

Adopted 5/31/2019

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

**Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
March 29, 2019 - 9:30 a.m.**

MINUTES

MEMBERS IN ATTENDANCE: Chairman Sean Earlen, Robert Barr, Jordan Howell, Ed Lloyd and Richard Prickett

MEMBER ABSENT: Candace Ashmun

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

STAFF PRESENT: Nancy Wittenberg, Stacey Roth, Larry L. Liggett, Susan R. Grogan, Charles Horner, Ernest Deman, Brad Lanute, Paul Leakan, John Bunnell, Joel Mott and Betsy Piner. Also in attendance was Craig Ambrose with the Governor's Authorities Unit.

1. Call to Order

Chairman Earlen called the meeting of the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee to order at 9:35 a.m.

2. Pledge Allegiance to the Flag

All present pledged allegiance to the Flag.

3. Adoption of minutes from the February 22 CMP Policy & Implementation Committee Meeting

Commissioner Prickett moved the adoption of the February 22, 2019 meeting minutes. Commissioner Lloyd seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

4. Executive Director's Reports

Bass River Township Ordinance 2018-05, amending Chapters 16 (Subdivisions and Site Plans) and 17 (Zoning) of the Township's Code by responding to CMP amendments and establishing an alternative permitting program for single-family dwellings on existing lots

Mr. Lanute said the purpose of Bass River Township Ordinance 2018-05 is three-fold: response to recent CMP amendments; response to amendments to the Municipal Land Use Law (MLUL) adopted by the State Legislature in 2017 relating to performance and maintenance guarantees; and establishment of an alternative local permitting program in accordance with the CMP.

Mr. Lanute said both the provisions related to the recent CMP and MLUL amendments are routinely handled administratively by staff and are included in Ms. Grogan's monthly memo to the Commission of ordinances raising no substantial issue with CMP standards. He said Bass River's establishment of the alternative permitting program, also referred to as the local review officer (LRO) program, is the reason Ordinance 2018-05 is before this Committee today.

Mr. Lanute said the CMP was amended in 1990 to permit municipalities to establish alternative permitting programs to allow modified application processes. He said the typical program is administered by a local official, typically the zoning officer, allowing the issuance of a preliminary zoning permit for a single family dwelling on an existing lot. The intent is to expedite the process for such applications while maintaining consistency with CMP standards. Commission staff reviews the permits and issues a decision if they may take effect. For those with which the Commission does not concur, the permit cannot be issued and applicants may proceed through the regular application process to obtain a Certificate of Filing if they choose to do so.

Mr. Lanute directed the Committee to the three exhibits attached to the report: Bass River Township's Preliminary Zoning Permit Application, Preliminary Zoning Permit, and a statement regarding the required periodic (every three years) reporting requirement by the Executive Director to the Commission. He said should the position of local review officer become vacant, the application process will revert to the standard process directly through the Commission. He said no comments were received on the ordinance and the Executive Director is recommending certification of Ordinance 2018-05.

In response to Commissioner Lloyd's question if the Commission were doing a three-year review currently, Mr. Horner said yes, as required. The reports are done on a rolling basis, municipality by municipality. Ms. Grogan added that some municipalities have a more active program than others so some have little to report.

Commissioner Lloyd suggested it might be more efficient to prepare a single report every three years, summarizing all of the municipal programs.

Ms. Grogan said Bass River Township's program is unique in that it allows the applicant to determine which process to use: the conventional application to the Commission or an application to the Township through the new alternative program. She said the Township wanted the applicant to have the choice, because different application fees will apply. It is likely the Township engineer will be the designee responsible for administering Bass River Township's LRO program and the fee and escrow requirements associated with the engineer's

review may be higher than the Commission's \$250 application fee. Staff will include that information in the three year report.

Mr. Horner said CMP standards are being upheld through the LRO program. Even if the applicant doesn't need a Certificate of Filing, the sign-off by Commission staff of the preliminary zoning permit is the same in the end. He added the periodic report indicates how the municipality is performing, i.e., are they signing off on zoning permits that meet CMP standards?

In response to a question from Commissioner Lloyd, Mr. Lanute said the MLUL was previously broad as to what municipalities could require in terms of maintenance guarantees and it seemed to be at the discretion of the governing body. Now the requirements are narrower and more specific. He said the provisions have been incorporated by ordinance in roughly 15 Pinelands municipalities as reported in the monthly no substantial issue memos.

In response to a question from Commissioner Prickett, Mr. Lanute said staff provided the Township with a model ordinance for the alternative permitting program.

Commissioner Lloyd recommended Commission certification of Bass River Township Ordinance 2018-05. Commissioner Prickett seconded the motion and all voted in agreement.

Manchester Township's Master Plan and Land Use Ordinances for that portion of the municipality in the Pinelands National Reserve, outside the state-designated Pinelands Area

Ms. Grogan said the Commission receives few requests of the type submitted by Manchester, requesting certification of the area in the Pinelands National Reserve (PNR), outside the Pinelands Area. She directed the Committee to Exhibit 4 (Zoning Map) of the Executive Director's report and identified three separate areas, each regulated differently: the Pinelands Area (the state-designated area); the area outside both the PNR and the Pinelands Area; and the federally designated PNR. She said the Commission's regulatory jurisdiction does not extend beyond the Pinelands Area. She directed the Committee to Exhibit 2, the map of Manchester's PNR Area. She said the CMP allows the Commission to serve as the planning entity for the PNR. She said with the adoption of the CMP and the Land Capability Map in 1980, the management areas for the PNR were adopted as well. She noted usually the PNR is displayed on the map with crosshatching to indicate it is outside the Pinelands Area and it is often referred to as the CAFRA (Coastal Area Facility Review Act) overlap area where the New Jersey Department of Environmental Protection (NJDEP) has primary regulatory authority. She said through a Memorandum of Agreement with the Commission, NJDEP consults the Commission on development applications within the PNR as to consistency of those applications with the CMP.

Ms. Grogan said in the overlap areas, the CMP gives the municipalities the option to request that the Commission review their master plans and land use ordinances for consistency with the CMP. She said most recently this was done by Barnegat, Stafford and Upper townships. Ms. Grogan said Manchester had submitted a written request about a year ago and staff has been working with the Township to make various revisions to zoning district boundaries and regulations applicable to the PNR to achieve substantial compliance with the CMP. Ms. Grogan reviewed the long history within Manchester's PNR going back more than 30 years and leading up to the Township's request for the certification of its master plan and land use ordinances outside the Pinelands Area but within the PNR through Ordinance 18-035.

Ms. Grogan identified the area within the PNR (Exhibit #2), of the roughly 4,000 acre Heritage Mineral (Hovsons, Inc.) site. She said some 15 years ago a settlement with NJDEP allowed the establishment of a 995-acre Regional Growth Area (RGA) development area to accommodate a maximum of 2,450 new residential units and 20,000 square feet of commercial development with the remainder designated as Forest Area (FA) to be permanently protected open space and dedicated to the State. She said the Commission implemented that settlement through management area changes but neither the anticipated development nor the open space dedication has occurred.

She said although the Commission has not seen one recently, petitions for amendments to the CMP may be submitted to the Commission. She said although never approved, over the years petitions have come before the Commission to change the zoning in the PNR and staff had encouraged Manchester Township to come into conformance for the entire Pinelands Area and PNR so that petitions and properties would not have to be dealt with piece by piece.

Ms. Grogan said, because of recent affordable housing agreements, Manchester is now requesting certification in the PNR. She said, during this process, many mis-matches in mapping (zoning, sewer service areas, split lot lines etc.) were discovered that will be resolved through this certification process.

Ms. Grogan said the first of two primary zoning changes involves the Pinelands Town of Whiting. The portion of Whiting within the PNR, some 1,587 acres, will be redesignated from Rural Development Area (RDA) to Pinelands Town to match the zoning of the similarly developed portion of Whiting in the Pinelands Area. Other zoning changes involve redesignation of 112 acres of developed FA to Pinelands Town as well as some 92 acres from RDA to FA due to split lots or to recognize permanently preserved lands.

She said the second primary management area change involves the expansion by 240 acres of the existing RGA along the State Route 37 corridor to accommodate a proposed 500-unit affordable housing project, Presidential Gardens. The 240-acre area, currently in RDA, is already partially sewerred, contains a high school and associated recreational fields, a bank and three single-family

residential properties. She said the affordable housing project will be developed on 51 acres, and, as proposed, would account for a good portion of the Township's affordable housing obligation.

Ms. Grogan said most of the public comment received was related to the Route 37 RGA designation. She noted that outside the PNR, on the other side of Route 37, there is intense development including the Township municipal complex. The public comment expressed concerns regarding the impact of increased development on wildlife habitat and water quality as well as procedural concerns. Ms. Grogan said given the existing development along the Route 37 corridor, the rezoning is appropriate. She reviewed the procedural concerns noting that the Commission had posted a notice of receipt of the ordinance on the website in October 2018 and had followed all notice and hearing requirements.

She said for the Heritage Minerals area, the Township had previously adopted a zoning map to implement the settlement agreement but had never submitted it to the Commission for approval and had already included the area along Route 37 in zones where sewered, intensive development is permitted. She said another change is the permitted uses in the FA where Manchester was asked to eliminate golf courses and a variety of other intensive uses as permitted uses. Also, the Township had previously zoned for increased density in the Forest receiving zone but staff asked that it be scaled back to reflect what is permitted in the Pinelands Forest Area by the CMP.

Ms. Grogan said the acreage is small in terms of redesignation. She noted the Township is seeking Plan Endorsement and Center designation from the State Planning Commission. She said much of the area along Route 37 is designated as a Suburban Planning Area, which is comparable to the Commission's RGA. She said the State Planning Commission may request some changes and staff will have an opportunity to participate in that process. The Commission may be seeing a revised version of Manchester's zoning map in the future which should not be unexpected as municipalities often change their zoning.

Ms. Grogan said staff had met with NJDEP to discuss Route 37 and the large affordable housing project. She said the project had been denied by NJDEP many years ago, largely because of the RDA designation of the property. She said the applicant has resubmitted the project to NJDEP application and is working out various issues. The updated designation to RGA should facilitate the project.

Ms. Grogan said three written comments were received focusing on the Route 37 area. One commenter stated the town center should be in Whiting, not on Route 37. She said staff agreed that Whiting is where development should occur but the Township feels that Route 37 is a busy highway corridor and more intense development there is also appropriate. She said a letter submitted by the Pinelands Preservation Alliance and Save Barnegat Bay felt that this was a single management area change to allow increased development without an offset and therefore inappropriate. Ms. Grogan said staff disagreed. The Township's entire PNR area is addressed,

development potential in the Pinelands Forest Area is reduced to be consistent with the CMP and the conditions of the Heritage settlement agreement remain unchanged.

Ms. Grogan said although there were not a lot of changes to Manchester's land use ordinance, there is a long history, many moving parts and multiple agencies involved. She said staff believes the Township's zoning plan is appropriate.

Commissioner Lohbauer complimented Ms. Grogan on the presentation and said he believed it makes sense. As for Route 37, the more intense development conforms with what is happening in Lakehurst to the north.

In response to Commissioner Lohbauer's question as to how the zoning change to Pinelands Town will impact Whiting, Ms. Grogan said currently the area is heavily developed so there is not much opportunity for further development.

In response to Commissioner Prickett's question if the current RDA portion of Whiting in the PNR was sewerred, Mr. Lanute said the 1979 aerials indicate that the subdivisions were in the process of being built out at that time and Ms. Grogan said that development could have occurred with sewer service in the RDA prior to the adoption of the CMP.

In response to Commissioner Lloyd's question, Ms. Grogan said both sides of Route 37 are in CAFRA.

Commissioner Howell recommended Commission certification of Manchester Township's Master Plan and Land Use Ordinances for that portion of the municipality in the Pinelands National Reserve, outside the state-designated Pinelands Area. Commissioner Prickett seconded the motion and all voted in agreement.

In response to Commissioner Barr's question as to what happens next, Ms. Grogan said the matter will be on the Commission's agenda for its April 12, 2019 meeting. Upon approval, staff will notify the State Planning Commission and NJDEP and update the Land Capability Map. She said NJDEP is finishing its CAFRA review of the affordable housing project and will submit it to the Commission for review under the new designation where density is appropriate and sewer service is permitted. She said the project will still need to meet all environmental standards.

First Amendment to the February 26, 2004 Memorandum of Agreement between the Pinelands Commission and the South Jersey Transportation Authority related to the Atlantic City International Airport

Ms. Roth reviewed the draft amendment to the February 26, 2004 Memorandum of Agreement (MOA) between the Pinelands Commission and the South Jersey Transportation Authority (SJTA) related to the Atlantic City Airport. She said SJTA was proposing a payment to the Commission's Pinelands Conservation Fund (PCF) of \$500,000, with five additional \$500,000

payments in order to allow mowing on the 290-acre Grassland Conservation and Management Area (GCMA) at the Atlantic City Airport and offset the removal of the GCMA. The GCMA had been established to provide habitat for two State-listed upland bird species (the grasshopper sparrow [threatened] and the upland sandpiper [endangered]) as well as the State listed [threatened] Frosted elfin butterfly. The removal of the habitat will address safety concerns at the airport, in accordance with Federal Aviation Administration (FAA) requirements. Staff has told SJTA that, in addition to its monetary contribution to the Pinelands Conservation Fund, an additional grassland habitat conservation area of at least 62 acres, the minimum size suitable for upland sandpiper habitat, must be acquired.

Ms. Roth said Ms. Wittenberg had conducted a public hearing on March 19, 2019 at which there were two speakers, Ms. Rhyen Grech, with the Pinelands Preservation Alliance (PPA), and Ms. Sarah Brammell, a technical consultant with the FAA. She said three written comments had been received, all of which opposed the proposed amendment. One individual opposed changes to the MOA due to impacts on the bird species. The PPA and Audubon indicated that the safety concerns at the airport were not due to the birds cited and that SJTA and FAA needed to demonstrate the subject bird species were the cause of bird strikes. Other objections expressed fear for the future of habitat conservation and that payments to the PCF did not meet CMP standards.

Ms. Roth continued her review of the original MOA and the 2003 FAA Wildlife Habitat Management circular requiring that wildlife be managed outside the operation area of the airport.

Ms. Roth discussed the habitat for the Frosted elfin butterfly, noting that the Forest Preservation Area (as identified on the aerial of the Atlantic City Airport, *Exhibit A to the draft MOA amendment*) is adjacent to the existing habitat and by adding 12 more acres of habitat, through the planting of indigo, it is hoped that the butterflies will expand into this area as indigo is needed for egg laying.

Ms. Roth further described the specific habitat requirements for the upland sandpiper noting that the 62 acre minimum habitat site must include a 50' buffer from any structures or forests as described in the 2003 Federal Environmental Impact Statement.

Ms. Roth said the SJTA is scheduled to meet next Friday and provide a resolution of its Board consistent with the proposed MOA amendment, along with the initial payment. If that is not submitted to the Commission, mowing will not be permitted. In any case, mowing cannot be performed after April 15 as the birds will return to their breeding/nesting area by May 1 and they must be protected. If the mowing occurs prior to April 15, once the grass is cut to 5" to 10" in height, the bird habitat will be eliminated.

Ms. Roth discussed the timeline for payment, noting that if SJTA fails to meet its obligations, the Commission will not be able to grant future development approvals. There is an application pending for a de-icing pad but it cannot proceed absent the initial payment and Board resolution.

She said staff will be providing the Committee with periodic updates and will ask SJTA representatives to meet with this Committee occasionally.

In response to Commissioner Howell's question as to how the figure of \$3 million was developed, Ms. Roth said staff looked at the cost of lands preserved through the State Agricultural Development Committee (SADC) program. She said this was a conservative estimate that also includes administrative costs. She said staff believes it provides an equivalent level of protection to offset the loss of the habitat at the airport.

Ms. Wittenberg noted that PCF funds are leveraged as the Commission provides one third of the funding for projects with the remainder coming from other entities.

In response to Commissioner Howell's question if staff had examined SJTA's financial statements, Ms. Wittenberg said SJTA is another state agency and Ms. Roth said staff had looked at its 2015 budget.

Commissioner Howell suggested that , based on his review of their financial statements, SJTA could make a larger contribution, particularly as farmland continues to get more expensive and there are a number of pre-approved projects that were never completed. Also, he said he'd prefer a payment schedule within two to three years, not spread out over five.

Ms. Roth said the areas where they didn't do the anticipated projects were used for different projects and SJTA is limited as to where it can develop further at the airport.

Commissioner Barr said he concurred with Commissioner Howell and asked if shortening the payment time frame would cause SJTA to balk at the agreement.

Ms. Wittenberg said SJTA has indicated it is committed to its projects at the airport and staff can request more information regarding their plans to spend money in the future.

In response to Commissioner Lloyd's question as to how often the grass is mowed at the airport, Mr. Deman said the question is how quickly will they need to mow and that depends on the weather.

Commissioner Lloyd said that in some cases, the grassland habitat is currently within 30' of the runway. Ms. Roth said the FAA requires that wildlife habitat areas be beyond 10,000' from the airport operation area which is outside the perimeter of the fence at Atlantic City Airport.

In response to Commissioner Lloyd's question if, upon approval of the MOA, SJTA will build a hotel in the current grassland habitat area, Ms. Roth said they could propose to do so, but she did not know if that would comply with FAA regulations. She said there are advisory circulars regarding height of structures near the airport.

Commissioner Lloyd said he wanted to repeat his concern with the payment structure and said he wanted more money if it is to be paid out over a number of years.

In response to comments by Commissioner Lohbauer regarding the airport's status as a federal installation with both commercial and military flights, Ms. Roth said the FAA, United States Department of Agriculture (USDA) and other agencies are involved with the wildlife habitat assessment at the airport and have called for a reconsideration of the MOA and a withdrawal of the GCMA. The airport has received grant funds from the FAA and must abide by the advisory circulars. She said SJTA uses USDA to perform its wildlife assessments and their staff is on site to implement the management of wildlife.

Ms. Wittenberg said, for her, it is a matter of whether or not the Commission buys into the safety issue. She said SJTA has done nothing wrong. She said she didn't know why the issue has arisen now after all this time but she felt the safety issue was paramount.

Commissioner Lohbauer said he agreed but asked for comment on the assertion from those that opposed the MOA, including Audubon and PPA, that don't believe the current grassland habitat area attracts wildlife.

Ms. Roth said FAA and SJTA believe the area is a wildlife attractant. By maintaining the grass at a higher level, the airport has created a food source (rodents, insects, etc.) for larger birds and other wildlife. She said the strike data shows there are 30 to 40 bird strikes annually, with a higher period of strikes in the non-mowing season (April 15 to August 15). She said the birds causing the strikes are attracted to the habitat. Ms. Roth said PPA and Audubon are concerned that it is not the subject birds causing the problem. However, she said, there has been a documented case of an F-16 being hit by an upland sandpiper. She said not just commercial, but also military planes, use the site and the National Guard is assigned to the Department of Homeland Security with armed planes. She said, in an emergency, there would be no time to clear the runway. She said low, mowed grass allows the facility to continually access the view of any wildlife hazards including predators and birds

Commissioner Howell said he didn't feel the bird strike data show an increase over time and he felt there may be other underlying goals of which the Commission is unaware.

Ms. Wittenberg said she didn't disagree. She said this is not unlike issues such as climate change or Burlington County's application to widen Route 530. As for the latter, she reminded the Committee that questions were raised as to how many fatalities along the highway are too many before the road safety issues are addressed.

Commissioner Barr said his family flies in and out of the Atlantic City Airport regularly and he was well aware that people's lives are at stake.

Commissioner Lohbauer noted that there is legislation under consideration to promote expansion at the airport.

Ms. Roth said until 2017, the Port Authority had been operating the airport and it had been no better at attracting commercial development at the facility than is SJTA. She said although she understood there had been ongoing discussions, she's seen nothing beyond what she's read in the newspaper.

In response to Commissioner Barr's question if another entity should take over the airport would it be required to meet the same conditions, Ms. Roth said paragraph 18 of the draft agreement makes it clear that any successors or assigns are bound by this agreement.

Commissioner Lloyd suggested adding the term "contract operators".

In response to Commissioner Howell's question regarding potential changes to the agreement, Ms. Wittenberg said if there are no significant changes then there is no problem. However, larger changes will require a second public hearing.

Chairman Earlen said, in the interim, the SJTA Board needs to pass a Resolution stating they will abide by the draft agreement and provide the initial \$500,000 payment to the Commission. That Board needs an indication from the Committee as to what the Commission is likely to support.

Ms. Wittenberg said the Board had discussed the draft MOA amendment at its March 20, 2019 meeting and at least two members were not satisfied with it. She said if this matter is not on the Commission's April agenda, there will be no mowing permitted until August as the birds will return for nesting and egg-laying and would be in jeopardy. She said she would like confirmation of SJTA's actual assets and where those funds are committed.

Commissioner Howell said he believed the Commission needed that information.

Ms. Roth said the CMP requires a minimum of an equivalent level of protection to allow an MOA to proceed. In this case, the value of the 290-acre of the habitat lost from the elimination of the GCMA will be offset by the potential acquisition of a parcel of at least 62 acres and a \$3 million contribution to the PCF where it will be leveraged 3:1 for the purchase and protection of lands in the Pinelands Area. In addition, SJTA is providing enhanced butterfly habitat. She said she felt SJTA has shown a commitment to providing an equivalent level of protection.

In response to Commissioner Lloyd's question about safety concerns, Ms. Roth said there are classes of accidents based on damage, including \$2 million for the loss of aircraft, but no monetary value assigned to loss of life. She said there has been a case of \$125,000 in damages to a plane from a falcon and several impacts on commercial flights.

Chairman Earlen said he felt that the \$3 million payment amount and structure should remain the same as proposed but the payment schedule should accelerate if SJTA cannot find suitable habitat within a year.

Commissioner Lloyd said he was not yet comfortable making a recommendation to the full Commission and asked that the draft MOA, including Chairman Earlen's suggestion, be advanced to the Commission for consideration.

Ms. Roth said she would bring an updated MOA to the Commission at its April 12, 2019 meeting at which time it can decide if it wants to move forward.

Commissioner Barr moved the referral to the full Commission, without a recommendation, of the first amendment to the 2004 MOA between the Commission and SJTA related to the Atlantic City Airport. Commissioner Howell seconded the motion and all voted in agreement.

Ms. Roth announced that the public comment period was closed on the proposed amended MOA with SJTA. Ms. Grogan added that such was the case also with comments on the Bass River and Manchester ordinances discussed today. One may summarize previous comment but not provide new testimony.

Ms. Wittenberg noted that the Commission packets will be mailed on Wednesday, April 3, 2019. She said this is a very tight frame with SJTA conducting its Board meeting on Friday and the Governor's office closely involved so that the minutes are practically "pre-approved" following the April 12, 2019 Commission meeting. She said with the safety concerns at the airport, there are many steps involved to make this amended MOA happen in a timely manner.

5. Public Comment

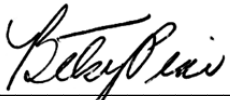
Ms. Rhyan Grech, with the Pinelands Preservation Alliance (PPA) reiterated PPA's concerns expressed in its March 6, 2019 joint letter with Save Barnegat Bay regarding Manchester Township's request for certification in the PNR as well as PPA's letter regarding the proposed amended MOA with SJTA at the Atlantic City Airport.

Commissioner Prickett said on March 14, 2019 the Assembly Agriculture & Natural Resources Committee and Assembly Environment & Solid Waste Committee conducted a hearing on restoring the health of the NJ Pinelands and surrounding areas to ensure public safety and maximum ecological benefit through measures to prevent wildfires. He said the legislature needs to provide more funding for forest management programs and that the acreage of annual controlled burns should be doubled from the current 20,000 acres to 40,000 acres. He said he felt criticism of the Pinelands Commission at the hearing was unwarranted, knowing that staff meets frequently with NJDEP throughout the year.

Ms. Wittenberg said she would be going on a field trip with NJDEP personnel shortly. She said the Commission does not regulate prescribed burning but does regulate forestry. She said she could not recall an instance where the Commission has denied NJDEP a forestry application, that there is often a conflict between habitat versus clearing and that she shared the concerns about wildfires and safety.

There being no other items of interest, Commissioner Prickett moved the adjournment of the meeting and Commissioner Lloyd seconded the motion. The meeting was adjourned at 12:10 p.m.

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: April 15, 2019