

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted both remotely and in-person
The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/watch?v=Spcj8hG2da0>

Meeting ID: 850 6449 5661
Richard J. Sullivan Center
15C Springfield Rd
New Lisbon, New Jersey 08064
November 29, 2023 - 9:30 a.m.

MINUTES

Members in Attendance – Alan W. Avery, Jr., Mark Lohbauer, Chair Laura E. Matos, Douglas Wallner

Members Absent – Jerome H. Irick, Theresa Lettman

Commission Staff in Attendance – Gina Berg, Ernest Deman, April Field, Susan R. Grogan, Brad Lanute, Trent Maxwell, Joel Mott, Stacey P. Roth, and Steven Simone. Also in attendance was Alexis Franklin with the Governor’s Authorities Unit.

Commission Staff in Attendance (Zoom) – John Bunnell

1. Call to Order

Chair Matos called the meeting to order at 9:31 a.m.

2. Adoption of the Minutes from the October 27, 2023 Meeting of the CMP Policy and Implementation Committee

Chair Matos asked for a motion to adopt the minutes of the October 27, 2023 meeting of the CMP Policy and Implementation Committee. Commissioner Lohbauer made the motion. Commissioner Avery seconded. All members voted in favor.

3. Review of proposed Memorandum of Agreement with Pemberton Township (Pemberton Lake Trails)

Stacey Roth, Chief of Legal and Legislative Affairs, presented a draft Memorandum of Agreement (MOA) with Pemberton Township to improve the trails at Pemberton Lakes and to make them more accessible for those with ambulatory (mobility) issues (*Attachment A to these minutes and available on the Commission’s website at*

[https://www.nj.gov/pinelands/home/presentations/Pemberton%20Lake%20Accessible%20Trail%](https://www.nj.gov/pinelands/home/presentations/Pemberton%20Lake%20Accessible%20Trail%20MOA.pdf)

[20Presentation-1.pdf](#)). She showed a map of the trails and described the existing conditions of the site and the proposed gravel and boardwalk upgrades.

Ms. Roth said that a draft MOA was distributed to members of the Committee as part of the meeting packet. The project proposed by the Township involves surfacing in wetlands and wetlands buffers. The Township requires a deviation from the wetlands standards of the Pinelands Comprehensive Management Plan (CMP) to proceed with the project. She said the CMP allows the Commission to enter into MOAs that provide for a deviation from CMP standards, provided that an offset resulting in the equivalent protection of Pinelands resources is included as part of the agreement.

Ms. Roth described the proposed offsetting measures. She said the Township would install gates at both trail entrance points, revegetate two areas, add accessible parking spaces, and install a rain garden near the Magnolia Road parking area as offsets.

Ms. Roth said that the draft MOA would also approve an alternative permitting process. She said that rather than submitting applications and obtaining formal public development approval from the Commission for each improvement, the Township will submit the information to the Executive Director (ED) and the project will be reviewed by staff. She said if the project is found to be consistent with the MOA and the CMP, the ED can authorize the project.

Ms. Roth said more information on the final site plan is necessary to ensure consistency with the MOA and the CMP. She said the plan indicates that the length of boardwalks is subject to change, pending verification of the extent of wetlands and ponding water. She said the MOA also requires submission of a design plan for the rain garden.

Ms. Roth described the next steps in the MOA process. A public hearing will be held on December 13, 2023. Staff will return to the Committee in January to review comments from the hearing, the response to comments and a final MOA. With the Committee's recommendation, the MOA would proceed to the full Commission in February for approval.

Commissioner Lohbauer asked if the gates and wooden barriers would prevent trail use by those with motorized wheelchairs. Ms. Roth said no, and that the gates at the access point will be designed so that electric wheelchairs could pass through, but other vehicles could not.

Commissioner Avery asked for the estimated extent of the rain garden. Ms. Roth said the Commission staff does not have that information at this point and that is why it is subject to the alternate permitting process. She said if the Commission were to approve the MOA, then development could not proceed until those details are provided.

Susan R. Grogan, Executive Director (ED), asked if the rain garden is estimated to be less than 5,000 square feet. Ms. Roth said yes. Commissioner Avery asked if the rain garden is a proposed offset measure or if the rain garden is necessary to meet stormwater management standards related to runoff from the upgraded trail. Ms. Roth said it is an offset and not necessary for stormwater management requirements and that staff suggested a rain garden similar in size to the rain garden at the Commission's offices.

ED Grogan said in accordance with the 13-step MOA process, the next step is the public hearing, followed by additional P&I Committee review. She said the MOA could go directly to the full Commission for a vote if there is no public comment that requires a substantial change to the MOA. ED Grogan asked for support from the Committee to proceed to the full Commission meeting in January.

Commissioner Avery asked if the Township is ready to initiate construction and if all other necessary permits have been acquired. ED Grogan said the Township would prefer to start as soon as they can but must address the permitting issues. She said the Township requires a right of access approval from the New Jersey Department of Environmental Protection (DEP) to operate in a Wildlife Management Area (WMA) and a Freshwater Wetlands Permit (GP-17), which the Commission issues on behalf of the DEP.

Chair Matos asked if the Township needs the MOA to be signed to receive the permits or if they could move forward on parallel tracks with the MOA process. Ms. Roth said the Township can proceed on parallel tracks with the DEP access permit, but that the GP-17 approval would not be issued until after the MOA is signed.

Chair Matos asked if other Committee members agree with the expedited process of proceeding directly to the Commission meeting after the public hearing if no substantive issue arises. Commissioner Wallner said he is comfortable with the proposal and that he is completely supportive. Commissioner Lohbauer agreed.

Commissioner Avery asked if the right of access approval from DEP requires State House Commission approval. Ms. Roth said no.

ED Grogan asked Ms. Roth to clarify why the MOA is just between the Commission and Township and not the DEP. Ms. Roth said there was no need for the DEP to be a signatory to the agreement because they review work on their own property through their own internal processes. She added that staff felt an additional level of review for the agreement was unnecessary. Instead, the MOA requires that the Township obtain the necessary DEP approvals prior to commencing the trail improvements.

Ms. Roth added that she is still working with Stafford Township on a similar proposal, and that the Committee will see that draft MOA early in the new year.

4. Review of proposed Comprehensive Management Plan amendments

ED Grogan discussed the draft package of CMP amendments (*Attachment B to these minutes and available on the Commission's website at <https://www.nj.gov/pinlands/home/presentations/CMP%20Amendments%20Proposal%20Presentations.pdf>*). The amendments address revisions to application fees, the Black Run watershed management area changes, electric utility rights-of-way (ROW) vegetation maintenance, expirations for old Waivers, Certificates of Completeness and Certificates of Filing (CFs), allocation and use of Pinelands Development Credits (PDCs), and other minor edits and updates.

ED Grogan discussed application fee changes. She said the new rule language proposes several new and increased fees, notably additional fees for applications to resolve violations of the CMP. She said it is not a fine or a penalty and that the Commission does not have the authority impose these, but it does have the ability to assess application fees. She said this additional fee recognizes that additional staff time is necessary to resolve a violation that has occurred. She added that the fee in the draft rule proposal is separated into major (\$1,000 fee) and minor (\$500 fee) development, which is a distinction that the CMP already makes. She added most violations involve minor development.

ED Grogan said the CMP contains fee caps that apply to development applications, depending on whether the applicant is a private entity, a public entity or a non-profit organization. She said when the additional fee is charged to resolve a violation, the draft rules specify this would be added to the violation fee and that the fee cap would not apply.

ED Grogan discussed additional fees for Waivers of Strict Compliance. She said the proposal is to assess \$250 for an additional fee in an extraordinary hardship scenario on top of the \$250 development application fee. She said not many applicants would be affected and that the Commission only receives a few waiver applications a year, the majority of which are for development of one single family detached home.

ED Grogan discussed fees for wetlands or wetlands transition area Letters of Interpretation (LOI). She said LOIs for allocation of PDCs would remain free of charge, but that the fee for wetlands or wetlands transition area LOIs would increase to \$1,000 plus \$100 per acre of the parcel or portion of the parcel included in the LOI request. She said the Commission does not require wetlands LOIs prior to initiation of development applications but other agencies do. She said wetlands and wetlands transition area LOIs require a lot of staff time and the increase is justified based on the required amount of effort. She said there would be a fee increase from \$250 to \$500 for all other non-PDC LOIs.

ED Grogan said Commissioner Avery pointed out an issue with the draft rule language concerning LOIs to verify the location and extent of wetlands and wetlands buffers. She said the rule language would be edited so that the \$100/acre provision applies only to the acreage requested in the LOI and not an entire, potentially very large parcel.

ED Grogan said that the fee increases are not anticipated to generate large revenue increases. She said the amendments are merely an attempt to make the required fees more closely coincide with staff time spent on those applications.

ED Grogan discussed the Black Run Watershed Management Area redesignation. She said the proposal would revise the Commission's Land Capability Map to redesignate 2,440 acres of the Black Run watershed in Evesham Township from Rural Development Area (RDA) to Forest Area (FA). She said the goal is to provide increased protection for the watershed and surrounding lands of highest ecological integrity. She said the management area redesignation is based on the Ecological Integrity Assessment (EIA) that the Commission's Science Office performed and the Southern Medford/Evesham Resource Protection Plan effort from years ago. She said the EIA

ranked ecological integrity based on several factors. Lands in and around the Black Run watershed were found to be of the highest ecological integrity and therefore more appropriately located in a Forest Area. She said that 60% of the area to be redesignated to Forest Area is preserved and 57% of the area is wetlands.

ED Grogan said the rule change is simple and will only reference a new Land Capability Map date. However, the effects of the amendment are more significant. She described the existing and new residential density in the area of Evesham that would change from RDA to FA. She said the potential residential units would be reduced from 244 units to 35 units. She said the realistic potential is likely even smaller due to environmental constraints like wetlands.

ED Grogan referred to a map of Evesham Township showing existing Pinelands Management Areas and the proposed Black Run FA boundaries. She said the area to be redesignated is a slightly different shape than the area the Commission has been discussing for the past 15 years, based on a recent review of existing developments and watershed boundaries. She said the area to be redesignated does not follow lot lines or property boundaries intentionally, as it is the Commission's responsibility to protect the watershed. She said if the Commission adopts the amendment, then the Township may adjust the boundaries to match lot lines or to add or remove certain lots that are split by the new FA boundary during the implementation process.

ED Grogan said the draft proposal does not include authorization of a new residential density transfer program, nor does it designate any offsite clustering area outside the watershed. She said this offsite clustering of high-density, sewer residential development near the border with Voorhees Township had been suggested in the Southern Medford/Evesham Plan. However, information gathered in the last 15 years indicates that such development is likely infeasible, given property ownership and the necessary route for new infrastructure. In addition, so many years have passed that new surveys and information regarding threatened and endangered species (T&E) would be necessary to demonstrate that critical habitat would not be impacted by development in the suggested offsite clustering area. She noted that the lands previously suggested as the location for the offsite cluster will remain in the RDA and continue to be zoned for clustered single-family homes on one acre lots.

ED Grogan said the Township could propose higher density zoning outside the Black Run Watershed through the zoning and master plan conformance process and the Commission would review that for consistency with the CMP. She noted that sewers are typically not permitted in the RDA. She said any development in the area would have to demonstrate consistency with the Commission's T&E standards, and that any residential development would have to be clustered on one-acre lots with a significant set aside of protected open space.

Commissioner Wallner said he is more comfortable with not having the tradeoff of allowing higher density permitted in the remaining RDA. He said had concerns about the new clustered development area.

Commissioner Avery said he likes the simple management area redesignation approach better and compared it to the Oyster Creek watershed redesignation in 2004.

ED Grogan next discussed the electric utility ROW vegetation maintenance program within the draft rule proposal. She said rule amendment would repeal the pilot program that expired in 2021 and make the ROW maintenance program a permanent piece of the CMP. She said the amendment would also update the definition of wetlands soils and include application exemptions if the maintenance prescriptions in the ROW plan identified for particular spans are followed. She said the draft amendment includes vegetation management standards for utility ROW maintenance that is not in the existing ROW plan, with different prescriptions depending on whether the area is uplands or wetlands. The draft rule requires the utilities to submit an annual list of maintenance planned and an annual escrow payment that is significantly reduced from the payment required during the pilot program. Those escrow payments will fund the staff periodic monitoring of sites for compliance with the prescriptions.

ED Grogan discussed draft amendments that will set expiration dates for certain Waivers of Strict Compliance. She said the rule amendment would establish that Waivers of Strict Compliance issued before 1992 will remain valid for one year after the effective date of the rule adoption. She said these waivers predate CMP amendments that were codified in 1992 and that prior CMP amendments had set expiration dates for all other Waivers except this final group. She said that the owners of land with expired Waivers will have the option of applying to the Commission for a new Waiver. In some situations, a new Waiver application might lead to a denial and subsequent state acquisition through the Limited Practical Use (LPU) program or an approval with an allocation of PDCs in lieu of the ability to construct a new home.

Chair Matos asked if there will be proactive outreach to those holders of old Waivers to notify them of the upcoming expiration date. ED Grogan said the Commission will attempt to contact all owners either by email or by regular mail if there is no email address in the Commission's records and that notices will be sent to municipalities and posted on the Commission's website.

ED Grogan discussed rule amendments to set expiration dates for Certificates of Filing (CFs), Certificates of Completeness, and Certificates of Compliance, and said none of those documents currently have established expiration dates. She said this presents problems for both the applicant and the staff when the certificate is very old. Under the current provisions of the CMP, the Commission must allow an applicant to use an old Certificate, even though rules and zoning have changed. That leads to local permits or approvals being issued that are inconsistent with current regulations and those inconsistencies must be addressed by the applicant before the Commission can sign off on the permits. She said draft rule amendments provide that CFs and other Certificates must be used or will expire five years from the date of issuance.

ED Grogan said Certificates of Completeness and Certificates of Compliance are no longer issued because they are only for applications in municipalities whose master plans and land use ordinances have not been certified by the Commission. All Pinelands Area municipalities obtained such certification by 2013.

She said the rule proposal summary will contain specific figures on the thousands of CFs and other certificates that have been issued and which have been used. She said certificates issued before January 1, 2004, will be deemed expired; certificates issued after that date will have a five-year expiration window unless local approvals are in place.

ED Grogan discussed draft PDC program clarifications. She said the goal of these amendments is to reflect actions that the Commission has allowed municipalities to take with regard to residential density obligations and zoning flexibility. The CMP assigns a residential density obligation to every municipality with a Regional Growth Area (RGA). She said the rule would clarify that this assignment is a minimum zoning obligation, and that towns have the flexibility to shift the PDC obligation to specific housing types or to non-residential uses. She said the rules would simplify confusing or vague PDC guidelines. She said that the PDC obligations are not reduced, but municipalities have the express flexibility to shift the obligation to various uses and zoning districts.

She said municipalities will retain the option to decrease their RGA zoning capacity by 10%. She added that the CMP was amended years ago to provide certain towns with the ability to decrease RGA zoning capacity by 30%. The proposed amendments would limit the 30% reduction option to those municipalities who have already obtained the Commission's approval for such a reduction.

ED Grogan described other minor clarifications and corrections included in the draft rule package, including replacing the term County "Freeholder" with "Commissioner," clarifying the Military and Federal Installation Area is exempt from the 35-ft height limitation, and other PDC clarifications.

ED Grogan shared a flow chart of the recommended actions. She said no formal action is needed from the Committee, but feedback is welcome. She said the next step is to submit the rules to the Governor's Office and potentially bring them to the full Commission in February 2024.

Commissioner Lohbauer asked about the vegetation maintenance ROW amendment. He asked if the pilot program specifically precluded the utility's use of herbicides as a maintenance tool. He said the rules do describe the express methods that are available to them, but no specific reference to herbicides. He asked if herbicides remain precluded. ED Grogan said that is correct, and that there is already a standard in the CMP that prohibits herbicide use.

Chair Matos thanked the staff and said the work was exceptional.

5. Public Comment

Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance (PPA), said the MOA process is not ideal for small trail improvement projects. He said neither the CMP nor DEP regulations regarding trails were drafted with accessibility in mind and do not speak to what makes a trail sustainable. He suggested creating a streamlined process that creates a better trail and said PPA would be submitting a request for an additional CMP amendment.

Edward Ferruggia, Voorhees Township resident and member of NJ Pinelands Save Our Arboreal Resources (SOAR), commented on the Black Run watershed proposal. He said he appreciated the Commission's efforts in addressing the issue and that the group is encouraged by the

proposal. He said the group is attempting to acquire some of the lands in the Black Run watershed area for preservation.

Sean Holland, Access Nature and Disability Advocate at PPA, said PPA is eager to start working on the Pemberton Lake trails. He said that PPA is looking forward to working on more trails like this and hopes the MOA process can allow development of accessible trails in the future.

Dr. Heidi Yeh, Policy Director at PPA, said she supports the proposed PDC changes codifying the shift in PDC obligations from residential to non-residential uses and allowing the carve out of some housing types such as affordable housing.

Michelle Nocito, Voorhees Township Deputy Mayor, said she echoed the comments of the previous speaker on the Black Run proposal. She said she appreciated the Commission's efforts to understand the concerns expressed by residents in Voorhees Township and thanked the Commission for its work to protect and preserve land in New Jersey.

Chair Matos closed public comment at 10:56 a.m.

Commissioner Avery said he agrees with Mr. Montgomery on a change in approach to the trail rules.

Chair Matos asked for a motion to adjourn the meeting. Commissioner Lohbauer made the motion. Commissioner Avery seconded. All voted in favor. The meeting adjourned at 10:57 a.m.

Certified as true and correct:



Trent R. Maxwell, Land Use Programs Technical Assistant

Date: December 12, 2023