

Adopted August 24, 2018

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

**Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
July 27, 2018- 9:30 a.m.**

MINUTES

MEMBERS IN ATTENDANCE: Chairman Sean Earlen, Candace Ashmun (via telephone), Jordan Howell, Ed Lloyd and Richard Prickett

MEMBERS ABSENT: Robert Barr and Paul E. Galletta

OTHER COMMISSIONER PRESENT: Mark Lohbauer (*as a non-member of this Committee, Commissioner Lohbauer did not vote on any matter*)

STAFF PRESENT: Executive Director Nancy Wittenberg, Chuck Horner, Larry L. Liggett, Susan R. Grogan, Gina Berg, Ernest Deman, Paul Leakan and Betsy Piner. Craig Ambrose, with the Governor's Authorities Unit, was on the telephone until ~10:30 a.m.

1. Call to Order

Chairman Earlen called the meeting of the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee to order at 9:25 a.m.

2. Pledge Allegiance to the Flag

All present pledged allegiance to the Flag.

3. Adoption of minutes from the May 18, 2018 CMP Policy & Implementation Committee Meeting

Commissioner Prickett moved the adoption of the May 18, 2018 meeting minutes. Commissioner Lloyd seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

Ms. Wittenberg announced that she was adjusting the sequence of the agenda as representatives from the South Jersey Transportation Authority (SJTA) would not be attending the meeting today as had been anticipated. She said she wanted to conduct any business requiring a quorum to accommodate those who might need to leave before the meeting's conclusion.

4. Executive Director's Reports

Egg Harbor Township Ordinances 12-2018 and 19-2018, amending Chapter 225 (Zoning) of the Township's Code by adopting requirements for the provision of affordable housing in the RG-4 and RG-5 (Residential) Districts, within the Pinelands Regional Growth Area

Ms. Grogan said Egg Harbor Township Ordinances 12-2018 and 19-2018 affect the two highest density residential zones (RG-4 and RG-5) in its Regional Growth Area (RGA) by adopting requirements for the provision of affordable housing in these two zones. She said recently the Township had signed a settlement with the Fair Share Housing Center for its affordable housing obligation. That agreement requires Egg Harbor to adopt relevant ordinances and a Housing Element and Fair Share Plan and submit them to the court for approval within a certain time frame. Ms. Grogan said Egg Harbor has chosen a path out of sequence with the normal process by adopting the ordinances first before proceeding with the other documents. She said the settlement agreement stipulates that the Township has a rehabilitation obligation of 92 units, a prior round obligation of 763 units, and a third round prospective need of 1,000 units. She said this is the highest obligation staff has seen in the Pinelands Area.

Ms. Grogan said Egg Harbor Township believes this new set aside requirement could provide for more than 700 affordable units. She said the Township does not need only new units to meet its obligation as there are some projects already pending and bonus units attributed to other projects. She reminded the Committee that the Township is not required to develop the housing, only to provide the zoning to accommodate it. She said other provisions include loosening various area and bulk standards and a Pinelands Development Credit (PDC) obligation of 25% of all market rate units. She noted that the Township should be commended for having taken the PDC initiative on its own. She added that Egg Harbor had adopted the same requirements some years ago but repealed them after receiving objections.

In response to Commissioner Prickett's question if allowing a PDC obligation of only 25%, rather than the traditional 33%, was a "sweetener" offered to the Township, Ms. Grogan said no, but rather it was a means of making the affordable housing and PDC programs work together. By making PDC use mandatory, it provides the flexibility to accommodate affordable housing.

In response to Commissioner Lohbauer's comment that it was unusual to see municipal ordinances prepared prior to the Housing Element and Fair Share Plan, Ms. Grogan said she had consulted with the Administrator who explained that the Township was concerned with controversy around the ordinances and objections from the builders so had chosen to get through the more difficult ordinance process first.

Ms. Grogan said staff is recommending Commission certification of Egg Harbor Township Ordinances 12-2018 and 19-2018.

Commissioner Prickett moved the recommendation that the Commission certify Egg Harbor Township Ordinances 12-2018 and 19-2018. Commissioner Earlen seconded the motion and all voted in favor except Commissioner Lloyd, who abstained.

5. Briefing on the Pinelands Infrastructure Trust Fund

Mr. Liggett gave a presentation on the Pinelands Infrastructure Trust Fund (PITF), noting that Ms. Berg had worked extensively on this project. (*Attachment A to these minutes and also located on the Commission's web site at:*

<https://www.nj.gov/pinelands/home/presentations/PITF%20Review%20and%20Next%20Steps%20PI%20%207-27-18.pdf>)

Mr. Liggett provided background on the origins of the PITF, its intended uses and purposes, and the previous funding formula. He described how the PITF Act required the preparation of a Pinelands Infrastructure Master Plan. The Master Plan established types of projects funded and ranking factors to determine which projects were funded. He noted that past funding had been awarded solely to sewer construction. In 1986, sewer infrastructure was the area of greatest need to offset costs of targeted growth in the Pinelands RGA and there were existing New Jersey Department of Environmental Protection (NJDEP) programs in place to provide engineering assistance. Of the \$30 million originally authorized by the 1985 PITF Bond Act, currently there are some \$15.6 million available, primarily from loan payback and low bid projects.

Mr. Liggett said, over the years, the Commission has made a number of changes to its PITF Master Plan and the Fund, inactive for several years, is targeted for reactivation in FY-2019. The Commission must now determine if it wants to revise the possible uses beyond just wastewater projects, the ranking criteria and the structure of funding assistance (proportion of grants, loans, and local match). Any changes to the ranking or to the list of possible uses must be incorporated into the Master Plan through the process of hearing and resolution by the Commission. It is then submitted to NJDEP for inclusion in legislative approval and appropriations process. He noted that during the most recent offering of PITF, few projects met the ranking criteria and the ones that did eventually declined funding because the funding timeline was too long.

Mr. Liggett said, before soliciting a new Request for Proposals from the 24 municipalities and five counties with RGA, the next steps will include reviewing recently developed County Wastewater Plans and discussing potential projects and interest from the RGA municipalities with sufficient remaining development potential. He noted that twelve municipalities, mainly in Atlantic County, made up the bulk of the RGA with development capacity. He said during discussions of PDC program enhancements, consideration was given to expanding receiving areas to Pinelands Towns (PT) and perhaps PITF funding could be directed there also. He

cautioned however, that including Town management areas would require an even longer process to revise CMP rules and the PITF Act.

Mr. Liggett said staff hopes to have recommendations for the Commission by mid-winter. The recommendations will reflect any projects identified by local agencies, as well as ranking criteria and a funding formula to amend the PITF Master Plan.

Commissioner Lloyd said the legislation allows projects within the RGA and asked if the projects were to include PT, there would need to be CMP amendments and perhaps the issue would require voter approval.

Mr. Liggett said Hammonton and the Boroughs of Buena and Woodbine have potential projects in their Pinelands Towns.

In response to Commissioner Lloyd's question if this were going to be a public process, Mr. Liggett said staff will first reach out to the municipalities and County utility authorities. Commissioner Lloyd then indicated a preference for a public information meeting. Mr. Liggett noted the approval of the PITF Master Plan includes a public process, but a public information meeting could be held. He said there was often interest in funding, but for projects within the wrong management area. Mr. Liggett said he will be returning to the Committee with more information and recommendations.

6. Discussion of the 2004 Memorandum of Agreement between the Pinelands Commission and the South Jersey Transportation Authority related to short-term development projects at the Atlantic City International Airport

Ms. Wittenberg said that representatives from the South Jersey Transportation Authority (SJTA) will attend the Committee's August 24, 2018 meeting; meanwhile staff would provide an update on the 2004 Memorandum of Agreement (MOA) for the Atlantic City Airport (ACY).

Mr. Deman made a presentation on the 2004 MOA for the Atlantic City International Airport (*Attachment B to these Minutes and also located on the Commission's web site at:* https://www.nj.gov/pinelands/home/presentations/07272018_MOA%20AC%20Presentation.pdf)

Ms. Wittenberg said shortly after the MOA was signed, the Federal Aviation Administration (FAA) raised the issues of concern with runway safety and proximity to the wildlife conservation area but did not bring it to the attention of the Commission until recently. She said since late 2017, the Commission has received increasingly strongly worded communication from the FAA, mostly directed to Ms. Roth, with concerns that the habitat area be replaced because of a safety concern regarding potential bird strikes. She said the upland sandpiper and the grassland sparrow are small birds that may attract larger predator birds although a recent bird strike at the airport was from a goose. She said there is an April to August mowing moratorium to protect

nesting birds which, fortunately, is ending soon as the SJTA had taken an aggressive tone indicating it wanted this habitat relocation to occur now.

Ms. Wittenberg said SJTA is represented by outside counsel. She said SJTA is committed to finding suitable habitat but possibly may provide funding so the Commission could find and protect lands. She noted they will need to find even more habitat as they want more development at the airport.

In response to Commissioner Lohbauer's question as to what qualifies as replacement habitat, Mr. Deman said, at the time of the initial MOA, the Commission did not impose a distance from the airport where habitat should be provided. SJTA did look within some 5 to 7 miles and there are still some available acres at the airport.

Ms. Wittenberg said the FAA wants the habitat located thousands of feet from the runway. She said she had been told that it is not sufficient to just push back the conservation area by a few feet. She said there will be a field meeting with US Fish and Wildlife Service, FAA, SJTA and NJDEP and the Commission to look at habitat.

In response to Commissioner Lloyd's question, Ms. Wittenberg said the burden was on SJTA to find the lands for habitat although the Commission staff would help.

In response to Commissioner Prickett's question as to what type of future development was anticipated at the airport, Mr. Deman said that the staff has not been told although the Commission recently approved some solar development in the area that seems to be auxiliary to any future projects.

Ms. Wittenberg said at the Committee's August meeting, she would have material to show a framework of what is needed at the Airport. She said there has been a lot of correspondence and the Commission will need to determine if it interested in pursuing an amended MOA.

7. Public Comment

Dr. Emile DeVito, with the New Jersey Conservation Foundation (NJCF), asked about the status of the Frosted Elfin butterfly at the airport.

Mr. Deman responded that the grassland habitat had been enhanced for birds.

Dr. DeVito continued that, by removing all the trees, the scattered small shrubs and trees were no longer available for the butterflies so perhaps they were courting elsewhere. He said he did not know of any other site for Frosted Elfin butterflies. Furthermore, there was only a single breeding pair of upland sandpipers at the site. He said grasshopper sparrows are more plentiful and can adapt to other habitats but it will be difficult to find another site acceptable to all three species. Dr. DeVito said conservation deed restrictions do not work in New Jersey as evidenced by sand mining operations such as one in Lacey Township. He said a conservation easement had

been placed on another portion of the mine property apart from active mining, but it was established to fail as the mine is expanding again. This particular mine is part of the Forked River Mountains and surrounded by protected lands. Dr. DeVito said similarly, the Woodmansie Mine in Woodland Township has an application before the Commission. It is located in the vicinity of Greenwood Forge Wildlife Management Area and Brendan Byrne State Forest yet the owner wants to expand the mine without doing adequate surveys for threatened and endangered (T/E) species on the entire parcel.

Ms. Katie Smith, with the Pinelands Preservation Alliance, distributed three letters to Commissioners and staff (*see Attachment C to these minutes*) regarding the proposed expansion of the Woodmansie mine absent proper T/E surveys. She noted that the Commission is dealing with a lot of issues but she encouraged the focus to return to such issues as changes to the PDC program and the protection of the Black Run headwaters. She said there was a need to strengthen Pinelands protection.

Dr. DeVito said the concern with bird strikes at the Atlantic City Airport was a red herring as the butterflies do not cause airstrikes, grasshopper sparrows are too small and the habitat is unlikely to attract hawks. He said if the airport were to convert some of this habitat to gravel, it would attract killdeer; they would move in and they fly all night long. If the area were paved, then gulls will be attracted. He said this concern with bird strikes is nonsense.

Mr. Prickett said an easement might not be relevant since the airport is leased from the federal government.

Commissioner Lloyd concurred that the airport leases the ground so has limited rights. He added that he agreed with Dr. DeVito's assessment that turning over land to the State for permanent protection is better than a conservation easement. He said the Commission could not approve the expansion of the mine absent a T/E survey.

Ms. Wittenberg said the application had been called up and the applicant was told to survey the entire parcel.

Mr. Deman said of the 1,400-acre parcel, 254 could be mined.

Ms. Wittenberg said the applicant sought a 40-acre expansion and staff has said that it didn't want the mining operation to expand piecemeal. She said in the Preservation Area District, everything is habitat. Furthermore dealing with T/E survey data is difficult. She had thought she would want to determine an area of disturbance and then deed restrict the remainder of the property but today's suggestion of transferring the land to the state seems to be a better idea. She said this has been an ongoing project and she believes the Commission has an obligation to allow the owner to get what he can out of the property.

In response to Commissioner Lloyd's question if staff were continuing to negotiate with the mine owner, Ms. Wittenberg said currently the application is at "call-up" and theoretically the Commission might never see it.

Commissioner Lloyd said he was interested in follow-up; mines have certain rights but there is an argument as to how far they can expand.

Ms. Wittenberg said she believed there are elements of fairness and compensation. Furthermore, once mining operations start, the snakes are attracted to the open areas for sunning.

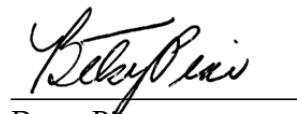
Commissioner Lloyd said he didn't think surveys were useful because they often report nothing was found yet the area is suitable habitat.

Commissioner Lohbauer thanked the staff for the July 19, 2018 Summer Short Course in Hammonton. He said he had a terrific time touring the Atlantic Blueberry operation and that once again the program had been a superlative event.

Mr. Leakan said this year, there were more than 100 participants compared to last year's 77.

There being no other items of interest, Commissioner Ashmun moved the adjournment of the meeting and Commissioner Prickett seconded the motion. The meeting was adjourned at 11:05 a.m.

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: August 7, 2018

Pinelands Infrastructure Trust Fund (PITF) Review and Next Steps

P & I Committee
7/27/18

Background



Pinelands Infrastructure Trust Bond Act of 1985

The Pinelands Infrastructure Bond Act - enacted on August 23, 1985

The Act authorized the issuance of bonds - \$30 million

Proceeds of which were to be used:

- To provide grants and loans to local government units
- For infrastructure capital projects
- In Pinelands RGAs

PINELANDS PROTECTION BOND ACT of 1985,¹¹ INTERPRETIVE STATEMENT

- Clarified the intended uses of grants and loans is for transportation, wastewater treatment, water supply, and other infrastructure systems in the Pinelands area.
- Conformance with CMP required before Project funding would be authorized
- Both municipal and county master plans must be certified *by* the Pinelands Commission

Purpose of the Act

Targeted Growth Areas with PDCs

- Redirecting development away from environmentally sensitive and agriculturally important areas
- Including traditional zoning and the Pinelands Development Credit (PDC) program.

Public Costs

- Public costs are associated with capital facilities needed to serve Regional Growth areas
- Ease financial burden on local taxpayers for RGA infrastructure

RGAs (orange) and Towns (purple)



Infrastructure Fund Master Plan

PITF Act

- PC must adopt Infrastructure Master Plan
- 1987, resolution PC4-87-3 first PC Master Plan



Pinelands Infrastructure Master Plan

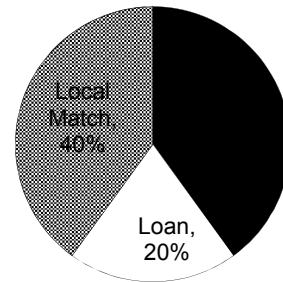
- Funding formula
- Project list (intended uses)
- New PC resolution to change formula or projects
- Several Amendments have occurred



NJ Infrastructure Trust

- Submitted to NJ-EIT
- FY Intended Use Plan
- Legislative authorization

Funding Formula



The Act did not specify what proportion of loans versus grants should be awarded

Past Funding Limited to Wastewater

The Act defined “*infrastructure capital projects*” to include acquisition, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility or equipment necessary for, or ancillary to, transportation, wastewater treatment, water supply infrastructure systems.

Projects Funded

- Broad range of infrastructure project types are eligible for funding through PITF.
- Past funding awarded solely to sewer construction primarily for two reasons:
 - Area of greatest need for Pinelands RGAs in 1986, and
 - Existing wastewater assistance programs offered NJDEP provided engineering expertise and management capacity.

Previous Project Ranking Factors

- Two sets of Ranking Factors
 - General
 - Project Specific



Previous Project Ranking Factors

General Ranking Factors – 75 points

- Future development potential
- Total number of future dwelling units served
- *Percent of “Growth Area” needs, including PDCs, met by project*
- Net development capacity (Unmet build-out needs remaining after completion)
- *Cost per Unit* Projects ranked by the total eligible cost per number of future dwelling units served.



Previous Project Ranking Factors

Project Specific Ranking Factors – 25 points

- *Wastewater Infrastructure Projects*
- Documented or known groundwater problems
- Recharge to groundwater in-basin/encourage community treatment plants
- Cost Financial bonus if PITF funding is minimized
- Future PDC units based on realistic potential

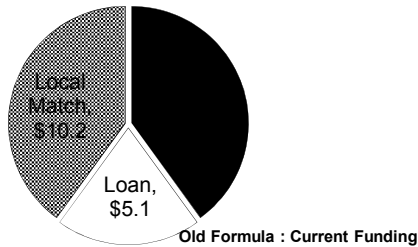


Past Project Summary

Project	9/01/1993 Master Plan Amendment
State Administration	\$500,000
Local Planning & Design	\$100,000
Projects	\$28,055,162
Contingency Grants & Loans	\$1,344,818
Total	\$29,999,980

Status Today

- Amount currently available (primarily from loan payback and low bid projects): \$15.6 million
- Using old funding formula: \$25.5 million in projects



Questions to be Answered: How to Amend the Infrastructure Plan

- Revise possible uses (from only wastewater)?
 - Response: Probably no need to expand, meets needs of today (stormwater and recharge covered)
- Change ranking criteria?
 - Response: Refine depending upon use and assistance offered

Questions to be Answered: How to Amend the Infrastructure Plan, cont.

- Change funding assistance from 40% grant/20% loan/20% other?
 - Response: Options
 - Tie to incentive, e.g.,
 - o Recharge?
 - o Interest rate tied to level of proposed or actual PDC use?
 - Continue revolving? How?
 - o 100% no interest loan?
 - o Split between grants, no interest loans and low interest loans

Larger RGAs – 12/24 Municipalities with Regional Growth Areas

Half (12) of those generate substantial PDC demand	
Egg Harbor Township	Winslow Township
Hamilton Township	Jackson Township
Monroe Township	Stafford Township
Barnegat Township	Medford Township
Pemberton Township	Manchester Township
Galloway Township	Waterford Township

State Intended Use Plan FY19 Draft Pinelands Statement

- The Pinelands Infrastructure Trust Fund, inactive for several years, is targeted for reactivation in FY2019.
- Possible uses , funding formula, and ranking criteria will be re-evaluated
- A new "Request for Proposals" will be issued to all 24 municipalities and counties with Regional Growth Areas
- Projects will then be ranked and recommended for funding (to be then placed in the FY20 Intended Use Plan)

Next Steps

- Review recently developed County Wastewater Plans
- Discuss with
 - Key Counties
 - Key RGAs: the 12 with sufficient development potential remaining
- Finalize proposed amendment to the Master Plan
- Review "amendment" with P & I
- Review "amendment " with PC



Next Steps, cont.

- Include Notice of Impending RFPs in Infrastructure Trust Fund's (Bank) 2019 Intended Use List
- Issue Request For Proposals - Late Fall
- Pursue CMP Amendment
 - Adding PDCs (and PITF eligibility) to Town Management Areas
 - Permit RDA Recharge areas



Memorandum of Agreement Atlantic City International Airport

History

- In 1992, the South Jersey Transportation Authority (SJTA) was created to pursue transportation related economic development projects throughout Southern New Jersey.
- SJTA purchased the passenger terminal complex and leased 2,000 acres of land from the William J. Hughes Technical Center at the Atlantic City International Airport.
- Environmental Impacts Statement prepared for SJTA determined that proposed aviation related development would result in a loss of grassland habitat at the Atlantic City International Airport.
- In 2004, SJTA and Pinelands Commission enter into a Memorandum of Agreement (MOA) to authorize SJTA to carry out specified development activities that were not fully consistent with the provisions of the Pinelands Comprehensive Management Plan.

Development Projects included in MOA

- Terminal Area Development: To accommodate existing and future passenger and airline needs, the SJTA proposed to develop new or expanded terminal facilities including the following activities:
 - Terminal building and gate construction and improvement
 - Public parking garage
 - Rental car maintenance facility and parking lot
 - Airline freight storage and handling facilities
 - General aviation aircraft storage hangers and additional aircraft parking area
 - Deicing apron

Development Projects included in the MOA

- Auxiliary Area Development: To advance the airline's interest in establishing maintenance and cargo facilities, the SJTA plans to develop an area of the airport for aviation related light industry, including:
 - Aircraft maintenance hangars
 - Air freight warehouses
 - Full length parallel taxiway west of Runway 4-22
 - Aircraft parking apron and taxiways
 - Access roadways and parking

Development Projects included in MOA

- Hotel/Conference Center: To meet demand for on-site lodging and meeting facilities, the SJTA plans to allow a third party developer to construct a hotel/conference center at the airport.
- Runway 13-31 Upgrades: To improve the utility of the primary runway at the airport, the SJTA proposes to install electronic navigational aids for the runway.
- Holding Aprons: To increase taxiway efficiency and operational safety, the SJTA proposes to construct holding aprons at each end of Runway 13-31. The holding aprons would separate military aircraft from runways and taxiways while arming and disarming procedure are being performed.

Purpose of Proposed Airport Improvements

- To improve air service for travelers in Southern New Jersey.
- To foster economic development in the South Jersey region.
- To enhance efficiency and safety at the Atlantic City International Airport.
- To encourage revenue producing land uses that support aviation oriented infrastructure.



Impacts from Development Projects



- Through habitat loss and fragmentation, the development projects would result in the loss of:
 - 95.71 acres of habitat critical to the survival of the local population of Upland sandpiper; and
 - 96.4 acres of habitat critical to the survival of the local population of Grasshopper sparrow.

Mitigation

- To compensate for the impacts to critical habitat for Upland sandpiper and Grasshopper sparrow, the SJTA proposed to create a Grassland Conservation and Management Plan (GCMP) for a 290 acre area located in the northwest corner of the airport.
- The GCMP involved converting unsuitable habitat and enhancement of less suitable habitat within the 290 acre area to optimum habitat for the concerned species.
- The GCMP also establishes a long-term plan to maintain the created/enhanced habitat as well as existing suitable habitat to benefit the concerned species.
- The MOA provides that the 290 acre area will be maintained as critical habitat and will not be developed.

Current Status of the MOA

- SJTA has completed the proposed habitat improvements within the 290 acre grassland conservation and management area.
- SJTA has completed construction of seven near term projects outlined in the MOA, including:
 - Parking garage
 - Holding aprons
 - Terminal expansion
 - Aircraft apron expansion
 - General aviation hanger
 - Taxiway improvements
 - Runway 13-31 upgrades



Charles Horner
Director of Regulatory Programs
New Jersey Pinelands Commission
15 Springfield Rd
New Lisbon, NJ 08068

May 8, 2018

Re: Woodmansie mine expansion

Dear Mr. Horner,

We are writing on behalf of the Pinelands Preservation Alliance and New Jersey Conservation Foundation regarding the proposed Woodmansie mine expansion in Woodland Township. This proposed expansion clearly fails to satisfy provisions within the Comprehensive Management Plan that protect threatened and endangered species. As the Pinelands Commission has stated in its April 3, 2018 call up letter and in the November 2, 2017 Inconsistent Certificate of Filing, the application as proposed is inconsistent with NJAC 7:50-6.33 as well as the Woodland Township certified land use ordinance that incorporates this provision into the municipal code.

NJAC 7:50-6.33 states that "No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection".

The New Jersey Department of Environmental Protection has documented the overall site as habitat for many threatened and endangered species, including northern pine snake, timber rattlesnake, Pine Barrens treefrog, bobcat, barred owl, bald eagle, and red headed woodpecker. However, the applicant surveyed only for northern pine snake, timber rattlesnake, and corn snake, with no attention to rare amphibians, mammals, or birds. This is impermissible and fails to approach the requirements in NJAC 7:50-6.33. Further, the applicant and the Commission both fail to address the requirements in NJAC 7:50-6.27 regarding the protection of threatened or endangered plants.

In their quest to demonstrate that the application is in compliance with 7:50-6.33, the applicant claims that surveying the 40 acres for which the expansion is proposed satisfies survey requirements and proves that the expansion would not impact threatened or endangered species. This is ludicrous. Surveying just the immediate 40 acres in which the expansion is proposed does nothing to demonstrate that the surrounding habitat would remain suitable for the threatened and endangered species currently there. Further, the survey itself was intrinsically flawed and differed significantly from the protocol approved by the Pinelands Commission.

As PPA and NJCF have described in the past, mining a specific area also causes harm to the surrounding habitat. In a similar case dealing with a mine expansion in Lacey Township, the applicant consistently promised to preserve habitat which then was degraded, then that degraded area was proposed for an additional mine expansion. See excerpt from our comments below:

In many instances in the 25 July 1996 report, the authors discuss the importance of the Pine Snake nesting habitat along the JCP&L right-of-way, the 3 snakes observed in the ROW adjacent to the existing mine, and the importance of the adjacent forest habitat southwest of the ROW, especially the *“undisturbed portions to the southeast, south, and southwest”* of the Study Area.

The conclusion of that 25 July 1996 report was that since pine snakes were not using the degraded habitats within the 203.5 acre Study Area in the pre-existing mine north of the JCP&L right of way, the additional mining proposed within that same existing mine (between the ROW and Lacey Road) would not cause irreversible adverse impact to the local Pine Snake population, *“as long as steps are taken to protect the nearby important pine snake habitat.”*

Unfortunately, the important habitat described as needing protection has not been protected. Not only has it not been protected, much of it has been obliterated by continued expansion of the mining activity south of the JCP&L right-of-way. Between 2002 and 2006, the important forest habitat south of the JCPL ROW was cleared and an additional sand mine was established and mined. Now, in 2017, the owners are proposing to expand once again, to mine even farther south into what was once exceptional habitat. If carried out, the proposed mine expansion will further cut-off pine snake dispersal routes from probable hibernacula to nearby nesting areas.

The Commission cannot allow resource extraction to continuously expand and degrade neighboring critical habitat until it is no longer suitable habitat.

Furthermore, the survey for this property is inherently flawed and would have failed to capture the species of interest even within the small survey area for the following reasons.

1) The survey failed to include the time during which many Northern pine snakes emerged.

Visual observation of potential pine snake hibernation sites did not begin until April 20, 2016. However, in 2016, nearly all radio-tracked northern pine snakes in nearby Chatsworth on the Franklin Parker Preserve had left the vicinity of their winter hibernacula by mid-April. At least two snakes left their winter dens in March, one in Bass River State Forest in the first week of March, and one in Chatsworth in late March. The unusually warm spring days that occurred intermittently during March 2016 allowed for an early emergence from hibernation, rendering of little or no value the visual surveys conducted from April 20 onward by the applicant.

To properly determine if any hibernacula were occupied, the applicant could have "corralled" in February the potential hibernacula that were in or closest to the proposed mining area. This is a simple and inexpensive procedure.

The applicant attempts to justify their failure to include time of emergence by reporting a sighting on May 7, 2016 near a winter hibernaculum "reference site." However, this fails to demonstrate that this was the time of emergence; radio-tracking has shown that many pine snakes re-visit the vicinity of communal winter dens during all seasons, especially the onset of mating season in May. The fact that two pine snakes were seen near a winter den on May 7 does not mean that snakes were only emerging from their hibernacula in early May, and fails to justify the late April 20 start date for visual observation of hibernacula.

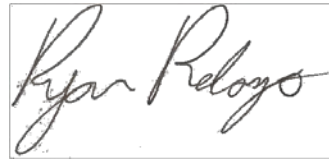
- 2) **The visual survey area surrounding the 40 acres excluded areas that are prime snake habitat.** Notably, the east to west 170' elevation ridgeline was not examined for hibernacula by the applicant. This ridge is just to the east of the proposed mining site, yet the entire 200 acre visual survey area conveniently wraps around this site and ignores this landscape feature. This landscape feature cannot be avoided or ignored, and the shape of the 200 acre visual observation area cannot be justified. This type small ridge, with a southerly exposure, is a feature that is often found to contain pine snake hibernacula, even in dense forest.
- 3) **The applicant designed the survey procedures based on an outdated understanding of Northern pine snake hibernating behaviors.** The applicant states that northern pine snakes favor sparsely vegetated openings in forests for hibernation, based on a reference from 1988. This led to a development of nesting investigation protocol that was limited to "sandy habitats featuring sparse vegetation. Such habitat types were limited to sparse areas within open canopy pine forest" (16). However, numerous and recent radio-tracking studies have revealed that these simplistic assumptions about degree of canopy opening, shrub density, presence of logs are showing that no generalizations can be made. In fact, in the T&E Protocol submitted to the Pinelands Commission, the applicant actually referenced a study from 2011 that demonstrated that hibernacula can be located in denser cover in forests. This understanding disappeared when it came to developing an adequate protocol. The only absolutely necessary requirement for a location of a natural winter hibernaculum of a northern pine snake is a viable subterranean access point, either a rotten stump hole or vacated mammal burrow. These holes occur fairly regularly in dense forest with little sun, few logs, and a dense shrub layer. These holes are important to the snakes in the local area, and they are impossible predict or find without radio-tracking. Often, the tree that led to these stump holes is long-since rotted away, and generations of snakes are maintaining the tiny opening. An example of such a stump hole is shown in the attached images taken at the Franklin Parker Preserve. Visual searching for these dens is not a viable procedure. Generalizations about habitat structure cannot be used to write-off patches of forest as unsuitable for hibernacula. We can show you the exact location of many large winter dens of pine snakes, all found via radio-tracking, that do not conform to the sweeping generalizations made by the applicant based on a 30 year old reference that was published before radio-tracking was employed. Allowing such claims represents and egregious form of observer bias.
- 4) **The drift fence designs used to survey the 40 acres were inadequate.** Contrary to the T&E Survey Protocol submitted to the Pinelands Commission, only one fence had a significant angular component. and neither fence would have adequately interacted with snakes coming from the east to utilize the 40 acres for some habitat need. The edges of existing sand roads were used for convenience, but the geometry of those locations was not suitable for optimal drift fence sampling. The fact that other species were trapped only

indicates that the fence was functioning; it does not imply that northern pine snakes did not traverse parts of the 40 acres that were not being sampled efficiently or effectively.

- 5) **To properly determine if Northern pine snakes are present on the property, they should be radio-tracked.** Every effort should be made to capture pine snakes that congregate to nest this year (2018) at the known nesting areas on the subject property, and in the 170' ridgeline area excluded from visual survey area. Female pine snakes can be implanted and radio-tracked after they lay their eggs, as has been done in many studies. If especially breeding females are using the 40 acres for feeding, hibernation, or shedding, then destruction of that 40 acres will cause significant adverse impact on the breeding potential in this local population. If a snake of either sex is hibernating in the 40 acres, then destruction of the habitat will also cause significant adverse impact.

For the foregoing reasons, the Pinelands Commission must reject the mine expansion as proposed.

Sincerely,



Ryan Rebozo, Ph.D.
Pinelands Preservation Alliance



Emile DeVito, Ph.D.
New Jersey Conservation Foundation



Katherine Smith
Pinelands Preservation Alliance



Fig. 1: This natural entrance to a large, communal pine snake winter hibernacula at Franklin Parker Preserve is in a very old stump hole. The tree from which this stump hole is derived has long-since rotted away, and there is no longer any evidence of any log or rotted wood adjacent to the stump hole. The environment in which this stump hole is found is shown in figures 2 and 3.



Fig. 2: The stump hole is embedded with dense woody shrubs (scrub oak and huckleberry). If a radio-tracked pine snake did not lead us to this winter den, there would be virtually no way to detect it. In simply visually searching through acres of forest, one would have to step within about 4 feet of this stump hole to have any chance of spotting it! There is nothing within the surrounding, uniform pitch pine/scrub oak forest to give away this location via a visual search. There are no large light gaps from wildfires or forestry projects, no windthrows of fallen trees. Sunlight hits the forest floor only in small patches as the sun moves across the pine canopy, which lets in sufficient light for a den to be anywhere.



Fig. 3: The photo with the galvanized wire hardware cloth "corral" shows that the location of the winter den is virtually arbitrary considering the above ground structure of the forest. (This corral was erected to capture the additional, non-radio-tracked snakes upon emergence in spring. The only important feature to notice in the photo is that the rotted stump that allows for subterranean access is a uniform area of forest, not detectable by "reading the landscape." This important communal winter den has probably been used for decades and will persist indefinitely, despite the fact that adjacent trees have filled any small light gap that may once have existed in the canopy above, and there are no logs or any other surface structures to distinguish the site. There are many indistinguishable and therefore undetectable winter hibernacula just like this throughout the pine forests, the only way to detect them is through radio-tracking. Any visual searching methods for hibernacula, including those used by the applicant, are insufficient and represent subjective observer bias based on preconceived and incorrect notions of what constitutes appropriate winter denning habitat.



Pinelands Preservation Alliance

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since 1989

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with linseed ink.

Mr. Chuck Horner, Director of Regulatory Programs
Pinelands Commission
15 Springfield Rd
New Lisbon, NJ 08064

May 17, 2018

Dear Mr. Horner,

I am writing on behalf of the Pinelands Preservation Alliance with regard to the proposed Woodmansie mine expansion (1980-0029.001). The Pinelands Commission issued several callup letters to the applicant requiring review of the application based on inconsistencies with the threatened and endangered species requirements within the Comprehensive Management Plan.

At the Woodland Township Land Use Board meeting on May 15, 2018, Clayton presented an amended application for both a continuation of resource extraction and an expansion of 132 acres and a deed restriction of the rest of the property, to which they indicated the Pinelands Commission was amenable. The applicant indicated they did not believe additional threatened and endangered species surveys would be required for the additional acreage to be mined. This area is excellent habitat for northern pine snake and has documented occurrences of corn snake, red headed woodpecker, and barred owl. The applicant must be required to survey for threatened and endangered species to satisfy N.J.A.C. 7:50-6.33. To properly satisfy N.J.A.C. 7:50-6.33, the full parcel must be surveyed, and certainly no mining can be done on acreage that has not been surveyed.

Sincerely,

Katherine Smith
Policy Advocate



July 23, 2018

Chairman Sean Earlen and Members of the Commission
The New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064

Re: Woodmansie mine expansion, 1980-0029.001

Dear Chairman Earlen and Members of the Commission,

The Pinelands Commission staff is currently reviewing a large expansion of a mine located in the Preservation Area. Clayton Sand Company initially proposed a 40 acre expansion for this site. The Commission staff had concerns that the proposed expansion did not meet the requirements of the Comprehensive Management Plan (N.J.A.C. 7:50-6.33), and initially issued an Inconsistent Certificate of Filing (ICOF) and required a hearing before the Commission staff. Since those initial actions, the Commission staff has been working with the applicant toward a deal that would allow an expansion of 132 acres without surveying that portion of the property. This application raises substantial issues of compliance with the Comprehensive Management Plan and as such, we urge you as a full Commission to review it.

The Commission's initial ICOF and requirement for a hearing recognized the exceptional value of this site and the failure of the proposed expansion to comply with the threatened and endangered species protections within the CMP. The site in Woodland Township is located between Brendan Byrne State Forest to the northwest and Greenwood Wildlife Management Area to the northeast. It is documented habitat for corn snake, Northern pine snake, timber rattlesnake, Pine Barrens treefrog, bobcat, barred owl, bald eagle, and red headed woodpecker. In terms of threatened and endangered species, the applicants surveyed only the 40 acres into which they intended to expand, not the rest of the site that would be impacted by such an expansion. The applicants did include a cursory visual survey of approximately 160 acres, but this was insufficient to truly capture the value of that acreage as habitat. In their quest to demonstrate that the application is in compliance with 7:50-6.33, the applicant claimed that surveying the 40 acres for which the expansion was proposed satisfied survey requirements and proved that the expansion would not impact threatened or endangered species. This is ludicrous. Surveying just the immediate 40 acres in which the expansion is proposed does nothing to demonstrate that the surrounding habitat would remain suitable for the threatened and endangered species

currently there. Further, the survey itself was intrinsically flawed and differed significantly from the protocol approved by the Pinelands Commission.

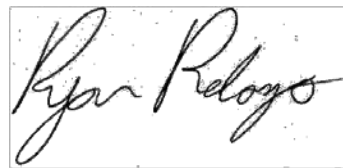
In response, the Commission staff rightfully required a hearing. However, between that initial callup and now, the Commission staff and the applicant have come close to a deal that would allow the applicant a 132-acre expansion on the site in exchange for a deed restriction, without any scientific basis for doing so included in the record. This deal would not require the applicant to do any additional surveys, meaning the applicant could expand into incredibly valuable nesting or breeding habitat for rare wildlife species, or into habitat for rare plant species, without the Commission's knowledge. Further, the language in the deed restriction includes broad circumstances for termination. It is written such that if the approval is "diminished in any way," the entire deed restriction would be automatically lifted. This means that some change that takes away less than one acre of mining capability would negate the entire easement.

We urge you to review this situation as a full Commission and determine whether it is compliant with the Comprehensive Management Plan. We are submitting with this letter our previous letters to the Commission Staff and a map of the proposed mining area. Please feel free to contact us with any questions.

Sincerely,



Katherine Smith
Policy Advocate
Pinelands Preservation Alliance



Ryan Rebozo, Ph.D
Director of Conservation Science
Pinelands Preservation Alliance



Emile DeVito, Ph.D
Director of Science and Stewardship
New Jersey Conservation Foundation