

Adopted 5/29/2020

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted remotely
All participants were present via Zoom conference
April 24, 2020 - 9:30 a.m.

MINUTES

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

MEMBER ABSENT: Candace Ashmun

STAFF PRESENT: Nancy Wittenberg, Stacey P. Roth, Susan R. Grogan, Charles Horner, Paul Leakan, Jessica Lynch, Jessica Noble and Betsy Piner. Also present was Craig Ambrose, with the Governor's Authorities Unit.

1. Call to Order

Chairman Prickett called the meeting of the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee to order at 9:37 a.m. and asked for a moment of silence to reflect upon all those who have been profoundly affected by the Covid-19 pandemic.

Ms. Wittenberg said that, thanks in great part to the efforts of Mr. Evan Bossett and his office, staff has remained working, efficient and productive. She noted that a new accounting firm was helping with the audit, that a request for proposals for painting Fenwick Manor has been issued and that the Science Office has secured permission from the New Jersey Department of Environmental Protection (NJDEP) to continue their field work in the state parks, which are currently closed to the public. She said regular staff meetings were continuing, development applications are being processed and overall she felt things were going very well.

Chairman Prickett responded that he too was pleased with how well the office was functioning.

3. Adoption of minutes from the February 28, 2020 CMP Policy & Implementation Committee Meeting

Commissioner Lohbauer moved the adoption of the February 28 2020 meeting minutes (Open and Closed sessions). Commissioner Earlen seconded the motion. The minutes were adopted, with all Committee members voting in the affirmative.

4. Extension of Garden State Parkway Secondary Impacts Agreement for Interchange 44

Ms. Roth provided the Committee with an update on the status of land acquisition by Atlantic County under the agreement that provided for the interchange expansion of Exit 44 on the Garden State Parkway. She provided a PowerPoint presentation (*Attachment A to these minutes and posted on the Commission's website at*):

<https://www.nj.gov/pinelands/home/presentations/Interchange%2044%20-%20PI%20Presentation.pdf>

She said when the New Jersey Turnpike Authority (NJTA) wanted to create a full interchange at Exit 44 (adding Northbound entrance and Southbound exit ramps), Atlantic County signed an agreement (June 18, 2012) to acquire any lands needed to meet the offset and mitigation obligations required to complete the project. The County then signed an agreement with the Commission (January 6, 2014) to “obviate” secondary impacts by limiting development on a total of 356 acres within 1.5 miles of the interchange project through easements or land acquisition. Under a three-tiered approach, if within three years the County was unable to obviate secondary impacts within the primary 1.5 miles, lands could be preserved in the second tier further out from the interchange. Finally, if needed, an additional 18-months was granted to secure lands in the third tier. At the conclusion of the six-year agreement (January 6, 2020), if the required 356 acres were not protected, Atlantic County was obligated to pay the equivalent market value of the remaining lands to a non-profit, government agency, college or university or undertake the acquisition of Pinelands Development Credits from agricultural lands or other projects to improve water quality within the boundary of Tiers 1 through 3 in Atlantic County.

Ms. Roth said Atlantic County had chosen to acquire lands, rather than easements, and focused on the Tier 1 area. She said as of March 5, 2020, the County had acquired 327 of the 356 acres within Tier 1 and was currently in negotiations with Galloway Township to obtain an additional 15 acres of the remaining 29. She said the agreement allows the County to request an 18-month extension to meet its obligation and it had done so by letter dated March 5, 2020.

Ms. Grogan said the County had done an excellent job in meeting the agreement. All the targeted lands are in Galloway's Rural Development Area so she felt this had been a very successful endeavor.

Ms. Roth said the County is planning to preserve even more lands than the required 356 acres, and staff is recommending granting the extension. She said because of the current health crisis, the recommendation is to add an additional six months and extend the agreement until January 7, 2022.

Commissioner Lohbauer moved the recommendation to the Commission to grant the extension until January 7, 2022. Commissioner Lloyd seconded the motion and all Committee members voted in the affirmative.

5. Review of draft CMP amendments related to coordinated permitting

Ms. Roth said she and Ms. Grogan had been working with former DAG Marci Green on a number of rules. She made a PowerPoint presentation on coordinated permitting provisions, the so-called “gap” rule (*Attachment B to these minutes and posted on the Commission’s website at [https://www.state.nj.us/pinelands/home/presentations/Coordinated%20Rule%20Amendment%20\(A\).pdf](https://www.state.nj.us/pinelands/home/presentations/Coordinated%20Rule%20Amendment%20(A).pdf)*)

Ms. Grogan said this is another in the series of rules for which staff had provided an overview at the January 24, 2020 P&I Committee meeting.

Ms. Roth said the process for private applications requires an applicant to secure a certificate of filing from the Commission and then obtain local approvals that staff can “call-up” or approve as appropriate. Public applications go directly before the Commission for action. Ms. Roth said under the Municipal Land Use Law (MLUL), a provision specific to the Board of Public Utilities (BPU) allows that agency to pre-empt municipal review of certain infrastructure applications by utility companies. These are private applications but the result is there are no municipal approvals to “call-up.” Ms. Roth said the Attorney General’s office has been urging the Commission to move forward and codify a process by which such applications can be reviewed by the Commission. A new process would require these applications to be treated as public development applications with public notice requirements, updates on the website status reports and opportunity for written and oral comment at a Commission meeting. Upon the close of the public comment period, the staff would prepare its report and present it to the Commission at its next meeting.

She provided a description as to how the process of treating such private applications as public ones might function and noted that there are related issues regarding litigation and public comment that the Commission should deal with later but they will require a lengthier and more complex process.

A discussion ensued regarding the length of the public comment period on such applications and Ms. Roth said typically, since public applications are rarely complete upon receipt and posted on the status report, with the 30-day review period of the submission of additional information and ongoing back and forth between review and applicant, there could be as long as six months of public comment.

In response to Commissioner Lloyd’s question as to how compressed the timeline might be, Ms. Roth said although 30 days might be typical, if the application arrived and was deemed complete before the agenda for the next Commission was issued, it could be as brief as 11 days.

Commissioner Lloyd said he believed a minimum 30-day comment period should be included.

Ms. Wittenberg asked if this revised period would apply to all public development applications, which could mean that others would be put at a disadvantage, particularly those with applications of an urgent nature.

Ms. Roth said if the Commission wants to create an application process significantly different than that currently in the CMP, the amendment process will take much longer.

Mr. Horner said there has never been an instance where a municipality has submitted a major development application and it was scheduled the next day to begin the 10-day public comment period.

Commissioner Lohbauer said he wanted a process for those limited cases so that the Commission can guarantee the public's involvement in the full process.

Ms. Roth said a 30-day comment period could be added to the "gap" rules but the full evidentiary process is in litigation now and will be addressed in the next iteration of the rules.

In response to Ms. Wittenberg's question to Ms. Grogan if the addition of this 30-day comment period could be done, Ms. Grogan said the rule will need to be very clear that it applies only to those projects seeking BPU exemption. She felt that distinction could be made.

In response to Chairman Prickett's comment that he would like to address these issues at the next P&I Committee, and Commissioner Lloyd's wish to discuss evidentiary hearings, Ms. Roth said that this is still the rule proposal stage and once the language is worked out, it will be published in the New Jersey Register and a public hearing scheduled. There is still the entire rulemaking process before us. She said she felt these small changes needed to go through now.

Ms. Roth said as for the concerns of the Pinelands Preservation Alliance (PPA) (*Attachment C to these minutes*), the municipal planning board process is being pre-empted by the BPU, but the BPU conducts its own hearing, albeit they can determine who provides testimony. She said she believed the BPU pre-emption was designed for projects involving multiple municipalities.

Commissioner Lloyd concurred that it was for linear projects so that they could not be thwarted by a single municipality. He said he didn't think a BPU hearing addressed the concerns of PPA in allowing the public to address a planning board. He said if the Commission is making only small changes at this time, he feared that the larger concerns of lack of an evidentiary hearing will never be addressed. He said he believed these were private applications and should not be treated as public ones and that he felt that most Commissioners believed there should be a larger public process.

Ms. Wittenberg said the matter is being litigated regarding "interested party" and "interested person" and the staff is following the recommendations of the Attorney General's office. She said DAG Kristina Miles could be at the May Commission meeting to discuss the matter further.

In response to Commissioner Lloyd's question as to what the staff envisioned, Ms. Grogan said there are several pieces to this round of rulemaking and they hoped to have a proposal before the Governor's Authorities Unit in time for the July Commission meeting. She said there will be an opportunity to discuss new language at the May P&I Committee meeting.

Chairman Prickett said he believed the Commission needed time to look at these rules in depth. He asked that the PPA letter be included in the minutes of this meeting.

In response to Commissioner Lloyd's question as to how many people were watching this meeting, Mr. Leakan responded there were 22 people watching the YouTube livestream. A few moments later he said it had increased to 25.

6. Public Comment

Ms. Rhyan Grech, with the Pinelands Preservation Alliance (PPA), referenced PPA's letter concerning the proposed "gap" rule. She said that Commissioner Lloyd had captured their concerns. She said no matter how long the public comment period might be extended, by eliminating sworn testimony before a planning board the record is incomplete. She said just because the Commission is in litigation, it doesn't mean that a private application becomes a public one.

Commissioner Lloyd said the BPU sometimes allows interveners in its hearings but that process is more expansive. He said the Commission should allow interveners for Pinelands issues.

Commissioner Lohbauer thanked the staff for how well this meeting had been conducted. Ms. Wittenberg noted that the credit belongs to Ms. Lynch and Mr. Bossett. Commissioner Irick added his thanks and noted that this had been one of the best remote meetings he had attended.

Closed Session

Ms. Roth stated that the Committee would meet in closed session to discuss litigation matters related to the Heritage Minerals/Hovson's, Inc. site. She said no action would be taken and the Committee would not resume its public meeting.

Commissioner Lloyd moved to meet in closed session at 10:45 a.m. Commissioner Lohbauer seconded the motion and all voted unanimously to do so.

Certified as true and correct:

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

Date: May 6, 2020

Betsy Piner
Principal Planning Assistant

INTERCHANGE 44**EXTENSION OF SECONDARY IMPACT AGREEMENT**

Pinelands Commission
Policy and Implementation Committee
April 24, 2020

GSP Overlay District

N.J.A.C. 7:50-5.35(b)

"The uses listed in (a)¹ through 3 above shall be permitted provided they will not induce changes in the location, pattern or intensity of land use which would be inconsistent with the Pinelands land use program as implemented through the Commission's certification, pursuant to N.J.A.C. 7:50-3, of the master plans and land use ordinances of Pinelands municipalities."

Interchange 44 Project

- NJ Turnpike Authority was to complete Interchange 44 on the Garden State Parkway by adding a Northbound Exit Ramp and Southbound Entrance Ramp.
- Project located in the State designated Pinelands Area.
- Pursuant to an agreement between NJTA and Atlantic County dated June 18, 2012, the County agreed to be responsible for land acquisition to complete the project, including any lands necessary to satisfy mitigation or other permitting requirements.

Secondary Impacts Agreement

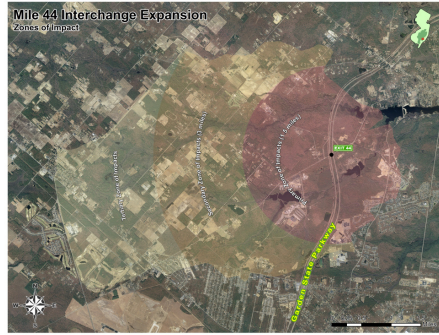
- Pinelands Commission and Atlantic County entered into a Secondary Impacts Agreement on January 1, 2014.
- The Secondary Impacts Agreement set forth the means by which Atlantic County would "obviate" secondary impacts associated with the Interchange 44 project.
- Specifically, Atlantic County was to limit development potential on parcels located within 1.5 miles of Interchange 44, totaling 356 acres.

Three Tier Approach

- Atlantic County had 3 years from execution of the Secondary Impacts Agreement to obviate secondary impacts, through land acquisition or easements within Tier 1.
- After the initial 3 years, Atlantic County had an additional 18 months to obviate secondary impacts equal to 2 times the amount of its remaining obligation within Tier 2;
- At the end of this 18 month period, Atlantic County had 18 additional months to satisfy any remaining obligation within Tier 3.

Three Tier Approach, continued

- At the end of 6 years, the Agreement contains a provision where the County pays an amount equal to fair market value of any acreage that it fails to acquire within Tier 1 within six years from the effective date of the Agreement; i.e. January 7, 2020, to a non-profit, government entity or university or college to undertake the acquisition of Pinelands Development Credits from agricultural lands or other projects, including land acquisition, to improve water quality within the boundaries of Tiers 1 through 3 in Atlantic County.



Atlantic County's efforts

- Atlantic County focused its efforts on acquisition of land within Tier 1.
- As of March 5, 2020, Atlantic County has acquired 327 out of 356 acres within Tier 1.
- Only 29 acres remain to be acquired for Atlantic County to complete its obligation under the Secondary Impacts Agreement.



Extension of Secondary Impacts Agreement

- The Secondary Impacts Agreement affords the opportunity to request an extension of the time period to complete the obligation to obviate secondary impacts from the Commission's Executive Director for a period of up to 18 months with the submission of documentation demonstrating that completion of the task to obviate secondary impacts will be completed within the extended time period.
- Atlantic County has indicated that it is continuing its efforts to work with Galloway Township to acquire lands owned by the Township located in Tier 1.
- Atlantic County has requested an extension to complete its acquisition of the remaining 29 acres required by the Agreement.

Staff Recommendation

- The Commission allow the County to complete its acquisition of the remaining 29 acres rather than having the County provide funds to a non-profit, governmental entity or university to complete the task for it, given the County's diligent effort to date to complete its obligations under the Agreement.
- The Commission extend the acquisition deadline by 2 years in recognition of the current unprecedented health crisis.
- With the extension, Atlantic County would have until January 7, 2022 to acquire the remaining 29 acres.

Proposed CMP Amendment: Coordinated Permitting Provisions

Policy & Implementation Committee
April 24, 2020

Purpose of the Amendment

To codify the application process for infrastructure projects proposed by public utilities that qualify for MLUL pre-emption pursuant to N.J.S.A. 40:55D-19 and do not receive municipal approvals.

MLUL Preemption

- N.J.S.A. 40:55D-19:
 - MLUL (nor regulations adopted thereunder) does not apply to:
 - Development proposed for the furnishing of service;
 - Proposed by a public utility;
 - Installation in more than one municipality; and
 - BPU determines the development is reasonably necessary for public service, convenience or welfare
- Public utility must petition Board of Public Utilities (BPU)
- BPU makes determination after notice and hearing
- Municipal approval is preempted

Coordinated Permitting – N.J.A.C. 7:50-4.81 et seq.

- Prior to filing an application with BPU, the public utility shall file a copy of the application with the Commission (N.J.A.C. 7:50-4.81(b))
- Staff reviews the application, requests additional information, and deems the application complete
- Staff issues a Certificate of Filing

Coordinated Permitting Process under Proposed Amendments

- BPU determines the proposed infrastructure project qualifies for the 40:55D-19 pre-emption.
- Applicant provides a copy of the BPU determination to the Commission.
- Proposed amendment requires that the proposed infrastructure project be reviewed in accordance with the public development regulations (N.J.A.C. 7:50-4.53 through -4.57.)

Pinelands Development Application Process for Public Utility Development for which Municipal Review is Pre-empted

- Applicant submits Pinelands development application and fulfills public notice requirements.
- Staff updates the status report on the Commission's website to provide the dates for oral public comment and submission of written comments.
- Oral comments accepted at PC meeting.
- Written comments accepted through close of business on day of PC meeting

Application Process (continued)

- Staff prepares a recommendation report after the comment period closes.
- The application is presented to the Commission at its next meeting.



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April 21, 2020

Richard Prickett, Chair
Nancy Wittenberg, Executive Director
New Jersey Pinelands Commission
17 Springfield Road
New Lisbon, NJ 08068

Dear Chairman Prickett, Director Wittenberg and Commissioners,

I am writing on behalf of Pinelands Preservation Alliance (PPA) to express concern about the proposed amendment to the Comprehensive Management Plan (CMP) regarding coordinated permitting. To address a remand order from the Appellate Division, the Commission must develop a process to consider applications that are exempted from municipal review by the Board of Public Utilities. Skipping this crucial step leaves a gap in the approval process, and the CMP must be amended to provide the same analysis of the application as other private applications.

The CMP and Municipal Land Use Law (MLUL) lay out a clear process for applications from private, for-profit entities. This process allows for an evidentiary hearing: an opportunity for sworn testimony, evidence submittal and examination, and cross-examination. It is the only way for the public, and for the Commission, to acquire, examine and consider all aspects of a complicated development proposal. Eliminating municipal review allows the applicant to bypass the level of scrutiny guaranteed to the public per the CMP and MLUL.

However, the amendment proposed is woefully inadequate in providing the same level of consideration to the types of applications specified in the remand order. The draft amendment suggests processing such an application in accordance with N.J.A.C. 7:50-4.53 through 4.57, which is the process for a public application. The opportunity for public comment offered for a public application is in no way an equivalent substitute for a genuine evidentiary hearing.

The rule should state that any member of the public can invoke an evidentiary hearing, either before the Office of Administrative Law (OAL) or before the Commission itself if the OAL hearing is not available. It is the only way to guarantee a true test of the findings presented, and that a proper record will be created.

The CMP states “No department, board, bureau, official or other agency of the State of New Jersey shall issue any approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land in the Pinelands Area unless such approval or grant is consistent with the minimum standards of this Plan.” (NJAC 7:50-4.81(a)). Compliance with the minimum standards of the CMP can only be determined by the Pinelands Commission, and the

determination of preemption from municipal review by a separate agency should not have any impact on how a private application is considered or approved with respect to the CMP.

Private corporations such as New Jersey Natural Gas, South Jersey Gas, or other for-profit, commercial entities must be held to the same standards as other private developers, and must submit to an evidentiary hearing. The final CMP amendment should clearly indicate that the Commission and the public are offered this protection.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Rhyon Grech", with a stylized, flowing script.

Rhyon Grech
Policy Advocate