

Adopted March 27, 2009

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

February 27, 2009 - 9:30 a.m.

**MINUTES**

**MEMBERS IN ATTENDANCE:** Acting Chairman Norman Tomasello, Candace Ashmun, Leslie Ficcaglia, Ed Lloyd, John Haas (1<sup>st</sup> Alternate), Paul E. Galletta (2<sup>nd</sup> Alternate) and Daniel M. Kennedy (3<sup>rd</sup> Alternate)

**MEMBERS ABSENT:** Stephen Lee and Robert W. McIntosh

**STAFF PRESENT:** Chuck Horner, Susan Grogan, Stacey Roth, John Bunnell, David Kutner, Ed Wengrowski, Paul Leakan, and Betsy Piner

Acting Chairman Tomasello called the meeting to order at 9:30 a.m.

**1. Adoption of minutes from the January 30, 2009 CMP Policy and Implementation Committee meeting**

Commissioner Haas moved the adoption of the minutes of the January 30, 2009 meeting. Commissioner Galletta seconded and all were in favor.

**2. Executive Director's Reports**

**Plumsted Township Ordinance 2008-21, amending Chapter 15 (Zoning) of the Township's Code by rezoning all or portions of Block 76, Lots 82.01, 82.02, 82.05 and 83.01 from the Forest area to the Rural Development Area**

Ms. Grogan said that Ordinance 2008-21 rezones portions of several lots from the Forest Area (FA) to the Rural Development Area (RDA) in the vicinity of the New Egypt Speedway. The previous boundary did not follow lot lines and was difficult to administer. Although initially the Township was interested in rezoning only the Speedway property, staff asked that the area also include the two developed residential lots (with houses located at the rear portion of the property) in order to eliminate the split lot lines on those properties. Ms. Grogan said that roughly 20 acres are involved and that the surrounding land is FA in State ownership. The designation of the portions of the lands owned by the Speedway will recognize the presence of existing facilities already in place as they are not a permitted use within a Forest Area. She characterized the rezoning as an adjustment to correct a boundary issue.

Commissioner Haas moved the recommendation to the Commission of the certification of Plumsted Township Ordinance 2008-21. Commissioner Ficcaglia seconded and all were in favor.

**3. Electric Transmission Right-of- Way Plan review of draft pilot program rules and recommendation of rule proposal**

Ms. Grogan said that the meeting packet had included the Right of Way (RoW) Plan and a draft rule proposal related to a pilot program for the maintenance of vegetation in electric transmission rights of way.

Mr. Bunnell reviewed the *February 2009 Final Draft of the Electric-Transmission Right-of-Way Vegetation-Management Plan*. He noted the five components (tasks):

- Create a GIS database of bulk-electric-transmission rights-of-way in the Pinelands
- Map and describe managed right-of-way and Pineland-reference habitats
- Compare patch and landscape characteristics of managed right-of-way and Pinelands reference habitat types
- Summarize right-of-way vegetation-management strategies used by utility companies inside and outside the Pinelands
- Develop a dynamic span-by-span vegetation-management plan (prescription) for Pinelands rights-of way.

He noted that some 59 prescriptions had been developed for 3,041 spans, involving mowing and cutting and timing restrictions related to T/E species and wetlands. He said that 6 of the spans will require a T/E survey prior to any vegetation management being undertaken. As not all situations can be anticipated, the Plan provides for 8 conditions under which some flexibility is allowed such as a 15 day leeway in the length of time in which mowing is to be accomplished (in response to the utilities' concerns with the limited window for mowing) and recognition that in an emergency situation, removal of dead or dangling trees is permitted.

In response to Ms. Grogan's question, Mr. Bunnell said that yes, the Plan has been shared with the utility companies.

In response to questions from Commissioner Ashmun, Ms. Grogan said that the Plan will be on the Commission's website and that if members of the public have concerns either with the prescriptions or the utility company activities in the future, they can either contact the utility companies or the Commission. Mr. Horner added that the Commission has an obligation to respond to inquiries but, like any trespassing issue, the rights of way are considered private property.

Commissioner Haas said that this was a good plan with support from the utility companies.

Ms. Grogan asked that the rule proposal not be forwarded to the full Commission until its April meeting to start the formal rulemaking process. She said that when the rulemaking process is complete and the pilot program is adopted, at that time the Commission could adopt the Plan.

Commissioner Lloyd asked what will be happening with rights-of-way maintenance until then. Ms. Grogan responded that the utilities will continue to submit applications and staff will review them, using the prescriptions in the RoW Plan.

Commissioner Haas moved the recommendation of the proposal of the right-of-way pilot program to the full Commission. Commissioner Lloyd seconded. Commissioner Kennedy confirmed with Ms. Grogan that, as an alternate, he could vote today. All Committee members voted in favor.

#### **4. Septic management: review of draft rules and rule proposal**

Ms. Grogan said that draft rules had been sent to the Committee in their meeting packets related to the implementation of a septic system management program.

Mr. Wengrowski noted that the draft rules had not yet been circulated to DEP and the technical advisory committee so it is likely that some minor revisions will be made prior to the Committee reviewing the rules again. He said that the intent is to see the adoption of ordinances in all Pinelands municipalities to apply to the management of all septic systems. He also directed the Committee to one very specific typographical error at the top of page 10 of the proposal which called for *annual* inspections; this should be *triennial* inspections.

Commissioner Haas asked if a Pinelands model ordinance would be applicable to the non-Pinelands area of split communities. Mr. Wengrowski responded that in May, the DEP had adopted statewide rules applicable to all municipalities, and yes, the intent was to distribute a model ordinance which could be applicable both inside and outside the Pinelands Area.

Mr. Wengrowski said that staff had undertaken a series of public relations campaigns to talk with the public and municipalities about the necessity of good septic management. He said that although the municipalities are not pleased with DEP imposing the rule and the poor timing with these economic conditions (staff layoffs, budget constraints, etc.), they do support the goal in concept. The Commission is providing flexibility to allow the municipalities time to phase in their programs.

In response to Commissioner Galletta's question about those municipalities that are split between Pinelands and non-Pinelands Areas, Mr. Wengrowski said that the Commission does not extend its jurisdiction beyond its boundaries, nor does it require installation or replacement of septic systems.

Ms. Grogan said that, just as with the stormwater rules, there are slight differences between DEP's rules and those of the Commission. Staff will try to write an ordinance that can apply to both inside and outside the Pinelands if the municipality chooses to adopt it for its entire jurisdiction.

Commissioner Lloyd said that if the Commission were to do nothing, the municipalities would still be required to comply with DEP's rules; by providing a model ordinance, at least the Commission was helping them meet the DEP requirements.

Commissioner Kennedy said that some of the counties and DEP are working on non-Pinelands septic management ordinances.

Commissioner Ashmun said that presumably the close relationship between DEP and the Commission would guarantee consistency.

Mr. Wengrowski provided a brief PowerPoint presentation (*Attachment A*). He said that the municipalities would all be required to inventory their septic systems, issue permits for 3 years and require the systems be inspected/pumped as needed every 3 years. The permit is renewable only with proof that such inspection/pumping has been performed. The model ordinance will be broadly written and the goal is to provide it to the Pinelands municipalities prior to the April deadline that DEP has established as the time by which all municipalities must demonstrate an interest in participating in the program.

In response to Commissioner Lloyd's question if the introduction of an ordinance by April would be sufficient to meet DEP's requirement, Mr. Wengrowski said that DEP is being very flexible as long as some level of interest is demonstrated.

Mr. Wengrowski said that, since 1979 the CMP has required maintenance of septic systems but it has not been enforced. This will redouble the Commission's efforts to bring about compliance.

In response to Commissioner Ashmun's question if it would be the Boards of Health that will be adopting the ordinance, Ms. Grogan said that it would vary and be applicable in some municipalities but, for others, the governing body might be undertaking the responsibility.

Commissioner Galletta asked if the septic inventory would be put into a GIS system. Mr. Wengrowski replied, no, the inventory merely ties the septic system to a lot.

Commissioner Kennedy said that the staff has chosen the route of least impact and that this was a good start. He said that the municipalities see this as a huge issue because of the funding needed to implement it, just like COAH, the stormwater regulations, etc.

In response to Ms. Grogan's question if there were any funding dollars available, Mr. Wengrowski said that he had received an encouraging letter from Mr. Larry Baier at DEP (Director, Watershed Management) regarding money to help a couple of towns implement a septic management program. DEP has asked Mr. Wengrowski to submit a new grant request.

In response to a question from Commissioner Lloyd if there were money in the federal stimulus package that would be coming to the Commission, Mr. Wengrowski said that the Atlantic County Utility Authority has been working with the governor's office to identify some shovel-ready projects.

Commissioner Ashmun noted that in municipalities that already have these septic management programs in place, many homeowners have been saved much money because preventive maintenance is far less costly than replacing a septic system.

Ms. Grogan said that the Committee would be receiving a final version of these draft rules for the March 27, 2009 meeting, including any technical comments from DEP and the technical advisory committee.

##### **5. Wetlands restoration: continued review of draft rules and rule proposal**

Ms. Grogan said that Mr. Kutner would review the revised rule proposal dealing with wetlands restoration.

*Commissioner Ashmun recused herself and left the meeting at 10:12 a.m.*

Ms. Grogan said that staff hoped that following Mr. Kutner's presentation the Committee would authorize the proposal of the wetlands restoration rules although it would not go before the full Commission until the April meeting.

Mr. Kutner said that a draft resolution and rule proposal had been included in the meeting packet. He reviewed the changes to the draft rule based on previous Committee discussion. He said that the day before the meeting, the Pinelands Preservation Alliance (PPA) had submitted comments and one of the authors of the letter, Ms. Jaclyn Rhodes, was in the audience today.

Copies of PPA's comments were distributed (*Attachment B*). The Committee invited Ms. Rhodes to speak.

Ms. Rhodes said that overall PPA was pleased to see the opportunity for wetlands restoration but there were three main issues of concern: native plants, monitoring protocols, and herbicide use.

She said that although Russell Juelg (another of the co-authors of the letter) could not be here today, she wanted to convey his concerns about the use of native plants for restoration. PPA is concerned that the plant stock at a nursery might not be the same as that in the Pinelands, thus only local seed stock should be used. The concern was the introduction of a foreign species due to variability of plants from outside the Pinelands. She said that although their suggestion was that the plant source should be within a ten mile radius of the restoration site, there was no scientific basis for that distance.

Ms. Rhodes said that PPA's concern with monitoring protocols stems from its review of the Fish and Wildlife Service's dealing with Phragmites over the past 7 or 8 years which includes repeated herbicide application and burning. She said that PPA wants a long-term plan to address invasive species.

Ms. Rhodes said that PPA was also concerned with the use of herbicides in the PAD. She said that a high level of care must be taken as to the types of chemicals being introduced and that their use be very limited.

Commissioner Ficcaglia asked about a prohibition from spraying. Mr. Horner said that the issue of herbicide use is applicable in many situations and the Commission examines it under the CMP's water quality standards; herbicides are examined on a case-by-case basis.

Commissioner Galletta asked Ms. Rhodes if PPA felt that burning was preferable to herbicide application. She responded that the concern was with the drift of the spray and penetration of waterways. She said that there were a few cases where PPA felt that aerial spraying was appropriate but it should be expressly limited.

Mr. Horner said that he felt PPA had raised some good points but he felt that they could be addressed.

Commissioner Kennedy said that he did not agree with putting a limit on the mileage range of some plant stock supplies. Ms. Rhodes responded that she didn't have the expertise of Mr. Juelg but wanted the issue addressed in the front end of the proposal.

Commissioner Kennedy said that he'd been told that the plant stock is not as important as the management technique. Commissioner Lloyd said that he agreed.

Ms. Grogan said that, as with the aerial spraying issue, the background material of the rule proposal can elaborate upon the issue of plant stock sources. She said that it is always difficult to draft a standard that applies to all situations. However, the background material is a clear statement of intent and the Commission relies upon that background and it has a legal basis.

Commissioner Lloyd said that he wanted to make sure that the rules contain clear language that the applicant can understand.

Dr. Emile DeVito, with the NJ Conservation Foundation, said that, in the case of Atlantic White Cedar, the seed source does not matter.

Mr. Bill Zipse, with the NJ Forest Service, said that the State tree nursery tracks the provenance of tree seed. He said that Atlantic White Cedar has one provenance whereas there are some distinctions with pitch pine.

Commissioner Ficcaglia said that among plant suppliers there is a huge range of knowledge and tracking. Commissioner Lloyd asked if something in the rule proposal could discuss the provenance of the seed. Commissioner Ficcaglia said that additional language would put the nurseries on notice.

Dr. DeVito, referencing PSE&G's property in the Delaware Bay estuary, said that ongoing aerial spraying needs to be avoided. One needs to introduce salt water to kill Phragmites. Burning alone will never get rid of Phragmites permanently.

Ms. Grogan said that the Committee might want to ask Mr. Kutner to make a few changes to the language and then return next month. The Committee agreed on that approach.

Commissioner Lloyd said that he felt this morning's discussion had been very helpful. Commissioner Ficcaglia added that it would make a better rule.

## **6. Forestry: continued review of draft rules and rule proposal**

Commissioner Galletta said that he would need to recuse himself from the forestry discussion but that he did not support Ms. Roth's advice that he do so. He said that the recusal matter was going to create many problems. He said that just as the Forestry Advisory Committee had no members who were landowners with Pinelands forestry experience, now the Commission will have no members with trees who will be able to vote. He said that he believed that the recusal process itself might create an appearance of impropriety.

Commissioner Ficcaglia said that she did not need to recuse herself as she did not live in the Pinelands.

Commissioner Galletta said that his firm had been in business since 1935 and had never done any forestry activities. He left the room at 10:50 a.m.

Mr. Kutner said that this was the fourth time that the Committee had discussed forestry and today he reviewed the latest changes to the draft rules (as included with his February 20, 2009 cover memo in the meeting packet materials) which reflect the Committee's previous discussion. He said that the Agricultural Advisory Committee had met and discussed the forestry rules previously and had questions about the economic viability of forestry in the Pinelands and the extent to which the rules will promote forestry. He said that both Michael Catania, Chairman of the Forestry Advisory Committee (FAC) and Bob Williams, FAC Committee member, were here to respond.

Mr. Catania said that there have been some suggestions that the FAC should start the process again. He said that when the Committee first convened in February 2004, the membership composition was quite different than it is today. At that time Tom Bullock, Bob Williams, Jon Wagar and George Zimmerman, respected foresters from all segments of the industry, plus Bob Zappolarti, noted herpetologist, were part of a very balanced membership. The meetings were conducted so that there was ample opportunity for public input and participation; they added freely to the discussion. The Commission had asked the FAC to develop its best recommendations and, over the past 4 years, it has done so. He said that he was shocked and offended by the criticism. He said that he himself is a farmer, a forester and a *bone fide* landowner.

Mr. Catania said that the FAC had developed a unanimous report and that the Committee is frustrated that, after 4 years, it is being asked to readdress these same issues. The Committee is done with this project and further review is unlikely to result in any different answers than those

provided to date. In terms of the impact on the economic viability of forestry, these rules provide an applicant with a clear path and remove uncertainty when they initiate forestry activities. He said that forestry in the Pinelands is dead and that these rules will help bring it back by means such as providing BMPs for dealing with endangered species and providing silvicultural practices that address concerns with sensitive areas and sensitive times of year. These rules will promote the ecological integrity of the Pinelands and produce economic value. The report is the result of a compromise of hundreds of hours of meetings. If nothing is done soon, the last sawmill will close and that will end the discussion.

Mr. Bob Williams, a member of the FAC, said that he agreed with Mr. Catania. He said that, when he appeared before the Committee previously, he had been asked about the economic viability of the forestry industry. He said that his report had made it clear that the rules are not the problem; it is the perception of what the rules do. He said that he felt it inappropriate for him to describe the issues with which he had disagreed along the way as there was no opportunity for those who might support those same issues to speak. He said that he could sit here today knowing that he represented a lot of forest landowners. He said that he had done his duty as an objective committee member, giving comment, providing field trips, etc. The FAC needed to come to a consensus as a group. He said that his report is clear that any discussion of the protection of forests that doesn't include the evaluation of the economics is flawed. He said that he has been asked repeatedly to defend the results of the FAC while other Committee members are not. He said that he has never strayed away from his record. The Commission has not lived up to its obligation to protect the forests. He said that the fact that one is *saving* the forest is nearly as bad as developing it. He said that, for him it is about the conservation of the forest, not the preservation of the forest. There is no other forestry protocol in all of North America that is more detailed to promote forest practices that represent how a forest functions naturally than that prepared by the FAC. He said that the forestry rules are a first step. The industry functions by having a sustainable source of fiber. That resource is not available now.

Mr. Williams said that he had been mocked about his concern with the ruffed grouse; it was common but now it is extinct. Yet the pine snake is held up like the "Holy Grail". The plants are on their way out and nothing is being done about it.

Ms. Grogan said that the Committee had received the rules and the full proposal but staff was not asking for a recommendation to the full Commission until the next meeting. Commissioner Lloyd said that he preferred to have the Committee make its recommendation at its March 27, 2009 meeting.

Commissioner Haas said to Mr. Catania that he appreciated the work of the FAC and that it was now time to move forward with these rules.

## **7. Public Comment**

Mr. Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance (PPA), said that he agreed with Commissioner Haas. He said that PPA's main issue was that the rule perpetuates native forest types. He said that he was satisfied with the draft rule and would support it. A key issue will be how the principles will be implemented and he said that he hoped that the FAC would remain involved.

Mr. Kutner said that the FAC had recommended returning in five years to evaluate the forestry program and see that the goals were being achieved.

Commissioner Kennedy said that he thought it would be helpful if the Commission were to sponsor a half-day seminar.

Ms. Grogan said that she thought this was a great idea and added that staff has also discussed developing model forestry plans.

Ms. Deborah Buzby-Cope, Mayor of Bass River Township, said that her family has been involved with forestry on their 45 acre parcel since the 1700s. She said that she could see the points made by Bob Williams as she had seen what had happened to her own property when the forest wasn't managed. She said that she commended the FAC for its work and noted that protecting endangered species is best done by thinning trees.

*Commissioner Ashmun returned to the room at 11:20 a.m. Commissioner Galletta returned at 11:22 a.m.*

Mr. Ed Limpicki, Chief of the NJ Forest Service, noted the loss of the forest products industry over recent years, citing GAF which left in 1975, and the loss of some 685 sawmills. He cited the need for a critical link between the forest product suppliers and the industry.

Dr. Emile DeVito, with the NJ Conservation Foundation, said that he served on the current FAC. that it had been a very open process and that there were representatives from all interested parties. He said that NJCF supports the rule changes.

Mr. Bill Fox, Ocean County representative to the Pinelands Agricultural Advisory Committee (AAC), said that the Committee had recently been reactivated and that they were unaware of the activities of the FAC until the rules were drafted. He said that there was a huge disconnect between the FAC and the AAC and that he believed that the Commission needed to coordinate a joint meeting between the two committees in order to resolve their differences.

Mr. Catania said that he would be happy to meet with the AAC but that there was no need to start from scratch.

Ms. Grogan said that the minutes of the AAC would be provided to the Committee..

Mr. Fox said that it was his perception that the right of way rules proceeded so smoothly because the utilities had been involved from the beginning. He said that he believed that the AAC felt that it had been excluded from the process. Mr. Kutner said that there was no intent to exclude; it was a matter of timing.

## **8. Other Items of Interest**

Ms. Roth noted that although some Commission members might need to recuse themselves during the discussion of certain issues, during the period of public comment, there was no need for recusal.

The meeting adjourned at 11:40 a.m. (moved by Commissioner Kennedy and seconded by Commissioner Galletta)

/CS15A

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

February 27, 2009 - 9:30 a.m.

**SUMMARY**

The Committee **adopted the Minutes** of the January 30, 2009 meeting.

The Committee recommended that the Commission certify **Plumsted** Township Ordinance 2008-21

The Committee recommended that the Commission propose rules related to the management of vegetation in **electric transmission rights of way**. This will be on the April agenda.

The Committee discussed draft rules related to:

Septic Management

Wetlands Restoration

Forestry

On 2/18/09, the P&I Committee conducted the first of 3 special meetings to discuss draft revisions to the Land Capability Map based on the EIA project.