

ADOPTED July 26, 2019

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
June 28, 2019 - 9:30 a.m.

MINUTES

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

MEMBER ABSENT: Candace Ashmun

STAFF PRESENT: Nancy Wittenberg, Larry L. Liggett, Susan R. Grogan, Charles Horner, Gina Berg, Ed Wengrowski, Paul Leakan, and Betsy Piner. Also in attendance 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 9:32 a.m.

2. Pledge Allegiance to the Flag

All present pledged allegiance to the Flag.

3. Adoption of minutes from the May 31, 2019 CMP Policy & Implementation Committee Meeting

Commissioner Lohbauer moved the adoption of the May 31, 2019 meeting minutes. Commissioner Earlen seconded the motion. The minutes were adopted with all Committee members voting in the affirmative except Commissioner Irick, who abstained.

4. Pinelands Infrastructure Trust Fund - Review of Proposed Projects and Recommended Funding Priorities and Proposed Schedule

Ms. Berg noted that the meeting packet contained the draft amendments to the Pinelands Infrastructure Trust Fund (PITF) Master Plan, including staff recommendations for projects and funding levels. She made a PowerPoint presentation (*Attachment A to these minutes and posted on the Commission's web site at:*

<https://www.nj.gov/pinelands/home/presentations/PITF%20Priority%20Project%20List.pdf>

Ms. Berg said the PITF was established through the Bond Act of 1985 and, through the repayment of loans, approximately \$15.89 million is now available for new projects. She reviewed the process thus far, noting that the schedule anticipated sending approved infrastructure projects to the State Infrastructure Bank in September for administration and funding.

Ms. Berg said ten project proposals were received for a cost in excess of \$34 million, far more than the available \$15.89 million. From these, five priority projects serving Pinelands Regional Growth Areas were selected. She described these projects in more detail from a series of maps:

1. Pemberton Township Burlington County Institutions Water Systems Improvements – in the portion of the Township where the Commission had recently certified two redevelopment plans
2. Manchester & Jackson townships - water and sewer main extensions
3. Monroe Township – transportation improvements for a redevelopment area likely to be certified by the Commission in the coming months. Absent Commission certification, the project may not be eligible for funding.
4. Galloway Township - sewer extension in Pinehurst
5. Winslow Township - water and sewer extensions in a redevelopment area along Route 73

Ms. Berg described how the ranking system was applied to the ten projects using both mandatory and bonus criteria. She noted that Monroe Township had two projects within the top five, so the Winslow project was “bumped” up in order to distribute the projects among more municipalities. She further described the funding formula and allocation for the priority projects, noting that both the Jackson/Manchester and the Winslow projects have a higher percentage local match.

Ms. Berg said there is a disconnect between the PITF Act and the New Jersey Department of Environmental Protection’s (NJDEP) administrative rules. Based on earlier discussions, staff had assumed that amended NJDEP regulations would be adopted in time to administer the PITF funding, but has since been informed the rule amendments will not be adopted until 2021. She said the Commission needs a waiver from NJDEP rules to allow the funding of projects involving water supply and transportation. Without the waiver, NJDEP can only administer PITF funding for wastewater projects.

Mr. Liggett said staff had met with NJDEP and it is supportive of such a waiver.

Ms. Berg asked the Committee to keep in mind the need to request and be granted this waiver. She also said NJDEP asked that the Commission allow them to use the PITF wastewater project loan funding as a match to their State Revolving Funds (SRF) in perpetuity. She estimated the amount of affected funds to be \$4,476,578. These funds, when paid back to the PITF through loans, would always be obligated to wastewater projects.

Mr. Liggett said NJDEP has a broad definition of wastewater as it includes stormwater and wastewater recharge so the revolving funds would apply to only those types of projects, not water supply or other infrastructure.

In response to a question from Commissioner Lohbauer, Ms. Berg said the Commission is not seeking to obligate PITF funds to wastewater projects in perpetuity. Rather, it is NJDEP who is seeking the Commission's approval to do so. If the Commission agreed, NJDEP would decide which components of the projects constitute wastewater improvements and how much of the funding is associated with those components. She said, for instance, Monroe's proposed transportation project will have a stormwater component related to infiltration of water back into the ground. If NJDEP defines that as a wastewater project, the \$4 million-plus figure cited previously could increase.

Mr. Liggett said that each year, NJDEP must find state funds to match the SRF funds offered by the federal Environmental Protection Agency (EPA). He said staff has slight qualms about agreeing to NJDEP's use of the PITF as matching funds since it might limit use of that fund in the future.

Ms. Wittenberg said NJDEP ultimately might not need to use the PITF for a match as they might find matching funds elsewhere.

Commissioner Lohbauer said that although past practice has been to support wastewater projects, he was glad to see the transportation project, particularly since it had some "green" design elements, consistent with the bonus ranking criteria.

Ms. Berg summarized the recommended actions and next steps pending the Committee's approval.

In response to a question from Commissioner Lloyd, Ms. Berg said the requested waiver was from the NJDEP's administrative standards, which are currently limited to only wastewater projects. The potential rule amendments would add water supply and transportation projects to the administrative rules. Under the current rules, those projects cannot proceed without a waiver.

Ms. Wittenberg said, originally NJDEP had committed to adopting the necessary amendments in a more timely manner, but apparently their schedule changed, which is why the waiver will be required.

In response to Commissioner Lohbauer's question as to what happens to the projects that the Commission does not fund, Ms. Berg said they can apply directly to the Infrastructure Bank and hope that they will rank high enough to receive funding.

Ms. Grogan said staff would proceed with a public hearing on July 31, 2019 for the Pinelands Infrastructure Master Plan Amendment.

6. Review of draft CMP amendments for coordinated permitting

Ms. Wittenberg said that this morning the Committee would see staff's attempt to address the procedural gap identified with the two pipeline applications that didn't require local approvals. She said although staff had spoken to the Committee previously about other procedural changes, there is an interest in moving forward quickly with simple amendments to address this particular type of application.

Ms. Grogan distributed draft language to address coordinated permitting with state agencies (*Attachment B to these minutes*). She noted that there is an interest in having the Commission proceed quickly with amendments to address public service infrastructure projects for which the Board of Public Utilities (BPU) grants preemption from local review, but there may be other types of projects that need to be similarly addressed in the future. She said she had discussed this draft with the Commission's Deputy Attorney General and that office felt this document was ready to go before the Committee but it may want to tinker slightly with the language. She said the next step is to prepare the full proposal, including the up-front material explaining the reason for the amendment. She said that document would be shared with the Governor's Proposed Rules office before it is advanced to this Committee and ultimately the full Commission. She said today's document is pared down from what the Committee had discussed previously and seeks to fill the procedural gap for a very specific type of project.

In response to Commissioner Lohbauer's question if the Commission itself would conduct the public hearing under the provisions of 7:50-4.86, Ms. Grogan said it will not be a formal hearing but rather the same as any public development application with public comment offered at a Commission meeting (as listed on the agenda) and written comment submitted on that same day. The staff would then prepare a report to be provided to the Commission for action at the subsequent regular meeting.

In response to Commissioner Lohbauer's question as to how much notice the public would have to offer comment, Mr. Horner said upon receipt, the application is posted on the Commission's website. He said there was nothing in the Commission's rules to prevent someone from commenting on the application at that point. Once the application is complete, it is again posted on the website with a notice of the closing date of comment.

Ms. Grogan added that the new process would not be triggered until the Commission receives notice from the BPU that a project qualifies for the Municipal Land Use Law (MLUL) preemption. She said up until then, the project would be treated as we do any private development application.

Commissioner Lohbauer said some of the projects can be large and complex and might generate the interest of hundreds of public commenters. He said the Commission would benefit from a formal public hearing, rather than receiving comment as part of the Commission meeting.

In response to Commissioner Irick's question as to what would happen if an application were to change after the Commission has approved it, Ms. Wittenberg said a significant change would require an amended report once the Regulatory Programs office determines it is a substantive change and the process would start over again.

Mr. Horner said there are certain *di minimus* changes that do not require a new approval, e.g. if an applicant has an approval for 100 parking spaces and changes it to 99 parking spaces. The staff would review that change and notify the applicant that the Commission's approval is still valid.

Commissioner Irick said he agreed with Commissioner Lohbauer that a separate public hearing should be conducted.

Ms. Wittenberg said that would require a change to the process because the Commission routinely receives applications for many small projects such as electrical distribution lines that pass through multiple municipalities and qualify for the MLUL preemption. As they are quite routine and non-controversial, she said she felt the Commission would have no interest in conducting a special hearing for such projects.

Mr. Horner said there are many traditional public development applications that the office receives routinely, such as water, sewer and other utility projects that don't raise substantial issues. He said he thought the Commissioners were struggling with how to distinguish between the small routine projects and those that will raise a lot of public interest. He said from a regulatory perspective, that is difficult because it creates a "we'll know it when we see it" situation.

Commissioner Lohbauer said a two-tiered approach might provide the public with a greater opportunity to provide comment. He said he would like to see the Commission attempt to make a meaningful distinction between routine applications and those that raise public interest. He said the Commission wanted to avoid another situation where members of the public do not feel they have been heard.

Commissioner Howell said as he read this proposed language, he understood that the application would be posted on the website upon receipt with a second notice when it was complete, so he was unsure why this was an issue.

In response to Commissioner Earlen's question as to what constitutes a hearing, Commissioner Lohbauer said it would be an opportunity for the public to address a single application.

Ms. Wittenberg said the public wants to speak in front of the Commissioners themselves, not merely to the staff at a traditional public hearing. She said there has never been a mechanism for the Commission itself to conduct a hearing. Rather, public hearings are conducted by staff. What Commissioner Lohbauer is suggesting would require the creation of a separate process and a separate response document.

Commissioner Howell said he felt there was sufficient opportunity for public comment and that the benefit of this language is that it would treat these large multi-jurisdictional applications like all others. He said he appreciated the symmetry of having a uniform approach.

Commissioner Lohbauer said a lawsuit was filed against the Commission over the failure to provide public comment on the pipeline applications and this language does not address the problem.

Ms. Wittenberg responded that she shared his concern with the public comment process but these applications are processed as private development applications, which do not come before the Commission. She said the problem was that these applications receiving preemptions provided neither opportunity for municipal approval nor any public comment. She said they were private applications that never came before the Commissioners.

Commissioner Earlen suggested that perhaps a clearer and longer comment period might address public concerns.

In response to Ms. Wittenberg's suggestion that the public comment be extended to two months (two meetings at which the public could comment and then a vote by the Commission at the third meeting), Commissioner Lohbauer said he thought that would be acceptable.

Commissioner Earlen said whether it is a large or small project or a 30-day or 60-day comment period, the applicant needs to be aware of the schedule up front.

In response to a question from Commissioner Howell, Ms. Grogan said those applications that do not qualify for or apply for the MLUL preemption will require municipal approval and not be subject to this new process.

Ms. Grogan proposed that the CMP require a minimum of 30 days' notice be provided of the opportunity for public comment at a Commission meeting on any project that BPU determines qualifies for the MLUL preemption.

Commissioner Irick said he felt that would resolve his concerns.

6. Briefing on draft Kirkwood/Cohansey water supply policies and regulations

Ms. Wittenberg said that in 2001 Assemblyman Gibson (whom she noted had attended the last Commission meeting on an unrelated issue) sponsored legislation related to water supply and the Kirkwood/Cohansey (K/C) aquifer. She said it involved a significant amount of funding and required the Pinelands Commission to perform a number of studies related to hydrology and ecological impacts of withdrawal from the aquifer. Over the past 18 years, staff has performed a number of studies, met with various stakeholders and made presentations before the Commission. She said although there are still a number of questions being discussed internally, staff is now ready to make some recommendations regarding water use and protecting the aquifer. She said there is very little in the CMP regarding water management and there are many questions as to how one looks at adverse impacts and how to be assured that wells won't have impacts on stream flow and localized ecological impacts on wetlands. She said further meetings with stakeholders will be scheduled.

Ms. Berg made a PowerPoint presentation (*Attachment C to these minutes and posted on the Commission's website at: <https://www.nj.gov/pinelands/home/presentations/K-C.PI.062819.pdf>*

She said the current rules, as Ms. Wittenberg implied, are somewhat ambiguous and lack metrics to apply when considering well applications. She outlined the background, policy goals and rule changes related to standards, definitions and conservation measures and noted that the intention is to reduce ambiguity, but ensure that the policy goals are met. She said that both current rules and proposed rules would apply only to wells of 100,000 gallons per day or larger that are not agricultural diversions.

Ms. Berg said the policy goals include regional watershed protection; maintenance of stream flows; nearby wetlands protection; sufficient water for CMP authorized development; and quantitative rather than qualitative regulations. She said staff believes the Commission should impose more restrictive measures than the State. Also, she said, the CMP does not regulate all withdrawals, including agricultural wells. Ms. Berg's presentation continued to further lay out recommendations to achieve the policy goals.

In response to a question from Commissioner Lohbauer, Ms. Berg said wells that withdraw less than 100,000 gallons per day (GPD) are not regulated in the CMP and gave possible larger examples including those supplying mobile home parks and certain industrial uses. (Note: a single family home draws, on average, 300 gpd.)

Mr. Liggett described other ambiguous applications to address, such as the impact of replacement wells, for example the one at New Lisbon Developmental Center. He suggested that rules must consider what new development is permitted in the Preservation Area District (PAD) and Forest Area (FA). He said there are some new uses, typically small scale commercial, in the FA. He said one must ask if the use of water is consumptive or if it is going into a septic system with recharge and one must look at non K/C alternatives, such as was done with the requirement that the Ancora Psychiatric Hospital use a private water supply, rather than a K/C well.

In response to a question from Commissioner Lloyd, Ms. Berg said she did not know how many diversions exceeded 100,000 gpd but she did display a map of the larger wells, noting that the agricultural wells are not shown. She said most likely the information was available on the NJDEP website. Data on wells of < 100,000 gpd are more problematic.

Mr. Liggett said some ten years ago the Planning Office did a well study and projected future water demand as being primarily in Atlantic County.

Ms. Berg continued her discussion showing how a basin would be defined using Hydrologic Unit Code 11 (HUC-11) watersheds and NJDEP Watershed Management Areas. She said the HUC-11 watersheds, as delineated by the USGS, create NJDEP delineated Watershed Management Areas. These are combined to make the basins. The definition would apply to the current CMP requirement that water from one basin cannot be diverted another basin. The recommended definition is to have watersheds combined into the Atlantic Basin and the Delaware Basin, and she presented a map of the basins.

With regard to the policy goal of maintaining stream flows, Ms. Berg said staff recommends using the Low Flow Margin (LFM) for the HUC-11 watersheds that is supplied by the State Water Supply Plan. However, staff feels Pinelands standards should be more restrictive than those in the State Water Supply Plan and limit diversions to 20% of the LFM for any HUC-11 watershed. Staff proposes allowing 20% stream low flow margin (LFM) in the Regional Growth Area (RGA), Rural Development Area (RDA) Pinelands Towns (PT), Agricultural Production Area (APA), federal installations and certain Pinelands Villages (PV). New wells of greater than 100,000 gallons per day would be prohibited in the FA and the PAD. This provides the protection of water quantity for the PAD, as required by the Pinelands Protection Act. It was noted that water supply and levels in ephemeral ponds of the PAD will be further safeguarded by prohibiting new wells in the FA.

In response to a question from Commissioner Lohbauer, Ms. Berg said the major water purveyors are New Jersey American in the Delaware basin and SUEZ in the Atlantic basin.

In response to a question from Commissioner Lohbauer regarding agricultural wells, Ms. Wittenberg said they receive an allocation but it is not a regulated activity and not monitored so one does not know how much water is being withdrawn. Mr. Liggett said the amount of agricultural land is shrinking and many farmers are switching from aerial spraying to more efficient drip irrigation. Further discussion followed regarding monitoring agricultural water use and steps the State is taking to review agricultural use.

Ms. Berg reviewed the proposed three-step process for new well applications that are in a permitted area. The application requirements will assure wells are located to avoid local adverse impacts. The three steps are modeling drawdown effects, designing hydrologic analyses, and performing pump tests. Mr. Liggett noted that the CMP allows the Commission to accept escrow funds to hire experts or consultants to oversee the process.

Ms. Berg said that the three steps are intended to give clear standards on how adverse impacts are to be measured and to ensure that new wells will not result in more than a 4-inch drawdown at the wetlands boundary. Mr. Liggett said many studies show the impacts of water withdrawal start very early on plant and animal species, but that impacts increase significantly starting at four inches of drawdown. Staff further clarified that current rules may allow as much as a 12-inch drawdown at wetlands boundaries in the absence of precise limits.

In response to Commissioner Lohbauer's question as to whether the Commission would have an opportunity to withdraw approval or close a new well if it does not perform according to the testing, Mr. Liggett said NJDEP has the authority, but it is reluctant to intervene.

In response to Commissioner Lohbauer's question regarding the size of a HUC-11 and how municipalities that share a watershed might be affected by LFM limits, Ms. Berg said it would involve several towns sharing a well. She said local coordinated planning would be necessary. Mr. Liggett further shared that when the Commission recently approved an amendment to its Memorandum of Understanding with Winslow Township, it called for the establishment of a regional guidance committee on cumulative well withdrawals. He said a regional approach was needed.

Ms. Wittenberg said it would take one to two years to establish final rules. She indicated there would be coordination among agencies, stakeholders, and the public.

Commissioner Irick complimented the staff on the preparation of such an extensive report and asked about the Commission's plans regarding recharge. Mr. Liggett said, under the PITF needs assessment, applicants were asked about recharge of treated wastewater. Staff indicated that recharge could be used as an offset in stressed watersheds.

In response to a question from Commissioner Howell asking about any history of trading or selling water rights in New Jersey, Ms. Wittenberg said there is no established regulation. Ms. Berg said Burlington County runs a water credit bank for the Potomac-Magothy-Raritan aquifer. Ms. Wittenberg said she was not sure the Commission had the authority to establish such a program.

Ms. Berg summarized the key recommendations for consideration as follows: 20% LFM, basin definition; large new wells prohibited in in PAD and FA; conservation ordinance required when new well approved; no more than four inches of drawdown in wetlands; and mandatory offsets in constrained watersheds. She then concluded the presentation.

7. Public Comment

Mr. Rich Bizub, with the Pinelands Preservation Alliance (PPA), noted that the Kirkwood/Cohansey rule changes have taken a long time, noting that they began in October 2003. He was glad to see the Commission's approach but offered some comments. He said the

12-inch drawdown that NJDEP uses is fine for confined aquifers but it has been devastating to shallow aquifers. He noted that 100,000 gpd is the equivalent of 70 gallons/per minute or 3.1 million gallons per month over 30 days. He asked, since a typical golf course uses between seven and 20 million gallons per month, what does that mean for the environment? He said one should employ well sequencing, prohibiting the use of K/C wells in the summer and fall when their impact is greatest on wetlands and threatened and endangered species, and then allowing them to operate in the winter. He said the Commission should consider water transfer rights as is done in the western United States where water rights are bought to maintain a steady flow.

Ms. Rhyan Grech, also with PPA, referencing the discussion of coordinated permitting, said adjusting the process so that private entities are provided a procedure that aligns with that of public agencies is not appropriate. She said the major difference is municipal review involves an evidentiary hearing and cross examination and this proposal will allow the applicant to circumvent the process. She said the Commission's approval of two pipeline applications had led to distrust by the public.

Chairman Prickett noted that upcoming events include a meeting of the Land Use, Climate Impacts and Sustainability Committee on July 17, 2019, the Pinelands Summer Short Course in Hammonton on July 18, 2019 and the orientation for newly elected and appointed officials on Tuesday July 23, 2019.

There being no other items of interest, the meeting adjourned at 11:32 p.m. (moved by Commissioner Lohbauer and seconded by Commissioner Earlen)

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: July 16, 2019