tree limbs, tree trunks brush and wood chips derived from tree parts was conducted more than four times per year and/or each processing event was more than a two week time period. It appeared the facility is processing more than 4 times a year. Facility failed to produce records of processing in a timely manner.</p>	<p>Rules</p>
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Subject Item: SW34 0 - Unpermitted/Illegal Activities

<p>Note: In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in this chapter or that they are not otherwise subject to the rules in this chapter shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of this chapter. [N.J.A.C. 7:26A-1.5(a)]</p>	<p>Out of Compliance</p>	<p>Failure to provide records necessary to determine compliance for exemptions on this property.</p>	<p>Rules</p>
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<p>Did operator not engage or continue to engage in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit, unless exempt by N.J.A.C. 7:26-1.1, 1.7 or 1.8? [N.J.A.C. 7:26-2.8(e)]</p>	<p>Out of Compliance</p>	<p>Failure to apply and receive approval of a SWF permit prior to engaging in the disposal of solid waste in this State. Specifically for land applying over's on the farm fields on the property. The over's aren't screened and have litter (bottle caps, plastic bags, plastics, wrappers, paper, wood, etc.)</p>		<p>Rules</p>
<p>Did operator not begin construction or operation of a solid waste facility without obtaining a SWF Permit, unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8? [N.J.A.C. 7:26-2.8(f)]</p>	<p>Out of Compliance</p>	<p>Failing to obtain a SWF permit prior to constructing or operating a solid waste facility. Specifically for land applying over's on the farm fields on the property. The over's aren't screened and have litter (bottle caps, plastic bags, plastics, wrappers, paper, wood, etc.)</p>		<p>Rules</p>



**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

**EXHIBIT D**

**Monroe Tp. Police Report Summary re: “Bridge Millings” (05/18/2020)**



Monroe Township Police  
 125 Virginia Avenue  
 Williamstown New Jersey 08094  
 (856) 728-0801

Exhibit D

**CAD Activity Detail Report**

Printed On: 05/23/20 06:13

**Monroe Township**

**Reported** : 05/18/2020 22:39:44      **Prime Unit** : P787  
**Priority** : 3      **Call Taker** : Paul, Michael S  
**Stacked** : 22:47:00      **Dispatcher** : Brown, Alexis N  
**Dispatched** : 23:00:04      **Case#** :  
**Arrived** : 23:01:56      **Finished** : 23:14:54  
**Disposition** : Clear No Report Required

**Notes**

Date	Unit	Notes	PF
05/18/2020 22:39:44		Male caller advised he didnt see a patrol car at the peach country and the gates are still open, he wants to know why an officer didnt show up and how does he requeste a report of this complaint.	MP6063
05/18/2020 23:00:04		Dispatched: P787	ANB6252
05/18/2020 23:03:48	P787	Called steve smith, where as his son jeff smith runs that yard on tuckahoe rd, attmepted phone contact with jeff @ 609-923-3990	MP6063.
05/18/2020 23:07:48	P787	Apparent south state is using the yard to dump etcf, and will be in and out of the yard until around 12 midnight.	MP6063

**Names**

Activity	Name	DOB	Address	Phone#
Caller	Grives Glen		Williamstown ,NJ 08094	C:(856) 728-1375

**Units**

Unit	Unit Time	Activity	Officer	Dispatcher	Disposition
P787	05/18/20 23:00:04	DI	TP787		
P787	05/18/20 23:00:04	EN	TP787		
P787	05/18/20 23:01:56	OS	TP787		
P787	05/18/20 23:14:54	IC	TP787		Clear No Report Required

Received a phone call from a concerned resident about Peach Country resident is Glen Groves 856-728-1375

very annoyed they leave gates open and traffic in and out all hours.

dispatch advised they spoke to peach tree and they said south state will be finish at midnight that are dumping millings from the Ben Franklin Bridge.

I advised Mr groves on the information I received and he is not happy about millings being dumped there and wants to know if they are allowed to do.

I sent OEM Sgt Borkowski an email on Mr Groves concerns.

**Monday, May 18, 2020**

**Pacillo, Thomas ( TP787 )**

23:00:04      DI      P787      Prime Unit Dispatched: P787  
 23:00:04      EN      P787  
 23:01:56      OS      P787  
 23:14:54      IC      P787

Exhibit D



**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

**EXHIBIT E**

**Memorandum from William L. Horner to Edward J. Hovatter (11/13/2020)**

# Exhibit E

## MEMORANDUM

To: Edward J. Hovatter, Esq.

From: William L. Horner, Esq. *wlh*

Cc: Glenn R. Groves

Jerry A. Lodge

Date: November 13, 2020

Re: **Peach Country Concept Plan (Monroe Township Block 14301, Lots 4, 7, 8, 9 and 10)**

### **Background/Purpose:**

At your request I have prepared this memorandum to present my clients' concerns and proposals in connection with your clients' concept plan for properties owned by Fred Smith Orchards, Inc., Loring, Inc., and Wood Management LLC (hereafter collectively "Peach Country"), particularly with respect to the Peach Country Garden Center and its driveway entrance at 1463 North Tuckahoe Road. If the proposals set forth in this memorandum are acceptable, I ask that your clients cause their concept plan to be revised accordingly.

As you know, my clients Glenn Groves and Jerry Lodge live directly across North Tuckahoe Road from the Peach Country Garden Center driveway entrance and have objected to the large number of non-retail vehicles that routinely access the rear areas of the Peach Country properties via the Garden Center driveway. Specifically, for the past several years a great deal of disruptive truck and landscaper-crew traffic has been utilizing the Garden Center driveway entrance, particularly during morning and evening commuting hours, and there have been numerous instances of large trucks traveling in and out of the rear portion of the property via the Garden Center driveway even later at night, long after the Garden Center is closed. There have also been many instances of other loud vehicle operations, including banging noises and persistent vehicle backup-beeping, within the Peach Country property (in areas beyond the Garden Center) during non-business hours. These vehicle operations have created substantial traffic congestion on North Tuckahoe Road, including vehicle travel and other maneuvers within the roadway shoulder areas, which pose significant dangers to my clients and other drivers. The trucks also routinely deposit debris (mulch, soil, woodchips and stones) along the paved and unpaved shoulder areas of North Tuckahoe Road that abut my clients' property. The noise, dust, traffic and debris

generated from these on- and off-site operations impairs my clients' use and enjoyment of their property, and negatively impacts the community at large.

**Non-Retail Access via Airport Drive Only:**

My clients would be in favor of site design changes and improvements that cause all Peach Country traffic other than the Garden Center's retail customers to access the Peach County properties via Airport Drive instead of through the Garden Center driveway. My clients are concerned, however, about the likelihood that Peach Country's non-retail, rear-property customers would continue to use the Garden Center entrance to access North Tuckahoe Road regardless of land use approval conditions requiring them to use only Airport Drive, and perhaps even despite directives from Peach Country management, whether in the form of signage or otherwise.

When you and I met at the Peach Country properties on October 14, 2020, I suggested that, to prevent such improper Garden Center driveway usage, a fence should be installed parallel with and behind the rear of the Garden Center building that would extend across the rear portion of the Garden Center parking area and serve as a physical barrier to prevent vehicles from entering and exiting the rear areas of the Peach Country properties via the Garden Center driveway. I also suggested that there should perhaps be a "person-sized" gate, too narrow for a car or truck, through which Garden Center customers and employees, and maybe small forklifts and ATVs, could pass between the rear property areas and the Garden Center parking lot.

A few weeks after our site meeting you informed me that, although my clients' proposed fence might be an acceptable solution to the problem, your clients' traffic engineer has expressed concerns about my suggested gate limitations because emergency vehicles must be able to access Peach Country's rear property areas via the Garden Center driveway. You also told me that vehicular access directly from North Tuckahoe Road to areas immediately behind the Garden Center building is occasionally necessary in connection with routine retail store operations, such as when your clients' waste disposal contractor's trucks arrive to empty the trash dumpsters that serve the retail store.

These access needs make sense to my clients, and they are satisfied that a vehicle-sized gate within the proposed fence seems necessary for these reasons. However, because your clients' proposal (and my clients' primary objective) is to cause all traffic relating to rear-property activities to gain access *only* via Airport Drive, and because an *open* gate between the rear areas

and the Garden Center parking lot would most likely invite improper usage of the Garden Center entrance at North Tuckahoe Road for access to and from the rear property areas, such a gate should be required to remain *closed* at all times except when needed for periodic Garden Center retail store trash pickup, bulk deliveries of retail merchandise to the Garden Center store, and emergency vehicles. This would make compliance much easier for your clients (they would not have to instruct, monitor and enforce against the numerous drivers who travel on and off the Peach Country properties), and it would make enforcement much easier for the Monroe Township Zoning Officer (enforcement would require simply observing whether the gate is open or closed, rather than ascertaining the specific identities and business purposes of numerous and various vehicle operators over the course of hours, days or weeks). It should also be noted that if such a gate were to be installed and operated in this manner, the automated gate that is currently located at the Garden Center driveway entrance along North Tuckahoe Road could be removed, and perhaps simply relocated and incorporated into the new fence for the above purposes.

The attached marked-up copy of your clients' concept plan shows my hand-drawn renderings and notations of the fence that could separate the rear areas of the Peach Country properties from the Garden Center parking lot as described above; the possible locations of a vehicle gate and smaller person-sized gate within that fence; and removal of the existing automated gate along North Tuckahoe Road. I have also indicated the possible location of an additional parking area behind the new fence at which Garden Center retail customers who drive into the Peach Country properties via Airport Drive could park their vehicles in relatively close proximity to the Garden Center store and walk to it via the person-sized gate.

In summary, it seems to me that, for your clients' proposed businesses to be approved in Monroe Township's Business Park zoning district, those businesses should be required to function like a business park from a traffic-flow perspective, particularly with respect to more intensive non-retail uses such as mulch processing and landscaper/contractor vehicle parking and storage. Indeed, one does not typically access a business park by driving through a retail store parking lot. Your clients' proposed access road to Airport Drive for all rear-property traffic therefore seems to make good sense, as would a clear prohibition against such traffic using the Peach Country Garden Center driveway for access to and from North Tuckahoe Road. A fence and closed gate system such as my clients are proposing in this memorandum would further these objectives for

everyone's benefit by physically preventing improper vehicle access and thus making enforcement by your clients and the Zoning Official easier and perhaps even unnecessary.

**Hours of Operation:**

In addition to the above traffic controls my clients request that all Peach Country business operations, perhaps with the exception of the proposed contractor/landscaping vehicle parking and storage, be conducted only during previously approved times, that is 7:00 a.m. to 5:00 p.m. Monday through Friday; 7:00 a.m. 12:00 noon on Saturdays; and closed on Sundays.

**NJDEP Compliance:**

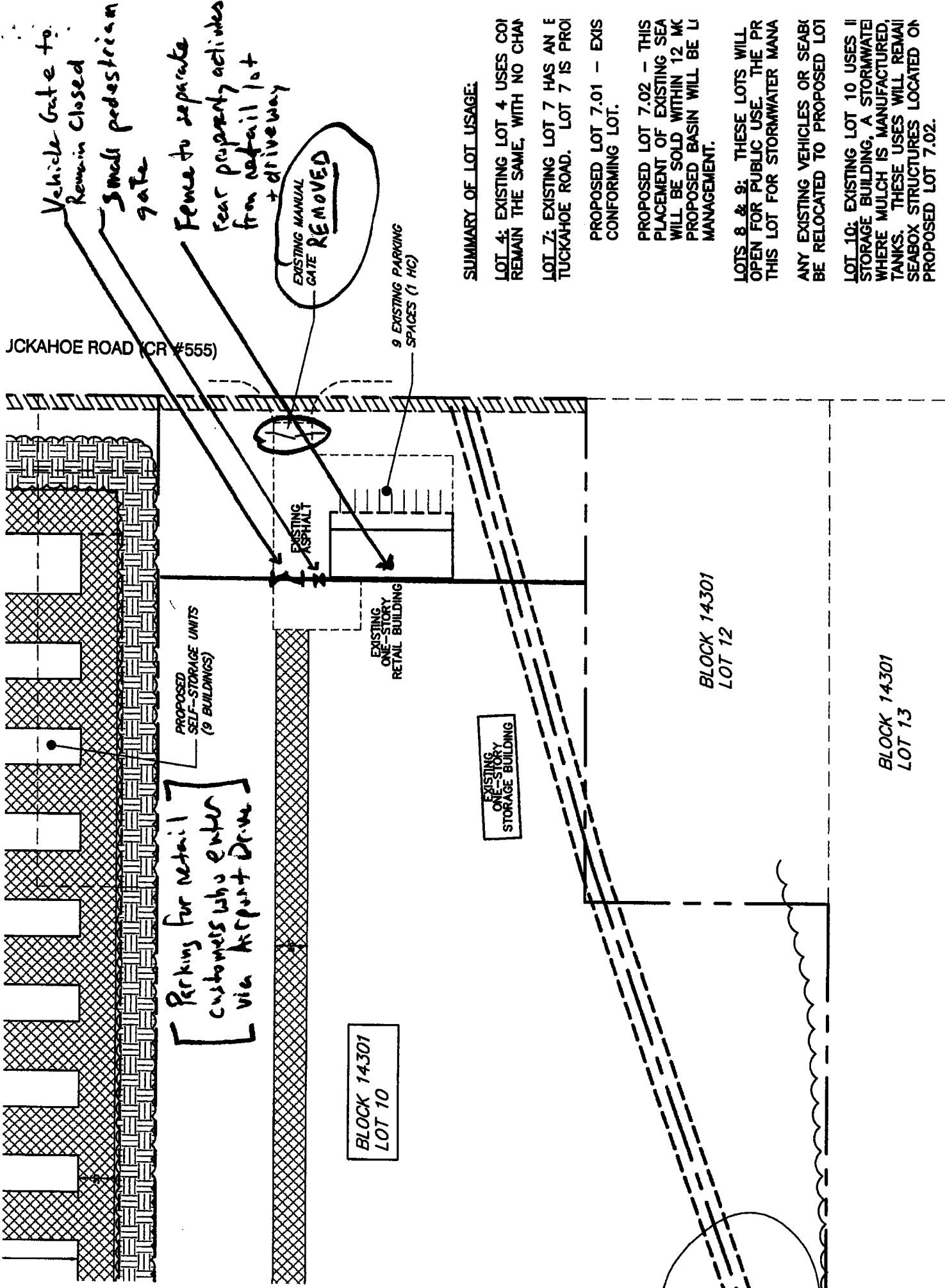
The Peach Country mulch operation should continue to be conditioned upon strict compliance with all applicable NJDEP requirements. Any violation of NJDEP requirements, particularly with respect to Peach Country's permitted (or "excepted") volumes and types of recycled materials, constitutes prohibited activity beyond the scope of Peach Country's municipal approvals.

**Outdoor Garden Center Storage:**

The current Peach Country approvals do not allow outdoor storage of equipment and materials at the Garden Center store, and my clients appreciate your clients' removal of some of these items over the past few months. If the new fence and gates are installed as proposed on the marked-up concept plan all such equipment and materials can be securely stored in the areas behind the fence, and there will be little if any reason for the current automatic gate to remain at the Garden Center driveway entrance on North Tuckahoe Road.

**Roadside Debris:**

Incorporating the above proposals into your clients' plan should greatly reduce the amount of debris deposited along North Tuckahoe Road, but my clients also ask that your clients monitor the condition of, and clean the roadway shoulders on a regular basis.



Parking for retail customers who enter via Airport Drive

SUMMARY OF LOT USAGE:

- LOT 4: EXISTING LOT 4 USES COI REMAIN THE SAME, WITH NO CHAN
- LOT 7: EXISTING LOT 7 HAS AN E TUCKAHOE ROAD. LOT 7 IS PROI
- PROPOSED LOT 7.01 - EXIS CONFORMING LOT.
- PROPOSED LOT 7.02 - THIS PLACEMENT OF EXISTING SEA WILL BE SOLD WITHIN 12 MC PROPOSED BASIN WILL BE LI MANAGEMENT.
- LOTS 8 & 9: THESE LOTS WILL OPEN FOR PUBLIC USE. THE PR THIS LOT FOR STORMWATER MANA
- ANY EXISTING VEHICLES OR SEABE BE RELOCATED TO PROPOSED LOT
- LOT 10: EXISTING LOT 10 USES II STORAGE BUILDING, A STORMWATER WHERE MULCH IS MANUFACTURED, TANKS. THESE USES WILL REMAIN SEABOX STRUCTURES LOCATED ON PROPOSED LOT 7.02.

**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

# **EXHIBIT F**

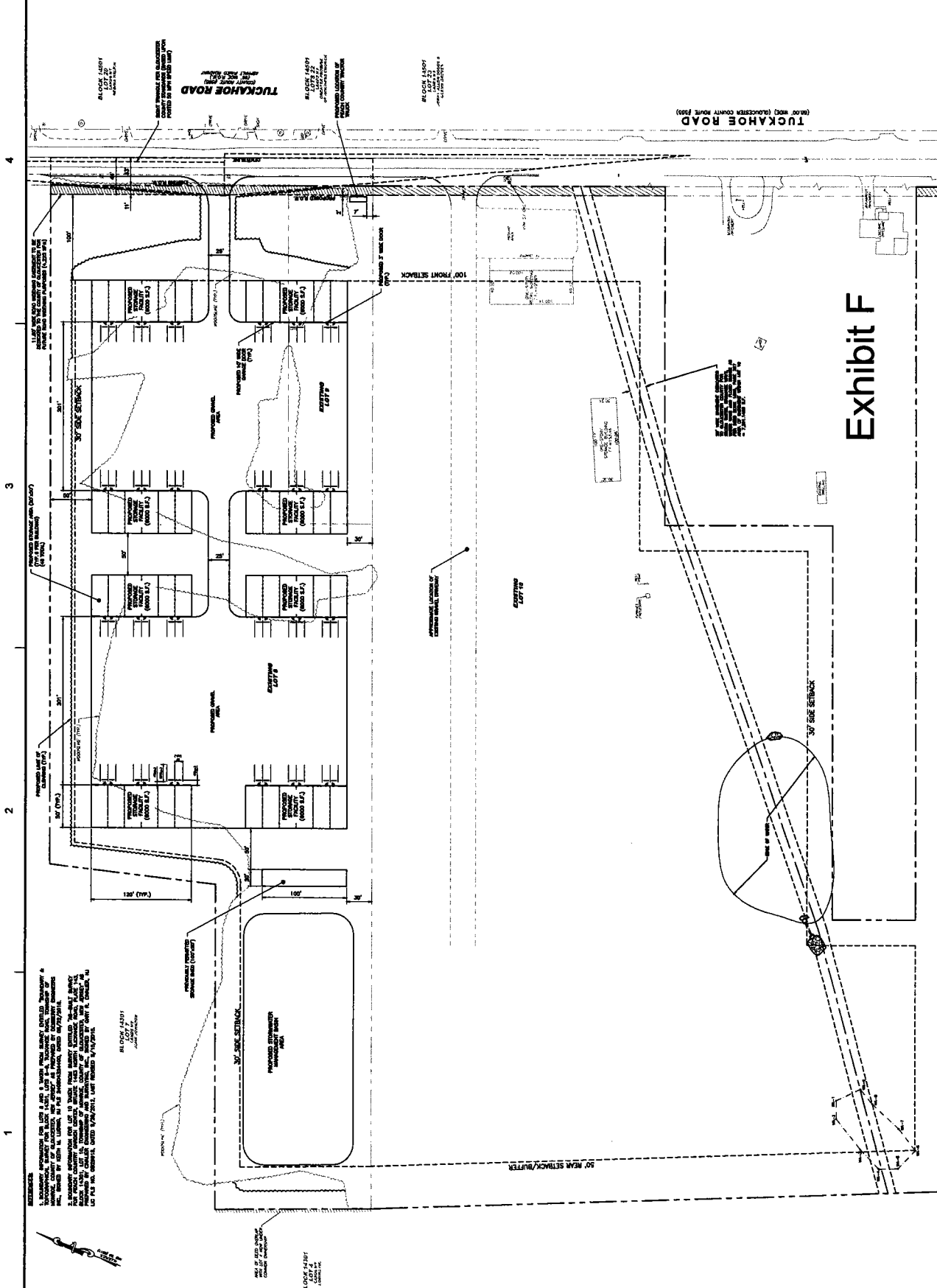
**Site Plan for Wood Management LLC Application #1 (2019)**

NO.	DATE	BY	DESCRIPTION

TITLE: \_\_\_\_\_  
 DATE: 08/02/19  
 CHECKED BY: \_\_\_\_\_  
 APPROVED BY: \_\_\_\_\_  
 DRAWN BY: \_\_\_\_\_

**CONCEPTUAL  
 SITE PLAN**

PROJECT NO.: 0100987





**OBJECTORS' MEMORANDUM 1**

**(Monroe Township Zoning Board – Application of Wood Management LLC, et al.)**

# **EXHIBIT G**

**Site Plan for Wood Management LLC Application #2 (current)**

C-103

DATE: 10/1/10

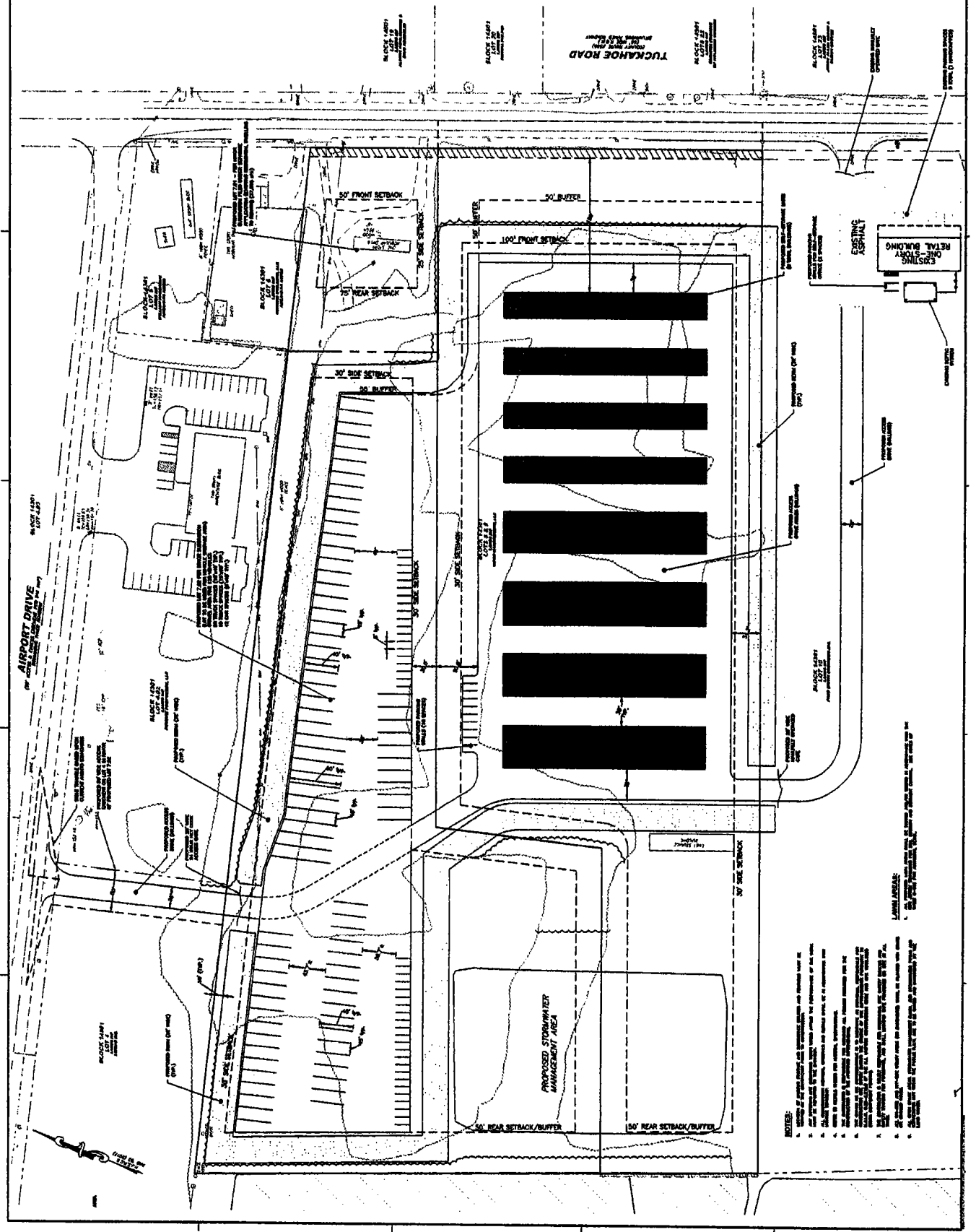
SITE PLAN

NO.	DATE	REVISION

WALTER C. BRONSON, JR.  
REGISTERED PROFESSIONAL ENGINEER  
NO. 35858  
STATE OF GEORGIA

PRELIMINARY AND FINAL  
MAJOR SITE PLAN  
PEACH COUNTRY TRACTOR  
BLOCK 14301, LOTS 4 & 7-10  
TOWNSHIP OF MONROE  
GLOUCESTER COUNTY, NEW JERSEY

**Dewberry**  
1000 WASHINGTON, N.J.  
201-992-8800  
WWW.DEBERRY.COM



- NOTES:**
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF ALL APPLICABLE CODES AND REGULATIONS.
  2. THE PROPOSED STORMWATER MANAGEMENT AREA SHALL BE MAINTAINED AS SUCH AND SHALL NOT BE USED FOR ANY OTHER PURPOSES.
  3. ALL UTILITIES SHALL BE DEPTH MARKED AND SHOWN ON THIS PLAN.
  4. THE PROPOSED STORMWATER MANAGEMENT AREA SHALL BE MAINTAINED AS SUCH AND SHALL NOT BE USED FOR ANY OTHER PURPOSES.
  5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF ALL APPLICABLE CODES AND REGULATIONS.
  6. THE PROPOSED STORMWATER MANAGEMENT AREA SHALL BE MAINTAINED AS SUCH AND SHALL NOT BE USED FOR ANY OTHER PURPOSES.
  7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF ALL APPLICABLE CODES AND REGULATIONS.
  8. THE PROPOSED STORMWATER MANAGEMENT AREA SHALL BE MAINTAINED AS SUCH AND SHALL NOT BE USED FOR ANY OTHER PURPOSES.
- LANDLORDS:**
1. THE LANDLORDS SHALL MAINTAIN ACCESS TO ALL UTILITIES AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REPAIRS.
  2. THE LANDLORDS SHALL MAINTAIN ACCESS TO ALL UTILITIES AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REPAIRS.
  3. THE LANDLORDS SHALL MAINTAIN ACCESS TO ALL UTILITIES AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REPAIRS.