

## **CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

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

[www.youtube.com/c/PinelandsCommission](http://www.youtube.com/c/PinelandsCommission)

Richard J. Sullivan Center  
15C Springfield Rd  
New Lisbon, New Jersey 08064  
**February 28, 2025 – 9:30 a.m.**

### **MINUTES**

**Members in Attendance:** Alan W. Avery, Jr., Jerome Irick, Chair Laura E. Matos, Jessica Rittler Sanchez

**Members in Attendance (Zoom):** Mark S. Lohbauer, Douglas Wallner

**Members Absent:** Theresa Lettman

**Staff Present:** Gina Berg, John Bunnell, April Field, Lori Friddell, Susan R. Grogan, Charles Horner, Brad Lanute, Paul Leakan, Claire Osei, Stacey P. Roth and Rhonda Ward. Also in attendance was Alexis Franklin with the Governor's Authorities Unit (Zoom).

#### **1. Call to Order**

Chair Matos called the meeting to order at 9:35 a.m.

#### **2. Adoption of minutes from the January 31, 2025, CMP Policy & Implementation Committee Meeting**

Commissioner Lohbauer moved the adoption of the January 31, 2025 meeting minutes. Commissioner Avery seconded the motion. All Ayes. The motion passed.

#### **3. Fourth Round Affordable Housing Update**

*Attachment A to these minutes and posted on the Commission's website at the following address:*  
[https://www.nj.gov/pinelands/home/presentations/2025.28.02\\_PI\\_AffordableHousing\\_Revised.pdf](https://www.nj.gov/pinelands/home/presentations/2025.28.02_PI_AffordableHousing_Revised.pdf)

Chief Planner Brad Lanute presented on the upcoming fourth round of affordable housing obligations and their impact on Pinelands Area municipalities and the Commission.

He reviewed the Mount Laurel Doctrine and the 1985 Fair Housing Act. He also outlined the 2015 NJ Supreme Court decision that shifted the Council on Affordable Housing's (COAH) responsibilities to the courts, establishing a process for municipalities to demonstrate compliance for the 3<sup>rd</sup> round and gap period covering 1999-2025.

Mr. Lanute summarized how Pinelands municipalities responded to the ruling and the Commission's role. For those that participated in the court process, the typical results were a

court-approved settlement agreement requiring updated housing elements, fair share plans, and ordinances. The Commission reviewed these for compliance with the Pinelands Comprehensive Management Plan (CMP) and worked with municipalities on creative approaches to meeting affordable housing obligations consistent with the CMP. He then highlighted examples of the resulting affordable and inclusionary housing projects that were subsequently reviewed and approved by the Commission and constructed.

He discussed recent amendments to the Fair Housing Act adopted in March of 2024, which apply to the 4<sup>th</sup> round period starting July 1, 2025. He said the goal of the amendment was to set clearer standards and create a less costly process. He noted that there were many changes, including the elimination of COAH, changes to methodologies and process, and the establishment of the Affordable Housing Dispute Resolution Program (AHDRP).

Mr. Lanute described the responsibility of Department of Community Affairs (DCA) to publish non-binding calculations of regional need and municipal need for affordable housing based on methodologies in the Fair Housing Act. He explained that the calculations were offered as a guide for municipalities to determine their own numbers. He noted that there was a January 31, 2025 deadline for municipalities to adopt a binding resolution that identifies their affordable housing obligation.

Mr. Lanute summarized DCA-calculated regional housing need and described the methodology that allocates regional present need to municipalities within a region based on an average of three factors: income capacity, land capacity, and equalized non-residential valuation. He detailed the land capacity factor as it was treated differently in the Pinelands. He described the factor as an estimation of the municipality's share of the developable land within the housing region and that it is based on land use/land cover data, tax assessment data, and weights assigned to state planning areas. In the Pinelands Area, Regional Growth Areas (RGA) and Pinelands Towns are assigned a weight of 0.5, while other Pinelands management areas are assigned a weight of zero. Mr. Lanute described the DCA land capacity factor results for Pinelands municipalities.

He then summarized the DCA-calculated prospective need results for Pinelands Area municipalities and provided greater details on the 13 municipalities that had a 4<sup>th</sup> round prospective need of 100 or more units. He noted that the 13 municipalities shown were split inside and outside the Pinelands Area and that most had RGA lands within the Pinelands Area.

Executive Director (ED) Susan Grogan remarked how high some of the numbers were when totaling 3<sup>rd</sup> and 4<sup>th</sup> round needs. Mr. Lanute said the 4<sup>th</sup> round is for a ten-year span, while the 3<sup>rd</sup> round and gap period covered a span of 26 years, which accounts for some of the differences between the two periods.

Commissioner Rittler Sanchez inquired if all construction since 1999 had been accounted for in the numbers.

Mr. Lanute responded that the 3<sup>rd</sup> round numbers are not adjusted to account for constructed units. He said that when the municipality prepares its updated housing element and fair share plan, it will include an inventory of all affordable housing. It will receive credits and bonuses for

units that meet affordability criteria. He said some towns may have already met or exceeded their 3<sup>rd</sup> round numbers shown on the slide. He noted the June 30, 2025, deadline for municipalities to adopt the new housing elements and fair share plans to maintain protection against exclusionary zoning lawsuits.

Commissioner Rittler Sanchez inquired if the age of a housing unit impacted whether it could be counted towards the affordable housing obligation.

Mr. Lanute said that he was not sure if there was such a restriction but noted that there are detailed regulations on what is eligible to be counted towards an obligation. He also said that the numbers presented so far are for the prospective need for new housing; however, there is also a current need that is based on an assessment of existing substandard housing in need of rehabilitation.

Commissioner Irick inquired if Section 8 or age-restricted housing qualifies as affordable housing.

Mr. Lanute said there are certain thresholds for how many age-restricted units can qualify, noting the total obligation cannot be met with age-restricted units alone. He said that Section 8 housing would be considered affordable housing.

Commissioner Avery inquired if an affordable housing site from the 3<sup>rd</sup> round becomes recreation or open space, does it remove those units from the obligation or does it transfer to another location and furthermore, in terms of newer calculations, if property comes out of the land capacity factor, are the numbers adjusted downward.

Mr. Lanute responded that while he was not completely sure how prior round obligations would be impacted by such a scenario, he assumed that the loss of developable lands would likely be addressed in the vacant land adjustment.

Commissioner Avery further inquired what agency within DCA is responsible. Mr. Lanute said Local Planning Services.

Mr. Lanute continued that through vacant land adjustment, if there is inadequate developable land, it becomes an unmet need and does not transfer to another town within the housing region.

Executive Director Grogan inquired if vacant land adjustments become part of a Fair Share Plan, who reviews and approves such changes.

Mr. Lanute responded saying that along with any durational adjustment, which accounts for inadequate public sewer/water, the new AHDRP administers the process for challenging adopted housing elements and fair share plans. He provided the deadlines for adopting such plans and the corresponding deadline to challenge it through the AHDRP.

Executive Director Grogan inquired about the AHDRP approval process absent a challenge. Mr. Lanute said that he was not aware of anything beyond ensuring that a complete housing element and fair share plan had been adopted.

Commissioner Rittler Sanchez inquired how municipalities seek direction and evaluation for their affordable housing plans. Mr. Lanute said that most municipalities rely on their existing engineering and planning firms and some larger towns have an affordable housing attorney. Commissioner Rittler Sanchez further inquired about available training and guidelines for municipalities.

ED Grogan mentioned programs offered through DCA and the League of Municipalities and noted that although there are changes in the 4<sup>th</sup> round, towns are familiar with the process.

Mr. Lanute said that 15 Pinelands municipalities had not submitted their binding resolutions, noting that those towns have smaller obligations and may be opting out of the process. In most cases, those are towns that were not eligible to go through the 3<sup>rd</sup> round court process.

Stacey Roth, Chief Legal and Legislative Affairs, added that some towns take the risk and opt out believing they will not see litigation.

ED Grogan said some towns with less vacant land opt out, however it can sometimes leave towns vulnerable to litigation.

Discussion continued on the enforcement and monitoring of fair share plans. Mr. Lanute said that municipal compliance is incentivized through immunity from exclusionary zoning litigation. Enforcement is partially administered through the AHDRP, which provides the process for interested parties to challenge adopted fair share plans. Once the municipality receives immunity, additional challenges outside the AHDRP process have a high burden of proof.

ED Grogan questioned who keeps track of projects to see if they are constructed and successful.

Ms. Roth said the law states that municipalities must provide the opportunity for affordable housing units but does not state an obligation to actually build the units.

Mr. Lanute said he anticipated the most impact to the work of the Commission will be between June 30, 2025 and March 15, 2026, when master plans and ordinances will be submitted by municipalities for review. He anticipates working with municipalities that have large obligations, especially within the Pinelands RGA, Pinelands Towns and Villages. He said many towns will try to meet their obligations outside of the Pinelands Area but for those with a RGA, he expects to see submission of zoning changes, redevelopment agreements, overlay zones, and density increases.

Commissioner Rittler Sanchez inquired, regarding additional staff burden, if municipalities expect the Commission to do more than just review. Mr. Lanute said municipalities will engage with the Commission in the formulation process and the Commission offers feedback, especially

for redevelopment plans and where the Pinelands Development Credit (PDC) program is impacted.

Commission Rittler Sanchez inquired if water supply deficiencies in certain watersheds and other environmental issues are taken into consideration.

Mr. Lanute responded that durational adjustments take water and sewer into consideration. Additionally, some municipalities have existing agreements with the Commission related to water and sewer that would continue to be in effect.

ED Grogan added, regarding water use agreements, that once those thresholds are reached in terms of development and water use, they have to put alternate arrangements in place for other water sources. She said it would be very individualized.

Commissioner Rittler Sanchez suggested issues could arise in RGA and Villages where there is limited system capacity. ED Grogan responded that it would be unlikely that municipalities would look at unsewered vacant land in their village to meet their affordable housing obligations.

Commissioner Avery said he anticipates towns proposing to expand their RGA boundaries to accommodate affordable housing units. He offered examples of where unavailable vacant land or premature subdivision could make it difficult for towns to meet their unit obligations.

Mr. Lanute said the vacant land adjustment is where municipalities can try to address the lack of available land. He said that the regulations around vacant land adjustments recognize the limitations imposed by Pinelands regulations.

Commissioner Irick said he expects pressure in Pinelands areas to try to accommodate affordable housing because municipalities realize that they can try to use one agency against the other to satisfy requirements.

#### **4. Presentation on Threatened and Endangered Species Survey Protocols**

*Attachment B to these minutes and posted on the Commission's website at the following address:*  
[https://www.nj.gov/pinelands/home/presentations/T\\_E%20Presentation%20for%20P\\_I%20meeting%20on%2028%202025.pdf](https://www.nj.gov/pinelands/home/presentations/T_E%20Presentation%20for%20P_I%20meeting%20on%2028%202025.pdf)

Charles Horner, Director of Regulatory Programs, reviewed the CMP regulations protecting threatened and endangered (T&E) species. He said the regulations require protection of a local population, not necessarily an individual plant or habitat. He explained that T&E plants are those that are listed on the New Jersey Department of Environmental Protection (NJDEP) endangered plant list and those listed as threatened and endangered in the CMP. Regarding T&E animal species, Mr. Horner said the CMP regulations protect critical habitat, including dens and nesting sites but not necessarily every location of a sighting. He said the Commission follows the NJDEP list of T&E animals and has a formal agreement with the NJDEP to share T&E animal sightings.

Mr. Horner presented possible approaches to administering the T&E protection regulations and reviewed existing processes. Possible approaches include requiring all applications for development to submit a survey or requiring surveys of applications only for major development.

A third option would be to use the CMP management area designations as a regional conservation plan for all T&E species and only require a survey for development applications in the Regional Growth Area (RGA), Pinelands Towns and Pinelands Villages. He noted that applicants or the public may question the requirement for surveys in areas targeted for growth. He also presented the current approach to administering T&E standards. He reviewed factors (as listed in the presentation) in determining if an application needs a T&E survey. He said staff identify for the applicant what specific species must be addressed.

Mr. Horner said in the past two years approximately 11% of new applications filed were required to complete a T&E species survey. He reviewed the estimated cost range of typical T&E species surveys and added that staff recognize the financial impact to an applicant in requiring a survey. However, a survey can be required to demonstrate consistency with T&E plant and animal protection regulations. He said the Commission regulatory staff uses both science and professional judgment to reach a defensible conclusion.

He remarked that a completed negative survey does not offer a period of protection for an applicant from T&E regulation, especially if new information is received regarding T&E species on the parcel.

Rhonda Ward, Environmental Specialist, reviewed the two options offered to applicants when a T&E species survey is required for an application for a single-family dwelling on a lot of two acres or more. She said the applicant can either complete a full T&E survey of the entire lot or a modified survey of a one-acre development envelope. She explained with the modified survey, the applicant is required to deed restrict the balance of the parcel outside the building envelope to protect potential critical habitat. She said the cost of a modified survey is significantly less than a full survey but results in a deed restriction. Ms. Ward said the property owner can lift the deed restriction in the future if they later complete a full T&E survey with negative results.

Ms. Ward said for other types of development a full survey is typically required. The staff suggests that applicants submit a survey protocol in advance for staff review and suggestions. The survey protocol provides the methods, techniques, locations and season of survey, as well as the experience and qualifications of a consultant. She explained the importance of demonstrating standard qualifications in a consultant to provide confidence to staff in accepting a negative T&E survey result. She said the CMP does not contain regulations on the contents of a survey protocol or on the minimum qualification for a surveyor.

She reviewed the contents of a complete survey (as listed in the presentation) and highlighted the importance of the data forms of site inspections, maps of the survey area, maps of T&E sightings and analysis to conclude that the survey was done correctly. She said often a survey requires confirmation of reference populations to ensure a survey was completed during the appropriate season or time of day. She said the report and findings analysis and conclusion helps to identify critical habitat and the presence of T&E species. Ms. Ward said the CMP does not contain regulations on the content of a T&E Survey. She said staff will review completed surveys and at times request modifications or clarifications prior to acceptance.

Mr. Horner continued on the topic of the Commission maintaining a list of qualified T&E consultants or assigning a consultant to applicants. He referenced procedures of U.S. Fish and

Wildlife Services (USFWS) and NJDEP. He said USFWS identifies certain criteria that needs to be met to be added to their list of qualified consultants for certain species. He emphasized that it is not a regulation. He said that the NJDEP does not have set regulations but uses a screening process that requires the consultant to demonstrate the ability to handle certain endangered species and obtain a permit.

He reviewed the steps required should the Commission decide to maintain a list, noting the challenge of creating qualifications that would need to be on a species-by-species basis of over 100 T&E plant and animal species. He said CMP amendments may be needed to establish regulations for qualifications, protocols and T&E survey content requirements. It may also require establishing a process or CMP amendment for appeals if a consultant is determined unqualified. He said currently, when asked by applicants, Commission staff will provide a list of those consultants who have provided T&E species surveys on other applications, without endorsing any consultant.

Mr. Horner said there are potential drawbacks to the Commission maintaining its own list of qualified consultants, including an applicant assuming acceptance of a survey if they are using a qualified consultant from the Commission's list and the impact on staff time in creating and maintaining the list.

He said a suggestion was previously made to have the Commission maintain the list and staff assign a consultant. Mr. Horner said this presents the same concerns in specifying minimum qualifications and added that it would require the Commission to establish a fee schedule, procedure for posting of escrow and billing. He remarked on the potential disputes between applicants and assigned consultants.

Chair Matos inquired if it was possible to refer applicants to the existing NJDEP and USFW lists. Mr. Horner responded that if a list is going to be used by the Commission, it should also be compiled by the Commission to address qualifications specific to the Pinelands Area.

Commissioner Avery inquired if larger acreage projects often have multiple species identified for T&E surveys, and if so, does one consultant firm have the ability to do all species. Mr. Horner responded that certain consultants have expertise for specific species, and occasionally multiple species are identified on one parcel.

Commissioner Avery confirmed that in theory an applicant could have multiple consultants, with different fees on the same application. Mr. Horner agreed and said that the Commission would need a uniform fee schedule. Commissioner Avery noted additional issues of seasonal time constraints and the occasional need for expedited surveys.

ED Grogan said that it has been suggested that staff complete surveys, which she said would be ideal if time and funding allowed, however it could produce disputes with applicants, and she does not recommend that approach.

Commissioner Rittler Sanchez sought clarification on consultant recommendations that staff may provide to applicants. ED Grogan clarified that staff, when asked, can respond to whether a consultant has done work or submitted surveys to the Commission in the past, but the Commission does not maintain a list or make recommendations.

Commissioner Rittler Sanchez suggested that no changes to T&E survey procedures or consultant lists should be made. She said such changes that would require CMP amendments would detract from staff discretion, which she said is necessary.

ED Grogan said that as science changes regarding any species, rules would need to be updated.

Commissioner Rittler Sanchez inquired about any species and habitat changes impacted by climate change in the past few decades.

Ms. Ward responded that certain species have proven to be more adaptive, but did not have an example based on climate change.

Commissioner Lohbauer thanked staff for the presentation and acknowledged that many of his questions were addressed. He said while there is no ideal approach, he agrees that moving T&E survey responsibility to in-house staff would result in challenges by applicants and could have the result of dueling surveys and expert opinions. He added that allowing applicants to find their own consultant may result in the public mistrusting the results. He said the best approach is what will be defensible, especially on appeal of Commission decisions. He said that it would be best to continue with the current process in place where applicants select their own experts but added that the Commission should set criteria for expert qualifications and acceptable survey protocols. He suggested that criteria be added to the CMP.

Chair Matos said that with only 11% of applications resulting in surveys, she questions the importance of using staff time and resources to amend the CMP.

Commissioner Irick said he expects to see more pressure from applicants who require studies. He said T&E consultants do not have specific licensing or certifications as others such as engineers. He said the Commission does not need to do the study in-house but can always check the work of the consultant. He said the Commission should not tell an applicant who to choose but could suggest a list of consultants with species-specific knowledge. He further suggested that the preferred time periods for a specific species survey be made available as guidance.

Chair Matos said the staff does work with applicants' selected consultants on timing issues.

Commissioner Irick said staff review of poor survey protocols and reports impacts staff time. He supported having a list of qualified consultants.

Commissioner Avery said it is hard to defensibly identify a list of consultant qualifications due to well-qualified consultants gaining experience through either or both academic qualifications and fieldwork experience.

Commissioner Irick said staff experience would allow identification of multiple consultants that could do a substantially correct and appropriate survey and report.

Mr. Horner responded that excluding some consultants could be problematic without regulations in place.

Ms. Roth said that the Commission would risk litigation if it were to recommend a particular consultant.

Gina Berg, Director of Land Use Programs, said the Commission does not issue a list or qualifications for other consultants such as planners and engineers that provide services to applicants.

Commissioner Wallner inquired if it would be possible to identify the criteria that would qualify a consultant and then provide a list of those that meet the criteria.

Ms. Ward added that listing consultants is also complicated because many T&E firms are a team of contributors with varying levels of qualifications, not a specific individual.

Commissioner Rittler Sanchez said she does not favor CMP amendments that more narrowly define standards to avoid adverse impact. She inquired if Mr. Horner could identify any issue that needs to be addressed by the Commissioners to help the staff in doing their job. Mr. Horner responded that it is not possible to please both applicants and conservation groups and that the Commission is doing its job in addressing both sides.

Chair Matos closed discussion.

## **5. Public Comment**

Fred Akers of the Greater Egg Harbor Watershed Association, regarding consultant experience, said there is a legacy of knowledge. He said the NJ Natural Heritage Program together with the State's Landscape project offers an incredible database and the Commission's ecological integrity assessment was a useful tool. He commended the work of the Commission that results in only 11% of applications requiring a T&E species survey.

Jason Howell of the Pinelands Preservation Alliance said he was glad to see discussion on the topic of T&E consultants. He said that if applicants are allowed to self-select incompetent consultants, there is a risk of losing critical habitat. Regarding maintaining the public trust, he added that there is a conflict of interest when an applicant can select their own consultant. He recommended, as middle ground, that the Commission acquire a bond and subcontract consultants.

Harry Harper, Pemberton Township Councilman, commented on the T&E consultant discussion. He said there needs to be a better system to verify and check the qualifications of consultants before surveys are completed. He suggested a hybrid system, on larger projects, where a developer contributes money to the Commission and the Commission staff shadows a consultant.

Heidi Yeh of the Pinelands Preservation Alliance requested an updated list of T&E plants. She said NJ Natural Heritage reports could be referenced by the Commission. She commented that discussion was focused on the difficulties of implementing T&E species surveys rather than the value driving the requirement.

Chair Matos said that the mission is what drives the work of everyone involved at the Commission. Chair Matos closed public comment.

**6. Adjournment**

There being no other business, Commissioner Irick moved to adjourn the meeting. Commissioner Avery seconded the motion. All voted in favor. The meeting was adjourned at 11:55 a.m.

Certified as true and correct:

A handwritten signature in cursive script that reads "Lori A. Friddell". The signature is written in dark ink and is positioned above a horizontal line.

Lori Friddell  
Land Use Programs Technical Assistant

Date: March 11, 2025