

Land Use, Climate Impacts & Sustainability Committee Meeting

This meeting was conducted remotely
All participants were present via Zoom conference

YouTube link: <https://www.youtube.com/watch?v=yObES2AIsO8>

Minutes January 20, 2021

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Richard Prickett, Edward Lloyd, Shannon Higginbotham and Alan W. Avery

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan Grogan, Jessica Lynch, Stacey Roth, Ed Wengrowski, John Bunnell, Ernest Deman, Brad Lanute, Gina Berg, Marci Green, Chuck Horner, Branwen Ellis and Paul Leakan

Governor's Authority Unit: Jamera Sirmans, Rudy Rodas (10:50 a.m.)

1. Call to Order at 9:33 a.m.

Chairman Lohbauer welcomed new Commissioner Higginbotham

2. Adoption of the October 30, 2020 Committee meeting minutes

Commissioner Lloyd moved the adoption of the minutes from the October 30, 2020 Committee meeting. Commissioner Avery seconded the motion, and the minutes were adopted with all voting in favor.

3. Discussion of solar energy facilities in the Pinelands Area

- **NJ Board of Public Utilities (BPU)-Community Solar Pilot Program**
Resource Planner Brad Lanute provided an overview of the BPU Community Solar Pilot Program.

BPU is currently in Program Year 2 with applications due by February 5, 2021. The rules for the permanent program are anticipated in early 2022.

In Year 1 there were 253 applications with 45 approved. Three of the approved applications were for facilities in the Pinelands. There were some changes for Year 2 including the requirement for a letter from the Pinelands Commission for any projects in the Pinelands. The letter needs to address whether the project is "consistent with the land use priorities in the areas". The Commission has provided such letters.

- **Comprehensive Management Plan (CMP) standards**

Director Susan Grogan continued with the presentation discussing Comprehensive Management Plan (CMP) amendments dealing with solar facilities (N.J.A.C. 7:50-5.36).

The primary amendments were made in 2012. The amendments encouraged solar on rooftop and parking by making them accessory. The amendments expanded the exemption to include solar on existing structures and impervious surfaces. The amendments also expanded opportunities for principal use of large scale solar facilities. Limitations in Preservation Area, Special Agricultural and Forest Areas were included.

- **Recent application activity and issues**

Director Grogan provided an overview of the solar applications received noting that most were on landfills. She noted that the accessory installations do not require a permit so there are no records for these.

- **Possible Amendments**

An overview of possible CMP amendments for the Commission to consider were discussed and included land fill closure (capping), outstanding violations, threatened and endangered species, tree removal, offsite infrastructure and restoration obligations.

Commissioner Avery asked if prime agricultural soils in the Rural Development Area (RDA) were based on soil type or active farmland. Director Grogan responded that it is based on soil type. She said she has acreage figures on the number of acres of prime agricultural or farmland soil in the RDA, and it is not a huge area. Commissioner Avery commented that maybe the Commission might want to have the restoration standards be more oriented to providing grassland habitat at the mining sites.

Chairman Lohbauer spoke about the prime agriculture sites in the RDA, and his concern about pressure going forward to allow for larger size facilities in Agricultural Production Areas (APA) due to the imposed, current limitations. Director Grogan stated the limitations were put in place to preserve agricultural land.

Commissioner Prickett stated the Commission should look at how farmers can use their land as a revenue stream for agriculture to support other types of agriculture compared to solar arrays. Commissioner Prickett spoke of whether or not landfills will ever have an impervious cover due to the expense. The Commission could possibly consider looking for an offset for not covering a landfill and allowing for a solar array to be put on top of landfills. Commissioner Prickett asked about the extent to which the Commission wants to see solar in the Pinelands.

Chairman Lohbauer stated he is not in favor of landfills forgoing an impermeable cap, due to leaching into the water supply, especially in the Pinelands. Chairman

Lohbauer asked whether the landfills have considered using the income stream from the solar arrays to finance the impervious cover. Environmental Technologies Coordinator Ed Wengrowski said this has been researched and the revenue generated from the sale of credits is insufficient to pay for the cap.

Commissioner Higginbotham asked if there are any requirements in place for the removal or replacement of solar to prevent long-term abandonment issues. Director Grogan replied that yes there is a standard in place.

Commissioner Prickett asked if there is bonding associated with solar clean-up, Director Grogan said the municipalities may have guidelines. The CMP does not.

4. Update on the New Jersey Department of Environmental Protection's NJPACT (Protecting Against Climate Threats) regulatory reform effort given by Executive Director (ED) Nancy Wittenberg

- ED Wittenberg provided an overview of stakeholder presentations by the NJDEP. She explained that a lot of material was presented and that it is a very comprehensive effort. For DEP a lot of it has to do with the significant coastal issues and sea level rise. The proposed changes are significant. In addition to changing regulatory standards DEP is also changing its regulatory process. It is establishing a new permit by registration to assist in keeping records of all changes made. ED Wittenberg stated this is something the Commission may consider.
- DEP discussed offshore wind and solar and noted that one resource should not be at the expense of another. DEP also noted that they currently do not regulate horizontal directional drilling for energy generated offshore coming to shore, but they acknowledge there will be competing needs.

5. Review of maps prepared using NJ FloodMapper – Resource Planner Gina Berg

Gina Berg delivered a presentation on the NJ FloodMapper tool which creates maps to show the risk of flooding from sea level rise. She showed 3 maps that showed risk associated with sea level rise and storm surge

6. Legislative update – Stacey Roth, Chief of Legal and Legislative Affairs

Stacey Roth provided a summary of the following climate change related proposed legislation:

Bill S2607 A2785 – requires land use plan elements of municipal master plans to include climate change related hazard vulnerability assessments

Bill S2605 A4554 – directs BPU to establish a utility scale solar energy development program.

Bill S938 – establishes standards for installation of electric vehicle charging stations, authorizes municipal deviation from standards and exempts installations at gasoline service stations from certain requirements.

Bill S3184 – a three-year program provides corporations business tax credits and gross income tax credits for the installation of electric vehicle charging stations for business, based on a sliding scale

Bill S3223 – defines electric vehicle charging infrastructure as inherently beneficial under the Municipal Land Use Law, makes it a permitted accessory use in all municipal zoning or use districts

Bill S3091 – requires developers to offer unit concrete products that utilize carbon footprint reducing technology as an option in new construction, establish tax incentives and state and local purchasing requirements for the use of concrete products using this new technology

Bill S3134 – requires all new state buildings to have solar or geo-thermal energy systems where feasible

Bill S2846 – requires state agencies in awarding contracts for purchase of items that require power sources to consider items fueled powered by fuel cells

Bill S1010 – permits counties and municipalities to bond for the purchase of alternative fuel vehicles

7. **Public comment**

Mayor Joe Venezia, City of Estell Manor –

Mayor Venezia asked if the Pinelands Commission knows how many identified contaminated sites there are in the Pinelands? Director Grogan stated she does not have that information but will investigate it. The Mayor explained that the Estell Manor landfill has been identified as number 17 from the bottom of least contaminated sites, meaning there are only 16 less contaminated sites than Estell Manor. He said the Pinelands Commission should welcome solar development on landfills without an impervious cap. He said that financially it is not feasible to wait until the cap is installed before installing solar in Estell Manor City.

He noted that his engineer can clear personal property and plant blueberries but not solar; or can clear for development but not solar. He doesn't feel property owners should be prohibited to do what they want with their property other than paying taxes. He said it makes it difficult for owners of large tracts of land to do anything other than to sell to the state, and it becomes a burden to the municipality. Chairman Lohbauer stated that the Commissioners cannot respond to his concerns not having knowledge of the property, but he suggested reaching out to Commission staff to find out what regulations relate to the Mayor's property

Mayor Venezia asked if the Pinelands Commission is going to allow solar development on landfills without an impermeable cover. Mayor Venezia gave a brief history of the Estell Manor landfill. Chairman Lohbauer said that is something to be answered by the full Commission, which would decide whether a full impermeable cap would be required on the Estell Manor landfill. Mr. Wengrowski said the Commission has been working with Estell Manor and suggested a pathway to resolve this outstanding issue. The City has been complying with the requested water monitoring program. The Commission is following regulations through this process and will respond once it has the information. The Mayor asked if solar can only be placed on the actual landfill area utilized or if it can go to surrounding areas onsite. Mr. Wengrowski said that if they have to generate some fill, they can clear a reasonable area that they can substantiate was necessary to be cleared to generate some dirt that they would use to put on top of that landfill to finalize its stormwater management plan. Mr. Wengrowski said you can then put solar on the actively landfilled portion and within reason any area that was disturbed to generate fill that was necessary to close the landfill. The Mayor asked for some leniency from the Commission for this municipal owned landfill in order for the City to put the solar development onsite, as solar companies are not interested in doing development on sites smaller than what can produce a minimum of 5GB of electricity, or approximately 25 acres.

Rhyan Grech of the Pinelands Preservation Alliance said the reason we're having this conversation today, the reason the LUCIS Committee exists in the first place, the reason that there is a climate crisis currently is because we didn't adequately protect our natural resources in the first place. The Pinelands Commission doesn't have jurisdiction over the entire state as other state agencies do. The Commission exists to protect this very rare and sensitive area of the state. When the Commission is thinking about the Pinelands' renewable energy contribution, the Commission is not thinking about it in the same way as these other statewide agencies, because the area within the Pinelands is particularly sensitive and rare and needs those levels of protection. When the Commission is thinking about some of the amendments to pursue, she said she hopes the Commission will consider the protections that have been put in place in the past. The protections must be the top priority. She said the NJDEP is considering a number of changes to the rules with regard to Horizontal Directional Drilling (HDD).

Commissioner Avery asked if the caller could provide source for the 50% industry failure rate that the caller provided. Chairman Lohbauer said he will reach out to the caller to get that information. See appendix.

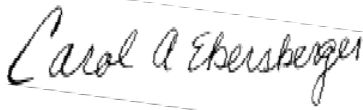
Commissioner Prickett said at this time this is just a discussion about these issues, and there is no agenda to make changes at this time. He said it is just a sharing of ideas.

Commissioner Avery thanked the staff for the work going into today's meeting.

Chairman Lohbauer thanked staff. Chairman Lohbauer thanked Executive Assistant Jess Noble for providing links to Commission members and staff. Chairman Lohbauer asked members to consider changing the name of committee to something shorter.

Chairman Avery moved the adjournment of the meeting. Commissioner Prickett seconded the motion and all agreed. The meeting adjourned at 12:46 PM.

Minutes submitted as true and correct.

A handwritten signature in cursive script that reads "Carol A. Ebersberger". The signature is written in black ink and is positioned above a horizontal line.

Carol A. Ebersberger
Business Specialist

Date: January 26, 2020

APPENDIX

Commissioner Avery asked if the caller could provide source for the 50% industry failure rate that the caller provided. Chairman Lohbauer said he will reach out to the caller to get that information.

January 20, 2021 Rhyan Grech did furnish Chairman Lohbauer with the requested proof via email The pertinent language from that email message is provided here:

EMAIL FROM RHYAN GRECH 1/20/21
...[H]ere is that information about the HDD failure rate:

When horizontal directional drilling (HDD) was a relatively new technology and concerns emerged about spills, a study sponsored by the non-profit Gas Technology Institute demonstrated a 50% failure rate for HDD.^[1] Energy companies are clearly aware of this study and accept its findings: in April of 2018, a spokesperson at Sunoco attempted to justify the IR rate for the Mariner East 2 pipeline in Pennsylvania “which is below the industry average of 50 percent”.^[2]

^[1] Skonberg, E.R., Tammi, C.E., Desilets, A.M. and Srivastava, V., 2008, Inadvertent slurry returns during horizontal directional drilling: Understanding the frequency and causes. Environmental Concerns in Rights-of-Way Management: Eighth International Symposium, p. 613-621.

^[1] Litvak, Legere, “The lessons of Mariner East 2,” Pittsburgh Post-Gazette, October 23, 2018.