

Adopted August 26, 2016

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
July 29, 2016 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Sean Earlen (Chairman) Candace Ashmun, Robert Barr, Richard Prickett and Joe DiBello (Alternate)

MEMBERS ABSENT: Paul E. Galletta, Ed Lloyd and Ed McGlinchey

STAFF PRESENT: Executive Director Nancy Wittenberg, Larry L. Liggett, Susan R. Grogan, Stacey P. Roth, Robyn Jeney, Joseph Sosik, Brad Lanute, Paul D. Leakan and Betsy Piner. Also present was Mr. Tyler Yingling with the Governor's Authorities Unit.

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

1. Adoption of minutes from the June 24, 2016 CMP Policy & Implementation Committee meeting

Commissioner Prickett moved the adoption of the June 24, 2016 meeting minutes. Commissioner Barr seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

2. Plan Review

Review of draft rule proposals and CMP amendments

Ms. Wittenberg said that staff continues to work on various Plan Review issues and has developed some draft CMP amendments for the Committee's discussion today. (*Commissioner DiBello arrived at 9:50 a.m. during the following discussion*)

Ms. Grogan made a PowerPoint presentation (*Attachment A to these minutes and posted on the Commission's website at <http://www.nj.gov/pinelands/home/presentations/CMP%20Amendments%20at%20July%202016%20pandi.pdf>*) noting that much of the rule language had been developed a few years ago along with some new items. Ms. Grogan described the various issues in the proposal as follows:

Application Fees: The proposal doubles the fees for applications involving violations such as clearing or developing without an application to the Commission. The increased fee reflects the

extra work imposed upon staff to resolve violations and staff hopes it will discourage such violations in the future. Specific fees are added for general development plans, typically those for larger projects for which approvals may span some 10 to 20 years. Under this provision, the applicant will pay half the fee upon initial submission of the application with the remainder due with the review of the subsequent phases of the project. Currently there is no specific fee for the development of solar energy facilities and the application fee is very high as it is based on construction costs. The proposal will establish a flat fee plus a cost per acre, similar to that applied to other land extensive uses like mining. This should reduce the cost of solar project applications considerably and may encourage more solar development. If adopted, it will be about ten years since the fees were last reviewed. The proposal includes a fee of \$300.00 for the demolition of a structure more than 50 years old. Based on the periodic review, staff is suggesting an increase of all fees by 50%. The proposal will eliminate the need for a sworn statement regarding cost/construction estimates. This was found to be cumbersome and staff will continue to review the estimates but the removal of this hurdle should expedite the review process.

Procedures and Exemptions The proposal eliminates the requirement for submission of names and addresses of people who “actively participate” on applications at the local Planning Board meetings. This requirement has found not be workable as often that information is not available. Now that there are so many opportunities for interested parties to obtain further information, there is no need for the Commission to actively try to pursue those who testify locally.

Commissioner Ashmun noted that the level of public concern is important. Some individuals may attend local meetings but not the Commission meetings.

Chairman Earlen said staff is looking for content, not the names of individual commenters.

During a brief discussion of the information provided in minutes of local meetings, Ms. Grogan said often those minutes are available on the municipal web sites and it is better to access them there rather than to gather copies for the Commission’s files.

A new provision clarifies that the exemption for prescribed burning includes linear clearing of vegetation not to exceed six feet in width and eliminates the exemption for utility distribution lines.

In response to a question from Commissioner Ashmun regarding the homeowner who puts a fire break around his house, Mr. Horner said there is no straightforward answer as the size of the property is a factor. The exemption may apply to a 1-acre lot but not a 100-acre lot.

Definitions and Procedures The proposal changes the definition of “interested person” to “interested party” and clarifies who has the right to participate formally in the Commission’s decision-making processes. It also clarifies that the Executive Director’s decision is considered rendered three days after mailing, not including the day the decision is mailed. This relates to the timing of appeals and is consistent with the procedure at the Office of Administrative Law.

Notice and Mailing Procedures The proposal will define “mail” to include “email” and eliminate most certified mailing requirements but will allow the Commission to do so if warranted. Also the

proposal eliminates requirements for newspaper notices and posting of notices on the subject property. These are seen as inefficient notification methods and, by requiring the posting of notices on the Commission's website, more people can be made aware of activities

In response to Commissioner Prickett's question if this was now the process State-wide, Ms. Grogan said yes. Also, she said, it is easier to search and get the information from a website rather than flipping through a newspaper where a legal notice would appear on only one particular day.

In response to Commissioner Barr's question regarding those who do not look at the website, Ms. Grogan said the Commission provides a hearing registry and maintains a list of those who are notified automatically.

Chairman Earlen noted that the municipalities have their own notice requirements and Ms. Roth stated that the Commission notifies the municipalities of any pending actions, while Commissioner Prickett added that public libraries have computers available. Ms. Grogan said the Commission already puts all hearing notices online.

Waivers The proposal will place an expiration date (one year from the effective date of these rules) for "old" extraordinary hardship waivers that were issued between 1981 and March 1992, when the "new" waiver rules took effect. At that time, the Commission determined that new waivers should expire after five years but chose not to apply such a deadline to the waivers granted previously. There are now some 200 of these waivers, many of which would no longer qualify or the properties have been sold, consolidated with other lots etc. Staff will attempt to notify all these property owners and explain their options. Some may be eligible to apply for and receive a new waiver approval.

In response to a question from Chairman Earlen if a year was sufficient time for affected landowners to be notified of the pending expiration date and obtain the necessary approvals, Ms. Grogan said that the notification process would start when the Commission proposes the rules, so landowners would actually have approximately two years. The approved waivers are almost all for one dwelling unit.

Another element of the proposal is the shifting of the responsibility from the applicant to the Commission for the advertising of public hearings on compelling public need waivers. This removes the cumbersome relationship between the applicant's obligations to advertise the hearing while the hearing is conducted by the Commission.

Landfills The proposal will clarify the circumstances under which an impermeable cap is not required on closed landfills (no significant public health risk from the plume, as determined by the New Jersey Department of Environmental Protection (NJDEP), and no significant ecological risk to wetlands).

Mr. Wengrowski reminded the Committee that staff had worked with the United States Geological Survey (USGS) whose staff had reviewed archived NJDEP data and developed a model to prioritize Pinelands landfills and determine which needed further investigation. He said staff will

work with the landfill owners to monitor any leachate plume and determine which landfills have no practical reason for concern.

In response to a question from Commissioner Prickett, Mr. Wengrowski said staff has been notifying the municipalities of any potential problems and “red light” projects. He said the municipalities are being penalized with high New Jersey Pollutant Discharge Elimination System (NJPDES) permit fees until the landfills are released by the Commission.

In response to Commissioner Prickett’s question if NJDEP will evaluate the data and remove landfills from the list, Mr. Wengrowski said the status of the landfills is posted on the Commission’s website. NJDEP has been provided with a copy of the USGS fate and transport model and many Pinelands landfills do not rise to a level of action required by NJDEP, but the Commission is looking for non-detectable levels, background levels or levels that are below an applicable regulatory standard in wetlands to protect the ecosystem.

Alternate Design Wastewater Systems Under this proposal, the FAST technology will graduate from the pilot program and be allowed for residential use on lots of at least 1.4 acres. Previously staff had thought the lot size should be 1.5 acres but that was a manifestation of rounding up. The proposal also deletes the mechanism for septic management as currently described in the CMP and instead relies upon NJDEP requirements that are specified in the State’s septic system standards. Mr. Wengrowski has been working with NJDEP and the Pinelands counties on this issue. Finally, under the draft rule proposal, advanced nitrogen reducing systems could be used for the expansion of or changes to existing nonresidential uses in the RDA, APA, FA and infill areas which should improve water quality while allowing expansion of permitted uses by 50%.

Commissioner Ashmun asked for clarification that the systems could not be used to allow residential development on smaller lots than currently permitted by zoning. Ms. Grogan said that authorization of the FAST system in no way allows for increases in permitted density or other changes in minimum lot size requirements. Use of the FAST system on 1.4 acre lots can only occur where that lot size is already permitted by a certified municipal zoning plan.

Commissioner Ashmun cautioned against relying solely on NJDEP’s rules for management and maintenance of these treatment systems. She said that NJDEP could abandon its oversight of the systems and then the CMP would contain no applicable standards. Ms. Grogan agreed to review the proposed CMP amendments to determine a better approach. She said that the current CMP requirements relating to the management of the pilot program treatment systems, which envisioned municipal tracking and management of the systems, have proved to be unworkable. The staff’s focus has shifted to working with Pinelands counties because they are obligated to fulfill these responsibilities under NJDEP regulations.

Mr. Wengrowski said that several businesses that cannot meet water quality by dilution will be able to improve groundwater quality by using one of these systems even as the use is expanded. He said that the Amphidrome system can be configured for commercial use and has attained nitrogen reduction efficiency by 97%.

Commissioner Ashmun said that the Commission had established the pilot program and is now harvesting the results.

In response to Commissioner Prickett's question as to why the expansion is limited to only 50%, Ms. Grogan said that one must be mindful that these uses are in the more conservation oriented management areas, particularly the Forest Area. Some of the existing uses are already quite large.

Mr. Liggett said all management areas have residential intensity standards but there are none for non-residential uses. In the non-sewered area, the intensity of development is controlled by septic dilution.

Ms. Grogan said if this proves to be successful, the Commission may want to permit these systems for new uses in the future.

Signs The proposal will eliminate the CMP standards for on-site signs and rely on the municipalities to regulate them and determine whether on-site signs using digital technology (electronic message display or EMD) should be permitted, regardless of management area. Off-site signs (billboards) in RGA and PT will be allowed to use digital technology subject to certain conditions but non-conforming existing billboards outside RGA and PT will be prohibited from converting to digital technology.

In response to a question from Commissioner Prickett, Ms. Grogan said that the Commission is aware of how many nonconforming billboards exist in the Pinelands but does not track them. If any were converted to EMD, it is likely that someone would report the violation.

Commissioner Prickett said he was concerned that billboards might become more valuable thus less likely to be removed.

Mr. Lanute said the NJ Department of Transportation (DOT) has a regional tracking system for billboards. DOT is aware of Pinelands standards and the tracking system distinguishes between conforming and non-conforming signs. It is a good resource.

Commissioner Barr said, as a fiscal conservative, he was concerned about the fee increases. He said he saw the need for it but New Jersey businesses are already taxed and any time one talks about raising fees, one must be mindful that it will be impactful on small businesses.

Ms. Wittenberg said the proposal retains the existing maximum application fee "caps".

Ms. Grogan said the cap will remain at \$50,000 for private development, \$25,000 for a public agency, and \$500 for a non-profit agency.

In response to a question from Chairman Earlen as to how frequently does a project require the maximum fee, Mr. Liggett said a couple of large solar projects hit that cap which is why staff decided to look at those fees.

In response to a question from Commissioner Prickett, Ms. Wittenberg said even if the 50% fee increase is not approved, staff wants to keep the solar fee decrease.

Ms. Wittenberg described the next steps of the process as the proposal will be reviewed in Trenton and then, if approved, will come back to the CMP P&I Committee for its consideration and recommendation to the full Commission.

In response to Commissioner Ashmun's question about other items from Plan Review, Ms. Grogan said there are more items and staff will continue to work on them.

Commissioner Ashmun offered to reconvene the MOA Policy Committee if it would help the process.

Black Run

Ms. Grogan made a presentation (*Attachment B to these minutes and posted on the Commission's website at <http://www.nj.gov/pinelands/home/presentations/Black%20Run%20Presentation%20at%207.29.16%20P&I%20meeting.pdf>*) on a potential rule proposal to protect the headwaters of the Black Run. She said since the last presentation (*see minutes of June 24, 2016 P&I Committee meeting*), staff had refined the boundaries of the proposed Forest Area by looking closely at existing uses, ownership and pending applications. She displayed a series of new maps, prepared by Mr. Sosik, that clearly show how heavily constrained the majority of vacant lots are due to extensive wetlands and wetlands buffer areas. She reminded the Committee that the rule proposal will first rezone from RDA to FA some 3,650 acres in southern Evesham and Medford townships. This is a slightly smaller area than had been discussed previously, based on staff's more detailed examination of the area. The second step will be the authorization of a pilot program allowing off site clustering in a 175-acre development area in the Southern portion of Evesham adjacent to the heavily developed portion of Voorhees Township. The development area, the newly created Restricted Regional Growth Area, will have the potential for 400 units on lots of no more than 15,000 square feet, served by sanitary sewer. The threatened and endangered species protection standards will be met through the permanent protection of the lands in the Forest Area. She said Evesham will be notifying landowners and is working with the Commission on this project. She said most of the private property owners are in the heavily constrained areas and cannot currently build. The pilot program will give them a chance to retain the value of their land by transferring their development potential. She said that the Committee had seen the draft rules last month and they will next be sent to Trenton for review. Staff will keep the Committee informed.

Chairman Earlen said he understood that the majority landowner was aware of the proposal but he wanted to be sure that all the landowners are notified before the rules are before the full Commission. He said he thought the affected property owners should have an opportunity to make comments on the process.

Ms. Grogan said staff will be working out the details with the Township and will keep the Committee informed.

Continued discussion of enhancements to the Pinelands Development Credit program

Mr. Liggett made a PowerPoint presentation on proposed enhancements to the PDC program (*Attachment C to these minutes and also posted on the Commission's website at <http://www.nj.gov/pinelands/home/presentations/PDC%20Enhancements%20P%20&%20I%207-29-16.pdf>*).

Mr. Liggett summarized the proposal including implementing the sliding scale requiring fewer PDCs at higher densities, exempting affordable units from a PDC obligation, enhancing flexibility to enable builders to better approach zone capacity, and treating the Pinelands Town Management Area the same as RGA. He said the proposal provides a number of relief mechanisms including requiring only 1 right for projects ≤ 4 units rather than applying the sliding scale and reducing the PDC obligation on lots heavily constrained by wetlands. He said the current iteration will impose no PDC obligation on commercial development but will provide municipalities with the option to shift PDC obligations to commercial development if they choose to do so. He said the current version defers consideration of allocating PDCs to the Forest Area or allowing an *in lieu* financial contribution to the Pinelands Conservation Fund until such time if/when the supply of PDCs warrants such options. He said the farm community had been very concerned about expanding the sending area as more PDCs will depress the price further.

Mr. Liggett said the builders like the sliding scale but object to it being mandatory. He also said they like the enhanced flexibility offered in this proposal and that they want smaller lots because they believe the current demand is for apartments and townhouses, not single-family detached units.

Mr. Liggett reviewed the presentation that had been made by NJBA at the June 24, 2016 Committee meeting, noting that the example had some erroneous calculations due to the confusion between PDCs and rights (1 PDC = 4 rights), failed to reflect any of the proposed flexibility provisions for constrained lots or recognize that there is no PDC obligation for affordable units. Furthermore, the builders' concern with height restrictions is not applicable in RGA where there are no CMP height restrictions. However, the case study did highlight for staff the need to further consider the relief mechanism for constrained lands.

Mr. Liggett provided some case studies prepared by Mr. Sosik. He said the impacts of the PDC enhancement proposal are not always obvious, noting differences in what the PDC obligation would be for projects under the current PDC program and the proposed enhancements.

Mr. Liggett said that staff had met with the representatives of the New Jersey Farm Bureau (NJFB) on July 26, 2016 and they are generally supportive of the enhancements. NJFB will be sharing the proposal with their constituents and respond to the Commission by September 1, 2016.

Staff met with the NJ Builders Association on July 27, 2016 and they remain opposed to the mandatory use of PDCs and want more flexibility. They are supportive of strengthening the PDC Bank which they believe could be accomplished by moving it out of the Department of Treasury and under the authority of the Pinelands Commission. Mr. Liggett said it will take legislation to strengthen the Bank.

Mr. Liggett distributed a document prepared by Mr. Creigh Rahenkamp (*Attachment D*) outlining the objections of the building industry and its recommendations to improve the PDC program, including eliminating the upper cap on permitted densities and the use of PDCs, bypassing local zoning district requirements with the use of PDCs, creating the right of appeal to the Commission for any denial by a local planning board, revising the function of the Bank and developing a sliding scale based on the type of housing product. Mr. Liggett noted that staff has been meeting with the builders for years but this was the first time they had been provided something in writing.

Mr. Liggett said the builders would like to see the PDC Bank sell certificates based on a set, established value and that the PDC cost should be based on housing types and location.

Mr. Liggett said staff had felt they were close to having a final proposal ready but this latest meeting with the builders has created somewhat of a setback. He said the Governor's Authorities Unit is aware of the three major stakeholders (municipalities, farmers and builders) and the Commission's goal of trying to work with all of them.

Chairman Earlen said it was good that the industry had provided a written document.

In response to a question posed by Commissioner Ashmun, Ms. Wittenberg said that the document presented by Mr. Rahenkamp had not been voted upon by NJBA. Staff had asked them to present some ideas and this document was their response.

3. Public Comment

Mr. Rich Bizub, with the Pinelands Preservation Alliance (PPA), said he was sorry not to see any proposed amendments related to the Kirkwood Cohansey initiative and hoped they would be forthcoming. Referencing the proposal relating to landfills, PPA felt the language raised some concerns regarding the role of the Commission in protecting wetlands.

Mr. Wengrowski responded that the proposal makes no changes in how one interprets the CMP in protecting water quality; rather the point of compliance is being moved. He said the CMP does not allow the degradation of water quality beyond background levels. If one has a landfill that is emitting constituents at a level equal to or less than background, there is no reason for remediation. For instance, if there is widespread degradation in the area due to an agricultural activity that is adding nitrate to the system and that landfill either dilutes that nitrate level (because there is less nitrate coming out of the landfill) or matches the nitrate concentration, there is no requirement to remediate. But, Mr. Wengrowski said, if the level of nitrate is increasing above background levels as a result of the landfill and the level is above the 2 mg/L standard, not at the monitoring well or the mass of water beneath the landfill, but at a receptor (a stream or wetland), then the CMP

requirements kick in for remediation and the same would apply to other constituents in a leachate plume if detected at the receptor. He said a testing laboratory would not report a zero detection level, rather the lab would provide a practical quantitative limit (PQL), the lowest level at which a substance can be detected and report the constituent as being below that level if it were not detected. He said the presence of any contaminant that exceeds the PQL at the receptor requires remediation. He noted that the presumptive remedy in the CMP is an impermeable cap on a landfill but such a cap does not always result in remediation if the underlying groundwater reaches up into the refuse field. He said it would stop water percolating from above but contaminants would still be leaching into the ground water. He said in such a case, a cap might meet the CMP obligation but would not remediate the problem. He said if a landfill is found to be leaking contaminants that are reaching receptors, there might be means other than a cap that would be required to remediate the problem and reduce the contaminants to below the background, PQL or the regulatory standard.

Mr. Bizub thanked Mr. Wengrowski for the clarification. He continued and said he felt the landfill rule should reference streams as well as wetlands as receptors. Also, he said he has been a longtime supporter of allowing the alternate design wastewater treatment systems for non-residential uses and believed their use will improve Pinelands water quality. However, he said the challenge would be in determining appropriate uses as these systems might be suitable for a retail clothing store to accommodate the restrooms, but perhaps not for a garage since solvents, paints, greases and other chemicals would not be treated and removed by these systems. Finally, he said he didn't understand the rationale for the provision to expand the use of the alternate design treatment systems to the Military and Federal Installation Area as most have their own sewer systems, except perhaps out in the range or bivouac areas where they might want to expand their bathroom facilities.

Ms. Tiffany CuvIELLO said she spoke on behalf of Maurice River, Buena Vista and Galloway townships which support allowing the expansion of the alternate design wastewater treatment systems. She said the builders' recommendation allowing the Commission to hear the appeal of a denial by a Planning or Zoning board was a plea the Commission should ignore. She said any appeal of a Planning or Zoning Board decision goes to the courts, and such a recommendation would not meet legal justification. She said Galloway supports the sliding scale PDC obligation in the RGA. Also, as Galloway has projects along the White Horse Pike (in RGA), it wants to have control over those design standards. She said it would be inappropriate for the Commission to set design standards as recommended by the builders. She said she was glad to see that a PDC obligation for non-residential development had been removed from this proposal although she supported allowing municipalities to have flexibility regarding PDCs for commercial projects. She said she wished the process could move faster. Galloway has a 100% affordable housing project and there should be an equity balance; the project should not be subject to a PDC obligation.

Mr. Jason Howell, with PPA, expressed his ongoing concern with the damage caused by off-road vehicles in Wharton State Forest and noted that PPA had recently organized a volunteer cleanup at Apple Pie Hill. Referencing Commissioner Barr's concern with the sacrifice of taxpayers he said what is going on with the off-road vehicles is sacrificing Wharton State Forest.

Mr. Ryan Rebozo, with PPA, asked the Commission to reconsider the implementation of the Best Management Practices for roadside maintenance. He cited locations where he had seen plant species damaged by those who ignore the “no mow” zone, by mowing beyond the 8’ buffer from the pavement, out of season or well below the 6” height limit. He said over the years, the message is not getting through to the supervisors or mowers and the Commission needs to make them aware of these obligations.

Ms. Grogan responded that Ms. Jeney has scheduled meetings with the Counties within the next month or so regarding the Commission’s agreements.

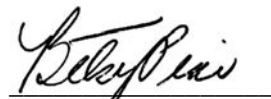
Mr. Jay Mounier, a resident of Franklinville, Gloucester County, said he did not speak for the Farm Bureau or for the Department of Agriculture rather as a small farm owner who has long been concerned that the PDC program doesn’t work particularly well. He said there have been some years when farmers were able to negotiate decent prices for their PDCs but, for the most part, they have not. He said the current proposal is about ten years old and hasn’t gone anywhere due to the interference from government, builders and municipal opposition. He said the only group to support the current proposal is the farmers. He said this is not all that beneficial but better than what is on the books already. He said if the Commission waits to hear what the municipal officials and builders think of the current rule proposal, the wait might be another 35 years. He said this delay is troubling to those whose rights were taken away in 1979 and who haven’t been able build anything since.

Ms. Wittenberg said that staff would look at the information provided by the builders and have further discussion to try to move a PDC proposal forward.

Chairman Earlen said it seemed the Commission needed the input from the various parties in order to try to accommodate the needs of all.

There being no other items of interest, the meeting adjourned at 12:04 a.m. (moved by Commissioner Barr and seconded by Commissioner Ashmun.)

Certified as true and correct:



Betsy Pfner,
Principal Planning Assistant

Date: August 16, 2016



Application Fees

- Double fees for applications involving violations
- Add specific fees for general development plans
- Add specific fees for solar energy facilities
- Add specific fee for demolition of old structures
- Eliminate need for sworn statements of construction cost estimates
- Increase all fees by 50%

Procedures and Exemptions

- Eliminate requirement for submission of names and addresses of people who “actively participate” on applications at Planning Board meetings
- Clarify exemption for prescribed burning to include linear clearing of vegetation not to exceed 6 feet in width
- Eliminate utility distribution line exemption

Definitions and Procedures

- Change the definition of “interested person” to “interested party” and clarify who has the right to formally participate in the Commission’s decision-making processes
- Decisions of the ED are considered rendered three days after mailing. Clarify that such decisions may be emailed and that we don’t count the day the decision is mailed when computing the three day period.

Notice and Mailing Procedures

- Define “mail” to include “email”
- Eliminate certified mailing requirements
- Eliminate newspaper notices
- Eliminate requirement to post notices on properties
- Require posting of notices on the Commission’s website

Waivers

- Establish an expiration date for “old” extraordinary hardship waivers (1981-March 1992)
- Shift responsibility for advertising public hearings on compelling public need waivers from applicants to the Commission

Landfills

Clarify the circumstances under which an impermeable cap is not required

- No significant public health risk from plume
- No significant ecological risk to wetlands from plume

Alternate Design Wastewater Systems

- “Graduate” the FAST technology from the septic pilot program and allow for residential use on 1.4 acre lots
- Delete septic management requirements for alternate design wastewater treatment systems and rely on DEP requirements
- Allow alternate design systems to be used for the expansion of or changes to existing nonresidential uses in the RDA, APA, FA and infill areas

Signs

Signs

- Eliminate CMP standards for on-site signs; rely on municipalities to regulate
- Give municipalities the ability to determine whether on-site signs using digital technology should be permitted, regardless of management area
- Allow off-site signs (billboards) in RGAs and Towns to use digital technology subject to certain conditions
- Prohibit existing billboards outside RGAs and Towns from converting to digital technology

Black Run Pilot Program

Increase protection for the Black Run headwaters and adjacent areas in southern Evesham Township

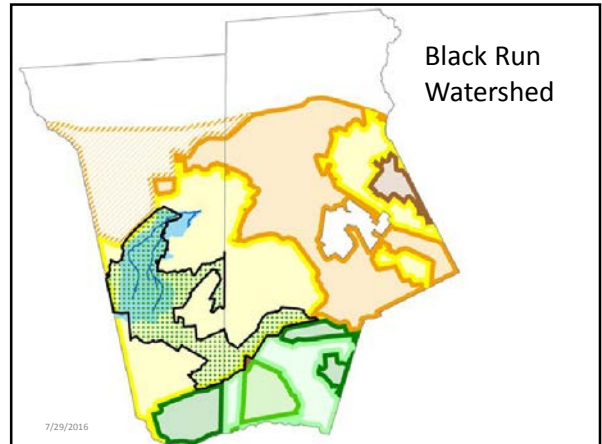
- New Forest Area (3,200 acres)
- Pilot Program
 - Designated development area (175 acres)
 - 400 residential units on sewer
 - Potential protection of 1,600 Forest Area acres

Black Run Rule Proposal



July 29, 2016
CMP Policy & Implementation Committee

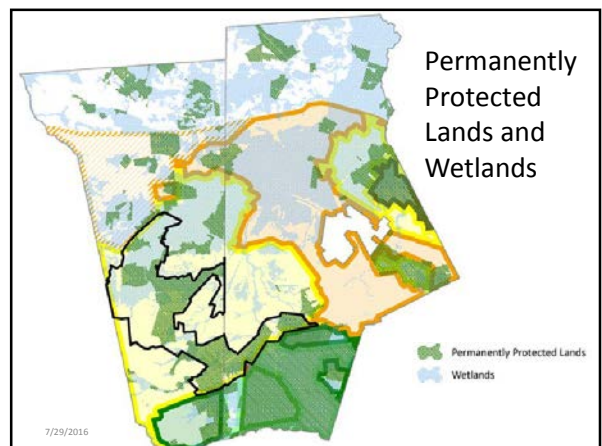
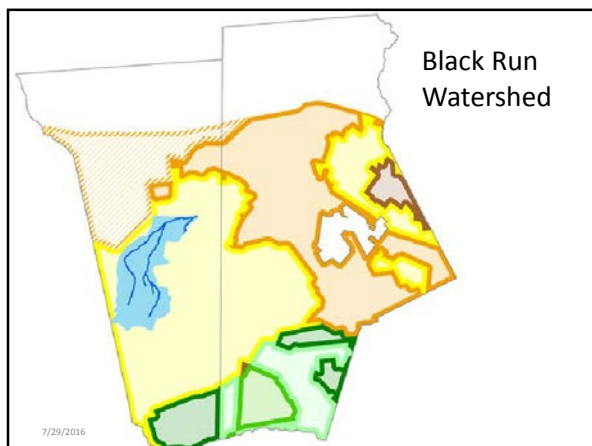
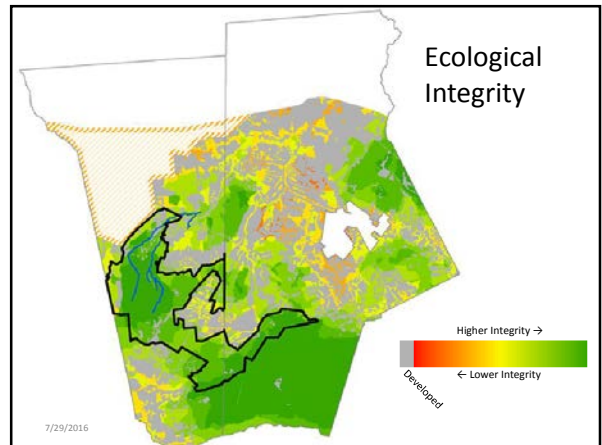
7/29/2016



Step 1: Forest Area Redesignation

- 3,650 acres from RDA to FA
 - 3,200 acres in Evesham
 - 450 acres in Medford
- Includes Black Run, adjacent lands in common ownership and other public and permanently protected lands
- Connects to existing FA in both municipalities

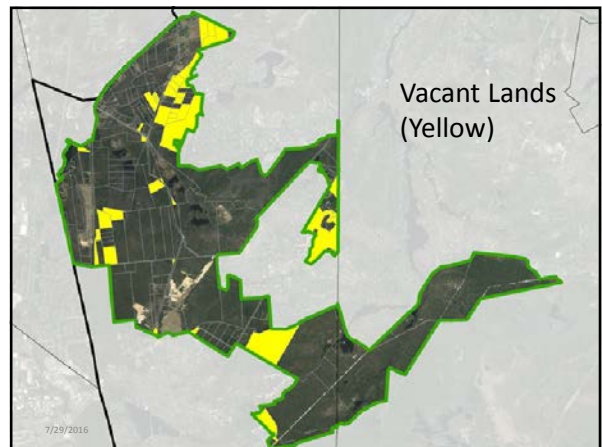
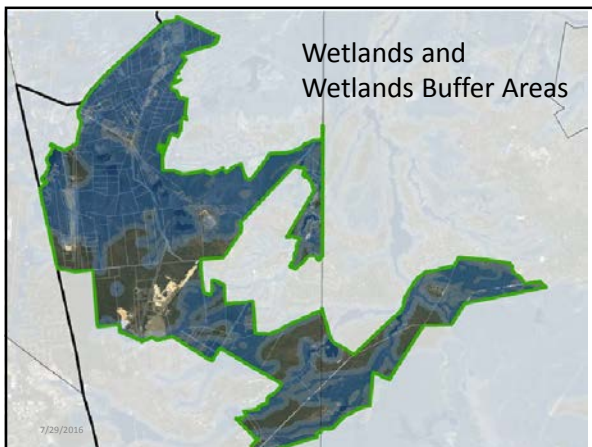
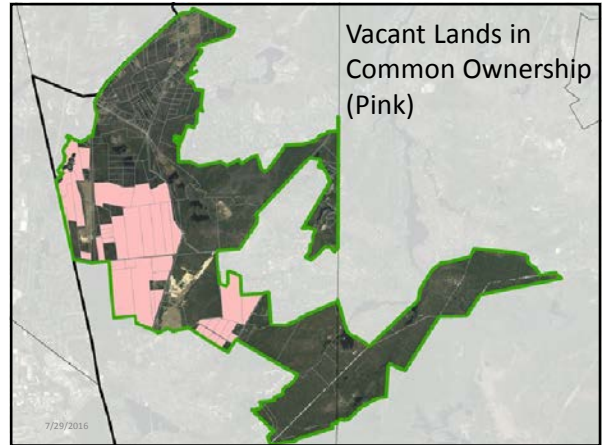
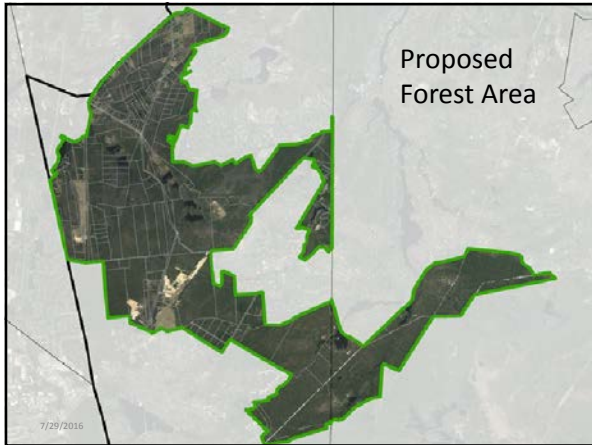
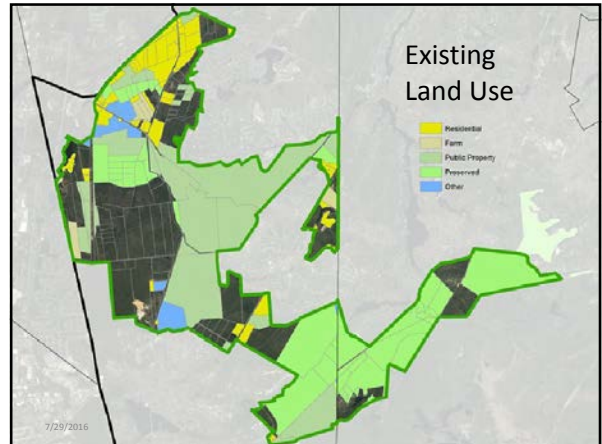
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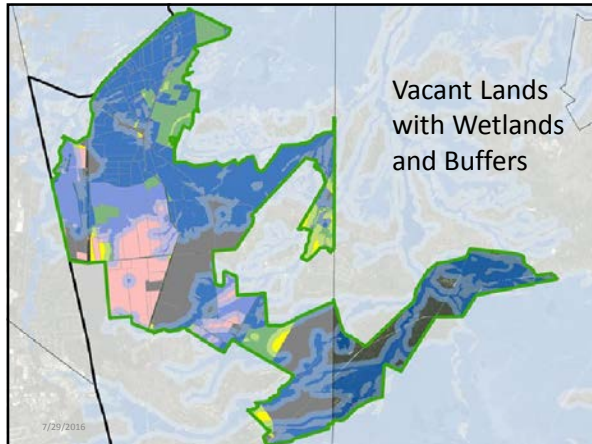


Step 1: Forest Area Redesignation

- New Forest Area
 - 3,650 acres total
 - 1,412 vacant acres available for development
- Current RDA designation
 - Permitted density of 1 unit/3.2 acres to 1 unit/6 acres
 - Zoning capacity of 353 units
- New FA designation
 - Maximum density of 1 unit per 25 acres
 - Zoning capacity of 57 units

7/29/2016





Conservation Area

- New Evesham Forest Area
– 1,400 vacant acres
- Existing Evesham Forest Area
– 250 vacant acres

7/29/2016

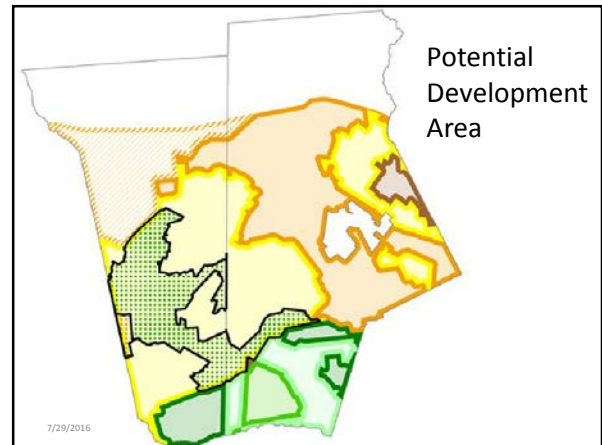
This slide contains the title 'Conservation Area' and a bulleted list of two items: 'New Evesham Forest Area' with 1,400 vacant acres and 'Existing Evesham Forest Area' with 250 vacant acres. A date stamp '7/29/2016' is located in the bottom left corner.

Step 2: Off-Site Clustering Pilot Program

- To encourage the clustering of all residential development potential in Evesham's new and existing Forest Area to a designated development area outside the Black Run
- Every unit constructed in the development area would require protection of 4 acres in the Forest Area
- Use of PDCs permitted only if Forest Area lands are unavailable

7/29/2016

This slide is titled 'Step 2: Off-Site Clustering Pilot Program' and lists three bullet points describing the program's goals and requirements. A date stamp '7/29/2016' is in the bottom left corner.

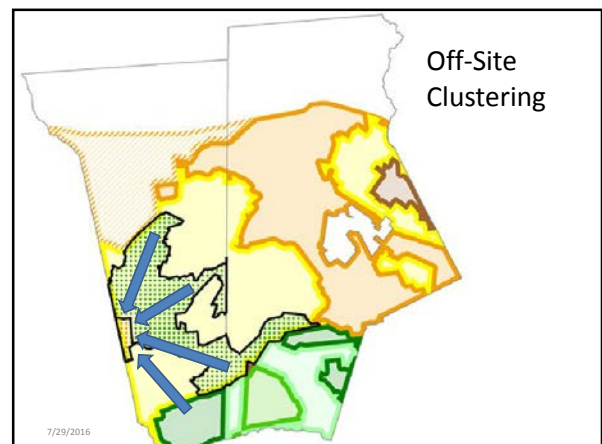


Development Area

- 175 acres
- 400 units
- Maximum lot size: 15,000 square feet
- Restricted Regional Growth Area
- Sewer service required
- Threatened and endangered species protection standards met through permanent protection of lands in the Forest Area

7/29/2016

This slide is titled 'Development Area' and lists six bullet points detailing the area's characteristics and requirements. A date stamp '7/29/2016' is in the bottom left corner.



PDC Enhancements: Update

P & I Committee
7/29/16

7/29/2016

PC Proposal Summary

- **Residential :**
 - Implement required use of PDCs with a **sliding scale** of from 5% to 50%
 - Minimize the PDC requirement at high densities to avoid unnecessary burdens for smaller units and affordable housing (5%)
 - **Exempt affordable units** from the PDC obligation
 - **Enhance flexibility** to enable builders to better approach zone capacity with:
 - Smaller minimum lot sizes,
 - Use of townhouses and apartments at higher density zones, and
 - Strengthened PC scrutiny on municipal development standards
 - **Remove the density cap** so that municipalities can work with developers and better address affordable housing and redevelopment.
 - Utilize current zoning, and require no new housing bonus mandate.
 - **Treat Pinelands Town Management Areas** the same as RGAs.

7/29/2016

Proposal (cont.)

- **Relief Mechanisms:**
 - Require only **1 right for all minor development (≤ 4 dus)** instead of imposing the sliding scale percentage.
 - Relieve **lots constrained** by substantial wetlands, etc. by reducing the %PDCs by 25%.

7/29/2016

Proposal (cont.)

- **Non-residential:**
 - Impose **no commercial obligation**.
 - Permit municipalities to shift PDC obligations to non-residential as an option.
- **Supply Bottleneck:**
 - **Defer action** on adding PDCs to the current supply to an unspecified point in the future if and when needed.
 - Defer the option to replace PDCs with an equivalent financial contribution to the PCF if PDCs are demonstrated to not be available to an unspecified point in the future if and when needed.

7/29/2016

NJBA Example (312 apartment units)


- **Under current CMP**
 - Percentage PDCs: 16%
 - Rights: **50**
 - Cost: **\$500,000**
- **Using New Sliding scale**
 - Percentage PDCs: 35%
 - Rights: 110
 - Cost: \$1,100,000
- **With New Affordable Housing Exemption**
 - Percentage PDCs: 31%
 - Rights: 95
 - Cost: \$950,000
- **With New Constrained Lot Reduction**
 - Percentage PDCs: 26%
 - Rights: **71**
 - Cost: **\$710,000** (Net over current = \$210,000)

7/29/2016

2. Geneanna Development

App. No. 1995-1176.003

Winslow Township – PR-2 Zone
0.7 du/ac Base, 1.45 du/ac PDC
Proposed 83 SF Detached Units on 64.5 acres
Proposed density is 1.29 du/ac
20% mandatory affordable housing




| | |
|--|---|
| <p>Current PDC Program</p> <ul style="list-style-type: none"> • Of the 83 total units: <ul style="list-style-type: none"> - Base units: 45 - PDC units: 38 <p>Required PDCs: 9.5 (38 rights)</p> | <p>Proposed PDC Enhancements</p> <ul style="list-style-type: none"> • 1.29 du/ac = 50% PDC obligation <p>Required PDCs: 10.5 (42 rights)</p> |
|--|---|

7/29/2016

2. Geneanna Development
App. No. 1995-1176.003

Winslow Township – PR-2 Zone
0.7 du/ac Base, 1.45 du/ac PDC
Proposed 83 SF Detached Units on 64.5 acres
Proposed density is 1.29 du/ac
20% mandatory affordable housing



Current PDC Program

- Of the 83 total units:
 - Base units: 45
 - PDC units: 38

Proposed PDC Enhancements

- 1.29 du/ac = 50% PDC obligation
- 20% affordable housing (-1.25 PDCs)

Required PDCs: **9.5** (38 rights) Required PDCs: **8.5** (33 rights)

7/29/2016

4. Village Grande at English Mill
App. No. 1983-6164.007

Egg Harbor Township – RG-3 Zone
2.25 du/ac Base, 3.75 du/ac PDC
Proposed 397 Units on 173.7 acres
Proposed density is 2.28 du/ac
20% (minus wetlands and basins) for open space



Current PDC Program

- Of the 397 total units:
 - Base units: 390
 - PDC units: 7

Proposed PDC Enhancements


- 2.28 du/ac = 45% PDC obligation

Required PDCs: **1.75** (7 rights) Required PDCs: **44.75** (179 rights)

7/29/2016

Hypothetical

Egg Harbor Township – RG-2 Zone
2 du/ac Base, 3 du/ac PDC
Proposed 42 Units on 18.5 acres
Proposed density is 2.27 du/ac
20% for open space



Current PDC Program

- Of the 42 total units:
 - Base units: 37
 - PDC units: 5

Proposed PDC Enhancements


- 2.27 du/ac = 45% PDC obligation

Required PDCs: **1.25** (5 rights) Required PDCs: **4.75** (19 rights)

7/29/2016

Hypothetical

Egg Harbor Township – RG-2 Zone
2 du/ac Base, 3 du/ac PDC
Proposed 42 Units on 18.5 acres
Proposed density is 2.27 du/ac
20% for open space



Current PDC Program

- Of the 42 total units:
 - Base units: 37
 - PDC units: 5

Proposed PDC Enhancements

- 2.27 du/ac = 45% PDC obligation
- Constrained lot = 25% PDC reduction (-4 rights)

Required PDCs: **1.25** (5 rights) Required PDCs: **3.75** (15 rights)

7/29/2016

Meeting Summaries

NJ Farm Bureau – July 26th

- Overall, very positive about the Commissions attitude and movements to enhance the PDC program.
- Will review the proposal with growers and provide feedback prior to September 1
- Not too concerned with other interested parties' feelings towards the program but want it to "work"

NJ Builders Assoc. – July 27th

- Still opposed to what amounts to as an "open space tax", i.e. the mandate
- Insistent that higher densities/flexible bulk standards will "fix" the program despite consistent avoidance of building over base densities in past
- Wants to help strengthen the PDC Bank

7/29/2016

NJBA Proposed PDC STRATEGY :
Creigh Rahenkamp 7-27-16

- PLAN B: WITHOUT COMPREHENSIVE PLANNING RE-ASSESSMENT
 - ELIMINATE THE CAP:** Starting with base densities that currently exist, eliminate the upper cap on the use of PDC's.
 - Initial Comment: very difficult to implement with Municipalities While builders would accept a cap, the current 50% PDC bonus is insufficient for product like townhouses and apartments.
 - ADOPT BULK/DESIGN REQUIREMENTS AT THE COMMISSION /PLAN LEVEL FOR USE BY PDC DEVELOPMENTS:** If you buy PDC's you can opt in to the standards
 - Initial Comment: Staff have proposed a local version of this, but it does not go as far enough.

7/29/2016

NJBA Proposed PDC STRATEGY :
Creigh Rahenkamp 7-27-16

3. **CREATE A RIGHT OF APPEAL TO COMMISSION:**
 - Initial Comment: conceivable, perhaps through the CMP call-up procedure.
4. **"MEND/ FIX/FUND THE BANK:** . . .to function properly as a "central bank" for the PDC currency
 - Initial Comment: We support legislative changes to the Bank.
5. **FAIR PDC COST:** Develop a sliding scale related to lot size/product type achieved.
 - Initial Comment: The sliding scale using % does something similar assuming product is associated with density (e.g., townshouses are associated with higher densities which require

7/29/2016

| | |
|---|---|
| <ul style="list-style-type: none"> • Builders' Example: • Actual project currently under construction • 312 unit apartment complex • Winslow Township, NJ • Apartment Project in the PR-4 zone • Current PDC Program Cost: • Currently requires: 12.5 PDC credits • Current Cost = \$ 10,000 per credit x 12.5 = \$125,000 (\$200,000) • Proposed Mandatory PDC Cost: • 312 unit apartment project on 100.84 acres • Density = 3.1 du/acre = Sliding Scale units requiring PDC's = 35% (or 110 rights) • Less than 2.3% of a unit's cost and only on the 272 market rate units • \$10,000/right = (35% x \$10,000) = \$3,500 per unit • *80% or 272 market rate units, \$952,000 • Proposed Total Cost = \$3,500/unit x 272 units = \$952,000.00 (\$952,000 or 95 rights) • \$452,000 without taking advantage of any of the relief provisions presented to the builders • Difference with mandatory PDC's = \$462,000.00 \$452,000 | <p style="text-align: right;"><u>Density</u></p> <p>Base Density = 2.6 du/ac Max permitted Density with PDC's = 5.25 du/ac</p> <p>12.5 Credits is equal to 30 PDC rights. Each right might cost \$10,000 for a total cost of \$500,000, or \$1600/unit and 1.1% of a unit's cost</p> <p style="text-align: right;">Currently proposed = 3.1 du/ac</p> |
|---|---|

Note: While the builders presentation ignored the relief provisions of the proposed new rule; the constrained parcel relief, for one, would reduce the required PDC's to **26%** and **71 rights**. This equates to \$2000/unit, less than 1.7% of the unit's cost.

7/29/2016



BRIEF BACKGROUND

- PDC's haven't worked as intended – they haven't raised the money expected, nor produced the density increases anticipated to produce the expected nature of the Growth Area under the CMP. There has been consensus on this point now for over a decade!
- The Building Industry cannot support a mandatory fee system – this is contrary to a core principle.
- Builders are willing to pay for a bonus, but the bonus has to deliver something of value in the market – today's market is for very small lots, townhomes and flats. The market for large lot single family homes is likely flat for a generation. A 50% bonus in 1 or 2-per acre zones won't be relevant.
- The best approach to creating a healthy PDC program is to create a healthy Growth Area. Given the many differences between 1980 and 2016, The Commission should initiate a comprehensive review of Growth Area polices: 1) balancing environmental regulations with the purpose of the growth area, 2) setting area-wide and district densities in line with planning theory and demographics, 3) reestablish bulk/design regulations consistent with Growth Area intent, and 4) create a functional bank.

TOWARD A PLAN B PDC STRATEGY WITHOUT PLANNING RE-ASSESSMENT

1. **ELIMINATE THE CAP:** Starting with base densities that currently exist, eliminate the upper cap on the use of PDC's. For example, a 1 per acre zone can host greater density with sufficient payment.
2. **ADOPT BULK/DESIGN REQUIREMENTS AT THE COMMISSION/PLAN LEVEL FOR USE BY PDC DEVELOPMENTS:** If you buy PDC's you can opt in to the standards adopted by the Commission and bypass local zoning district requirements. The PDC ordinance would need to permit 5, 6, 7, 8, 9, 10,000 sf lots, towns with garages, towns without garages, and flats.
3. **CREATE A RIGHT OF APPEAL TO COMMISSION:** Any applicant that has purchased PDC's has a right to appeal any denial by a local planning board directly to the Commission.
4. **"MEND/FIX/FUND THE BANK:** ...to function properly as a "central bank" for the PDC currency. Establish a price that applicants can rely upon for immediate/ direct purchase from the bank.
5. **FAIR PDC COST:** Develop a sliding scale related to lot size/product type achieved.