

Adopted May 28, 2021

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted remotely

All participants were present via Zoom conference

The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/channel/UCBgpC8sbR3Acrjo7ppxs3Uw>

Meeting ID: 833 5477 1666

April 30, 2021 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Richard Prickett, Jerome H. Irick, Ed Lloyd and Mark Lohbauer

MEMBERS ABSENT: Alan Avery and Jordan Howell

STAFF PRESENT: Nancy Wittenberg, DAG Kristina Miles, Stacey P. Roth, Susan R. Grogan, Gina Berg, John Bunnell, Paul Leakan, Ernest Deman, Jessica Noble, Jessica Lynch and Betsy Piner. Also in attendance was Rudy Rodas with the Governor's Authorities Unit.

Call to Order

Chairman Prickett called the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee meeting to order at 9:31 a.m. and Ms. Wittenberg identified all staff attending/participating in the meeting.

1. Adoption of minutes from the March 26, 2021 CMP Policy and Implementation Committee meeting

Commissioner Lohbauer moved the adoption of the minutes of the March 26, 2021 Committee meeting. Commissioner Lloyd seconded the motion. All voted in favor of adopting the minutes.

2. Memorandum of Agreement (MOA) between the Pinelands Commission and the South Jersey Transportation Authority

Ms. Roth said the South Jersey Transportation Authority (SJTA) is seeking guidance as it develops its plan to create the grassland conservation and management area (GCMA) required under the 2019 Memorandum of Agreement (MOA) amendment. She noted that of the four alternatives provided by the SJTA consultants (AECOM), included in the packet, two are not viable. She noted that Mr. Deman had been involved in this project with her since the beginning.

Chairman Prickett said that the Commission must make sure that the plan meets CMP standards. Ms. Roth said the primary concern is with the number of trees that would need to be removed to create the minimum amount of habitat. \

Mr. Steve Maser with SJTA and Mr. Anthony Velazquez with AECOM joined the meeting via telephone. Together they made a PowerPoint presentation (*Attachment A to these minutes and posted on the Commission's website at the following address:*

<https://www.nj.gov/pinelands/home/presentations/CMP%20PI%20Committee%20Meeting%2043021.pdf>

Mr. Maser said, following Atlantic County's acquisition of the Royal Casino horse farm in Hamilton Township as a suitable site for the relocation of upland bird species, environmental studies were begun to evaluate the property and how best to accommodate the required minimum 62 acres of habitat plus the 50-meter buffer the birds require. This must be accomplished while addressing environmental impacts, including no net loss reforestation (NNL) and riparian zone impacts. He noted the high financial cost of offsets to these impacts and the need to minimize the cost of construction and environmental mitigation.

Mr. Velazquez reviewed the four alternatives for the GCMA relocation project while displaying aerial maps. He said the site encompasses about 222 acres adjacent to the eastbound lanes of the Atlantic City Expressway and was established as a horse farm sometime in the 1980s. He said the majority of the property is wetlands, as delineated in yellow, and it is adjacent to the Makepeace Lake Wildlife Management Area. He said the dark blue outlines regulated waters pursuant to the flood area hazard control act under which any sources that drain more than 50 acres are considered regulated waters. He said the pond and downstream channel are such waters. He said the 150' wide riparian zone, as outlined in a blue dashed line, extends to a downstream area where a plant species dependent upon water quality for survival, as designated by the New Jersey Department of Environmental Protection (NJDEP) Natural Heritage Program, is located within a mile. He said removal of vegetation is regulated in riparian zones. He said he was aware of the Committee's previously expressed concern with preserving trees and the plan has tried to avoid wetlands and clearing of mature forest.

He said Alternative #1 was developed by SJTA as the initial alternative to determine the site could meet the 62-acre minimum threshold. At the time, there had been no wetlands delineation. He said this alternative would require about 115 acres of clearing, including right up to the edge of the pond, and would provide for 75 acres of habitat, somewhat more than was required. However, this alternative has significant impact on wetlands and NNL reforestation.

He said for Alternative #2, the wetlands and riparian zones were delineated and with a total clearing of 110 acres, only 60 acres of habitat could be created so this would not meet the minimum acreage requirement and there would be a NNL obligation.

Mr. Velazquez said Alternative 3 avoids wetlands and riparian zones and converts a portion of an existing ditch (portions of which have phragmites) to grassland to achieve the minimum acreage while still preserving the mature upland forest around the existing house. However, the 21.6-acre NNL requirement could get very costly at roughly \$750,000.00 more than Alternative #4.

Mr. Velazquez said Alternative #4 is SJTA's recommendation. It avoids wetlands and riparian zones to the greatest extent possible. It will require removal of the trees surrounding the existing house and the conversion of a scrub filled ditch to grass. It will achieve the 62 acres of habitat while requiring only 99 acres of clearing and has only 9.4 acres of NNL, thus will be less costly. It is the most compact plan, requires the least amount of soil disturbance and clearing and is the least costly to prepare and maintain.

In response to a question from Commissioner Lohbauer, Mr. Maser said the 99 acres of clearing includes that which is already cleared; it is not 99 acres of deforestation. As to the use of the property, Mr. Maser said all the building structures will be demolished and removed. He said because this property was purchased with County open space funds, it is technically a park, but the buildings are an attractive nuisance. He said SJTA has secured the structures but is interested in removing them quickly.

In response to a question from Commissioner Lohbauer as to the requirements of the NNL Reforestation Act, Mr. Velazquez said there is an obligation to replant trees or make a monetary contribution. He said, as there is not sufficient room on the site to replant, and any replanting effort would require another site and another plan, a monetary contribution would be proposed.

Mr. Maser added that because this is a County property, they will try to seek a waiver, particularly since this is a mitigation project and it seems unreasonable to require mitigation for performing mitigation. He noted that several municipalities have successfully applied for grants to do their own reforestation, including Galloway and Egg Harbor Township.

In response to Chairman Prickett's question as to the type of grasses that will be used, Mr. Maser said, in accordance with the grassland plan for the airport site, they will use little bluestem and follow all the same environmental requirements of that original plan.

Ms. Roth noted that the original MOA had required an advisory committee which, she recalled, had included the Commission, NJDEP, and others, including perhaps the Pinelands Preservation Alliance (PPA). SJTA is reconvening that group and will be using the original materials of that plan as their guide.

Mr. Velazquez said the group will include representatives of NJDEP, the Fish and Wildlife Service, the United States Department of Agriculture (USDA), USDA Xerces Society, Conserve Wildlife, NJ Audubon and the Pinelands Commission.

Chairman Prickett said he was impressed with the work done to identify four alternatives, leading to one that addresses all of the environmental concerns.

Ms. Roth said SJTA was seeking guidance today, noting that the Committee had previously expressed an interest in preserving the large trees around the house, as would be the case with Alternative #3, but that would require more clearing than under Alternative #4.

Mr. Velazquez said the area of trees around the house is about 3.5 acres, of which 2.5 acres would be saved but an additional 11 acres would be mowed to do so.

In response to Ms. Roth's question if carbon sequestration is lost if trees are cut or only when they are burned, Commissioner Lohbauer said once the tree is cut, it ceases sequestering carbon. He said he appreciated Commissioner Lloyd's concern with carbon sequestration. Although he himself had asked that the older trees around the house be saved, it appears that Alternative #4 will remove the least number of trees. Also, he said he agreed with Mr. Maser that there should not be a mitigation obligation for performing mitigation but, at the same time, one wouldn't want to remove a source of carbon sequestration. He said although the original MOA was developed to address habitat concerns, he believes the Commission must now also address carbon sequestration.

In response to concerns expressed by Commissioner Lloyd regarding carbon sequestration and if it were preferable to retain the old trees around the house under Alternative #3, Mr. Velazquez said no such analysis had been performed. He said some trees on the northwest side, towards the Makepeace Lake property, are as large as those around the existing structure and will continue to grow. Furthermore, he knew of no plans to burn the trees; rather he thought a contractor would probably take them off site. Mr. Maser added that it could be written into the contract that the trees would not be burned.

In response to Commissioner Prickett's question, Mr. Velazquez said the trees are a typical native Pinelands oak-pine community with mostly red and white oaks.

Commissioner Irick asked whether there were specimen trees around the buildings. Mr. Maser said if any such trees were present and were retained, then a new 50' buffer would have to be calculated around each remaining tree. This is an "all or nothing" scenario. In addition, there was nothing approaching the size of a specimen tree on the site, perhaps only a maximum of 12" to 24" diameter trees.

Ms. Roth asked if the Committee needed additional information or was prepared to make a decision as SJTA is seeking guidance to allow them to move forward.

Commissioner Irick moved the approval of Alternative #4, including the clearing of the large trees around the structures with the caveat that they not be burned.

Commissioner Lohbauer asked for confirmation that Alternative #4 is the least impactful on carbon sequestration of the four alternatives. Ms. Roth said she would work with SJTA to obtain that information. The Committee agreed that if SJTA is able to make that demonstration, the staff will issue a letter stating the SJTA may proceed to implement Alternative #4. If such a demonstration cannot be made, the matter will be scheduled for further discussion at the Committee's May meeting. Ms. Roth confirmed that approval by the full Commission is not required; this is a determination that can be made by this Committee.

Chairman Prickett thanked Mr. Maser and Mr. Velazquez for their presentations. Mr. Maser said the information on carbon sequestration will be provided to Ms. Roth and Mr. Deman promptly.

3. Pinelands Conservation Fund

Ms. Grogan said Ms. Roth and Ms. Berg would make the presentation this morning. She reminded the Committee that this is the last step before proceeding with the next round of the Pinelands Conservation Fund (PCF) land acquisition program. She said the Committee will be reviewing updates to the deed of conservation restriction (DCR) used in prior rounds.

Ms. Roth made the presentation, noting Ms. Berg had prepared the slides (*Attachment B to these minutes and posted on the Commission's website at:*

<https://www.nj.gov/pinelands/home/presentations/2021%20PCF%20Deed%20of%20Conservation.pdf>)

Ms. Roth said this was a good segue because the SJTA project will require a DCR and ongoing management and staff considered that when updating this newest version to accommodate both.

Ms. Roth said when she drafts a DCR, the first step is to articulate the purpose. She reminded the Committee that the Commission does not have the authority to own property but Green Acres holds the property rights while the Commission is a third party beneficiary with enforcement rights. She noted that New Jersey Green Acres is wonderful to work with and the process has been in place for some 15-17 years with great success. She said that is in large part because, by partnering with NJDEP, the Commission can take advantage of the New Jersey Conservation Restriction and Historic Preservation Restriction Act should it ever be necessary to lift a deed restriction.

Ms. Roth reviewed the draft deed restriction that addresses concerns regarding grassland habitat, maintenance plans, forestry standards and fish and wildlife management offsets, depending upon the type of project that was submitted. She noted that this updated DCR offers flexibility by including provisions to incorporate by reference, future Commission-approved amendments should they be necessary, and included in the chain of title. This will allow modifications to accommodate maintenance plans for threatened and endangered species or climate factors.

In response to a question from Chairman Prickett, Ms. Roth said she considers this to be the “master” draft and it will be modified according to the specific project with the goal that the properties be left in as natural state as possible.

Ms. Grogan said this is intended to be a template since this acquisition round has a variety of priorities and projects. She said when the projects come before the P&I Committee, the Committee will have a chance to review the applications and maintenance plans and discuss the appropriate deed restriction. She said, in the past, generally the Commission did not see the individual deed restrictions as they were incorporated in the grant agreements and handled by staff.

Ms. Roth said staff had felt some of the previous language was too vague, particularly in regard to forestry and fish and wildlife management. The revised deed restriction specifically prohibits fish and wildlife management activities that are proposed to satisfy a NJDEP mitigation requirement. She noted that that NJDEP is increasingly requiring mitigation for applications outside the Pinelands Area that impact critical habitat. On some occasions, this mitigation has involved purchase of mitigation “credits”. Staff wants to ensure that these mitigation obligations are not met by “enhancements” to existing habitat on PCF properties in the Pinelands Area.

Commissioner Lloyd suggested that the phrase “sole and absolute discretion” of the Commission apply to all these projects. Ms. Grogan suggested an overarching statement to that effect, one that would cover all development and uses proposed on the PCF properties.

In response to Chairman Prickett’s concern regarding prescribed burns, Ms. Roth said there is a difference between controlled burns for fire fuel management vs. prescribed burns to benefit habitat. She noted that prescribed burns for fire abatement is an exempt activity.

Ms. Roth said forestry activities are another area where the Commission will want to have oversight on these preserved lands. The deed restriction uses the “sole and absolute discretion” language relative to forestry. She agreed it should be an overarching statement. She said forestry would be limited to 5% of the parcel.

In response to Commissioner Lloyd's question as to why the 5% limitation on forestry, Ms. Grogan said that limitation has been included in many previous PCF rounds and it originates from the CMP clustering standards, limiting the clearing of open space preserved for cluster development.

Ms. Roth said low-intensity recreation (hunting, fishing, biking and trapping) is permitted but no motorized vehicles of any kind, including bicycles, are permitted. She said as for structures, pathways, bridges etc., they can be maintained for the use of the public but the language is clear that the primary reason for the acquisition is preservation of the land. The revised deed restriction makes clear that athletic fields and other active recreation will not be permitted.

Ms. Grogan said if the Committee is satisfied with the deed restriction, then staff will issue invitations to the Commission's typical preservation partners in May.

Commissioner Lohbauer said he thought these were good improvements and he appreciated that Ms. Roth had successfully incorporated the goals they had discussed previously when developing the scoring criteria.

Commissioner Irick said he believed these additions enhance the program and commended staff on their efforts.

Commissioner Lloyd said he particularly liked the language related to low-intensity recreation.

Commissioner Lohbauer moved that the Committee recommend this deed restriction to the full Commission.

Ms. Grogan said the P&I Committee has oversight of the PCF program and the recommendations do not go to the full Commission unless an unusual project comes in outside of the established parameters.

Commissioner Lohbauer amended his motion to recommend that the P&I Committee approve the changes to the deed restriction. Commissioner Lloyd seconded the motion and all voted in favor.

4. Comprehensive Management Plan application exemptions and procedures

Ms. Roth asked that the Committee meet in closed session with DAG Miles.

Ms. Miles said the purpose of the closed session was to provide information to the Committee regarding a potential moratorium and the Commission's legal authority.

At 10:54 a.m., Commissioner Lohbauer moved that the Committee meet in closed session to receive advice from DAG Miles. Commissioner Lloyd seconded the motion and all voted in agreement.

The meeting resumed in open session at 11:33 a.m. DAG Miles said the P&I Committee had met to receive legal advice.

Chairman Prickett said three proposals have been received from Commission members and he would present his own first. He said he didn't think companies using horizontal directional

drilling (HDD) wanted to damage the environment intentionally and it was not in their best interest to do so. Even though HDD has been an exempt activity for 40 years, he felt it was only recently that the Commission has been made aware of these inadvertent returns (spills) that can damage wetlands. He said he was concerned about the, possibly permanent, impact of bentonite spilling into wetlands and his research has taught him that Pennsylvania has a law regulating HDD additives. He said the additives affect the viscosity of the fluids and they can be petroleum-based substances. He said it was essential that the drilling additives be regulated, that inadvertent spill plans be submitted, allowing the Commission to stop the project if necessary, and that the bentonite meet drinking water standards. He said his amendments apply to both exemptions and wetlands standards for linear improvements.

Commissioner Lohbauer thanked Chairman Prickett for the research and said contamination of wetlands is a serious concern. He said without the requirement of a biotic test to address the spills during the construction of the Southern Reliability Pipeline, there was no way of knowing their impact. He wants the CMP to contain language to require such a test in the future. Also, the hydraulic pressures can be sufficient to damage structures and that should be a serious concern. He said when the Commission approves these projects, it needs to be aware of the potential for this type of damage.

Commissioner Lloyd said these are important issues that the Commission should pursue. The Pinelands is an ecologically sensitive area and the Commission needs to know what is being put in the soil.

Chairman Prickett said he recognized that damage to wetlands could be catastrophic.

Commissioner Irick said it was his view that the language of 7:50-4.1(a)5 (*The repair of existing utility distribution lines;*) and 6. (*The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits;*) undermines the CMP. He said the presence of drilling fluids and the size of the soil grains led him to conclude that there are certain areas where the exemptions should not be applied. For example, he asked why the Commission would allow an increase in the size of a pipe without an application. He said that is an expansion, not a repair. He said he wanted to delete both of those exemptions. He said NJDEP permits the repair of onsite septic systems part for part and piece for piece. He said, in contrast, increasing the diameter of a line from 16" to 24" is not a repair.

Commissioner Lohbauer said he supported Commissioner Irick and believed the Commission needed to start with the repeal so that these projects would no longer be exempted from review.

Commissioner Lloyd said he agreed with Commissioner Irick in that these provisions are vague. He said there needed to be a change in the rules to address these two provisions and put the Commission in a position to review the projects, whether they are public or private developments. He said the Commission needed to go to the Governor's office to discuss the potential CMP amendments before proceeding.

Chairman Prickett asked if the Commission would track above-ground utility lines also.

Commissioner Lloyd said he thought the Commission should discuss if there is a subset of projects that should be added to the exemptions but he felt the Commission could move quickly

with repeal. He said to avoid a burden to staff, it should determine how many previously exempt projects would now require applications if the exemptions were repealed.

In response to Chairman Prickett's question as to what should be the next steps, Ms. Grogan said while the Commission is considering amendments, staff could initiate a discussion with the Governor's office regarding its concerns. She said once the formal rulemaking process begins, it will require submitting a written proposal including extensive impact statements and costs to applicants for the Governor's office to review and sign-off on before the Commission can proceed. She said, at this point, she felt the initial discussions with the Governor's office were warranted.

In response to Chairman Prickett's question as to how that would happen, Ms. Roth said it would start, typically, as a policy discussion with staff, most likely Ms. Wittenberg, Ms. Grogan and herself regarding the Commission's interest in repeal. But, she said, additional information is needed, particularly the impact statements.

Ms. Field said, in the absence of Mr. Horner, she wanted to clarify for the Committee the Regulatory Programs office's current process. She said, in particular, she wanted to address the current definition of utility distribution lines, as it covers not only natural gas but also water, electrical, cable, sewer, stormwater discharge etc. She said she wanted to clarify the impacts of repealing that exemption as all those projects would now come before the staff for review. She asked if the Commission wanted all those types of projects to be subject to review.

Ms. Roth said she felt there were legal implications by picking and choosing only select types of utility distribution lines.

Commissioner Irick said all projects using HDD should be reviewed.

In response to Commissioner Lloyd's question as to the number of applications that would be involved, Ms. Field said that is an unknown. Because currently these applications are not reviewed, it is only occasionally that the Commission receives an exemption request.

Ms. Roth said Ms. Field had gone through the Commission's records and identified where either of those exemptions had been used but found perhaps only 30 letters. She reiterated her concern with teasing out only particular types of applications. She said she would go back and review the data again, in response to Commissioner Lloyd's concerns.

Chairman Prickett asked what the approval process would consist of, if repeal were successful and all these projects applied to the Commission. He said repeal would mean staff would have to spend a lot of time reviewing all projects just to give the Commission the number of projects. He said his goal is to regulate HDD.

Commissioner Lohbauer said HDD is not a utility, it is a process, and asked how many of these utilities use it.

Ms. Roth said Regulatory Programs staff members look at the development, not the method of construction, so this is beyond the current development review process.

Ms. Field said to amend the current exemptions to delete or revise certain exempt activities and then to establish rules related to HDD would be a new pathway for staff. She said the CMP does not deal with construction techniques or materials. The Commission typically looks to other agencies for oversight on such matters.

Commissioner Lloyd said he advocated repeal of the exemptions, followed by developing a set of regulations to deal with HDD. He said he thought both efforts should proceed together.

Commissioner Irick said water utilities bore under roads for a 2" diameter pipe, so maybe the exemption should be limited to the size of the pipe, perhaps to only 3". He said we want to know what type of construction will harm the Pinelands.

Commissioner Irick moved to proceed with the parallel track. Commissioner Lohbauer seconded the motion.

Prickett asked for a definition of the parallel track.

Commissioner Irick said parallel track involves working with the Governors' office as to how to repeal 7:50-4.1(a)5 and 6 and look at what types of concerns the Commission has with drilling fluids. Commissioner Lohbauer seconded the motion.

Ms. Roth said she thought she understood that the Committee wanted to repeal the exemptions in 7:50-4.1(a)5 and 6, develop new standards to govern the use of HDD and consult with the Governor's office on the necessary CMP amendments.

Commissioner Irick agreed and amended his motion as stated by Ms. Roth. Commissioner Lohbauer agreed. All voted in favor.

Chairman Prickett said the discussion would continue at the next meeting and perhaps by then, the Commission will have received some response or guidance from the Governor's office.

5. Stormwater Management

Ms. Grogan said there was no full rule proposal for the Committee to review today. She said this is a huge document with much data and staff is still reviewing and refining some of the wording and the impact statements but it will be on the Committee's May agenda.

6. Public Comment

While the Committee waited for the phone lines to open for public comment, Commissioner Lohbauer thanked Ms. Field for clarifying the implications of removing the exemptions for HDD and said he was sensitive to not subjecting the staff to too many applications.

Chairman Prickett said the process will take a while with lots of hurdles.

Ms. Rhyan Grech, with PPA, thanked the Committee for its substantive discussion of HDD. She said, broadly speaking, all projects under the Commission's exemption provisions are considered development and the exemptions should be applied as narrowly as possible. She said PPA is supportive of repealing and amending the provisions regarding HDD and agrees with Commissioner Irick that there are places where pipelines are not appropriate. She also asked if,

as in the initial MOA with SJTA, PPA could be a participant in the advisory committee. She also noted that the AECON report indicates the non-forested area of the horse farm grassland site is mostly wetlands and since it is to provide habitat for upland species, consistent with studies by the Cornell Laboratory of Ornithology, these grassland species avoid wetlands. She asked that the Commission confirm that this property is an appropriate site.

Ms. Roth said she would express to SJTA the interest of PPA in participating in the advisory committee and that she believed the project site consisted of wetlands agricultural fields.

Mr. Deman confirmed that the site had served as horse pasture and the soil composition indicates these are wetlands. Since NJDEP is already part of the advisory committee, it is aware of the suitability of the site, survival of grass species, etc.

There being no other business, Commissioner Lohbauer moved to adjourn the meeting. Commissioner Irick seconded the motion and all voted in agreement. The meeting was adjourned at 12:36 p.m.

Certified as true and correct

A handwritten signature in cursive script, appearing to read "Betsy Piner", is written over a horizontal line.

Betsy Piner
Principal Planning Assistant
May 17, 2021