

**Adopted May 29, 2009**

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

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

15C Springfield Road

New Lisbon, New Jersey

April 24, 2009 - 9:30 a.m.

**MINUTES**

**MEMBERS IN ATTENDANCE:** Candace Ashmun, Leslie Ficcaglia, Stephen Lee, Ed Lloyd, and John Haas (1<sup>st</sup> Alternate)

**MEMBERS ABSENT:** Norman Tomasello and Robert W. McIntosh

**STAFF PRESENT:** John Stokes, Larry Liggett, Susan Grogan, and Betsy Piner

Commissioner Ashmun called the meeting to order at 9:40 a.m. and noted that any action taken by the Committee today would be only in the form of a recommendation to the Commission.

**1. Adoption of minutes from the March 27, 2009 CMP Policy and Implementation Committee meeting**

Commissioner Ficcaglia moved the adoption of the minutes of the March 27, 2009 meeting. Commissioner Haas seconded and all were in favor.

**2. Executive Director's Report**

**Jackson Township Stormwater Plan and Stormwater Control Ordinances**

Ms. Grogan said that Jackson was the last of the Pinelands municipalities to respond to the 2006 CMP amendments relating to stormwater management and that this has been a lengthy process, as evidenced by the sequence of events described in the report. She said that there was nothing unique about the Plan and ordinances and that the Township had relied upon the model ordinance provided by the Commission to all the Pinelands municipalities. She noted that there had been public comment from Rich Bizub, with the Pinelands Preservation Alliance (PPA), who spoke in support of the documents at the public hearing conducted on April 22, 2009. A summary of that testimony had been distributed prior to the meeting. *(Note: because the summary was incorporated into the April 24, 2009 Executive Director's report, as included with the Commission's May 8, 2009 meeting packets, it is not attached here.)* Staff was recommending full certification.

Commissioner Lloyd moved the recommendation to the Commission of the certification of Jackson Township Resolution 2009-10 and Ordinances 09-08 and 20-08. Commissioner Ficaglia seconded and all were in favor.

### **3. Presentation by Jackson Township of its proposed master plan and zoning amendments**

Mr. Stokes asked the Committee to recall that Jackson Township had made a number of changes to its zoning ordinance in response to the recommendations of the Toms River Corridor Plan ([http://www.state.nj.us/pinelands/infor/broch/toms\\_river\\_corridor.pdf](http://www.state.nj.us/pinelands/infor/broch/toms_river_corridor.pdf)) and continues to evaluate its zoning both inside and outside the Pinelands Area. He said that Jackson Township was in the midst of its Master Plan review and that Mr. Liggett's April 17, 2009 packet memo identified some of the Township's concerns related to the Rural Development Area (RDA) and Regional Growth Area (RGA).

Mr. Liggett said that staff had met several times recently with Jackson Township officials. He said that the Township has a large RDA (in the vicinity of the Clayton mine) which currently permits residential development at 1 du/9 acres with mandatory clustering. The Township now believes that commercial development in this portion of the Township would be more compatible with the uses at the adjacent military base. Staff has no issue with commercial use, but is concerned about the Township's interest in sewerage the area. The Township is also looking at changes to its Regional Growth Area, specifically the RG-2 Zone bordering the Forest Area that, according to the EIA study, was an area of high integrity in 2002. The area was not sewerage until relatively recently and now a sewer runs from Megan's Run along Grawtown Road through the center of the zone. There are many preliminary approvals/stalled projects and the Township would like to lessen the residential development pressure here as well as reduce, proactively, the number of complaints regarding noise due to the proximity of the base. Staff feels that the "integrity" of the area is compromised by the presence of this sewer line and the existence of approvals.

Mr. Liggett introduced Mr. Chris Warren, with Alaimo Associates, Jackson's master plan consultant, and noted that the meeting packet had contained 6 maps provided by the Township related to zoning, noise contours, and development and a seventh map prepared by staff related to the ecological integrity status of the subject area.

Mr. Warren distributed a document summarizing proposed zoning changes and 2 maps (*Attachments A: a document describing Jackson Township's proposed changes in the Pinelands Area; Attachment B : Figure 6.7, a map from the JLUS (Joint Land Use Study), indicating various noise conditions and Attachment C-a map entitled the Defense Air Facility Zone (DAFIZ) an oversized map attached to File Copy only.* He described major features of the Pinelands Area of the Township including various tributaries of the Toms River, a wildlife management area, the Lakehurst Naval Air Engineering Station (NAES), and the Toms River Corridor. He said that the Township was considering the creation of a conservation overlay zone based on factors such as wetlands and wetlands buffers, the special buffer of the Toms River Corridor Plan, and Category 1 waters. This

area would be excluded from density calculations when determining the residential yield of any particular parcel.

Mr. Warren provided a history of the zoning in the Township and reviewed various maps, noting that the initial zoning was more compatible with the presence of Navy operations than what exists today. The NAES was established in 1952, and thus predates the CMP.

Mr. Stokes said that his recollection was that the total amount of residential development permitted in the Pinelands Area of the Township under the CMP was much less than what had been permitted previously. Mr. Warren concurred.

Mr. Warren said that the EIA scores in the RGA along the western fringe of Jackson Township along Grawtown Road are the highest of any in a Pinelands RGA.

Mr. Warren said that when Jackson initiated this current Master Plan review, the first issue to be identified was the potential for substantial conflict with the military training exercises at Lakehurst and the mega base. He said that last year the Navy had completed the AICUZ (Air Installation Compatible Use Zone) studies (as shown in the contour maps). He noted that the number of air training landings would be increasing from the 12,000 that had occurred last year to 40,000 next year. NAES is equipped as a training facility and most flights are at night in support of that training mission. He said that it was important that the Commission understand the potential noise impacts from the facility. He said that an average noise level of 60-65 dBA is considered "acceptable", but, at peak levels the noise would range from 80-85 dBA inside a home to 100 dBA outside. He said that the contour maps show an *average* noise level.

Mr. Greg Bury, an environmental engineer since 1992 with the NAES, said that he would provide background as to how naval operations will affect Jackson Township. He said that he was a member of the Compatible Development Planning Team which worked closely with Jackson Township on their development issues. He said that he would reference terms described in the JLUS. The JLUS is a compatible land use study sponsored by the Department of Defense (including the three military bases: McGuire, Ft. Dix and Lakehurst NAES as well as the Office of Economic Adjustment) with representatives from Ocean and Burlington Counties, the ten surrounding municipalities, the Pinelands Commission and other organizations. This was a broad effort to look at the region to see how needs can best be met both inside and outside the existing bases and the anticipated merger of the military installations to create Joint Base New Jersey in October, 2009.

Mr. Bury said that in order to study these compatibility issues, the JLUS gathered information from various sources including the three bases, the municipalities and the September 2005 Environmental Assessment for East Coast Based C-17 Aircraft (EA), a document developed by the Base Realignment and Closure Commission (BRAC). The BRAC had decided to move C-17 operations to Navy Lakehurst, construct a new airfield parallel to an existing airstrip and add C-130 assault landing zone techniques to the training mission. Because neither the C-130s nor the C-17s were yet at Lakehurst in

September 2005, the EA could only model the anticipated noise levels once those operations were active with the aircraft on site. That modeling was based on work done by the Federal Interagency Council on Urban Noise (FICUN). The FICUN was founded in the late 1970's with the intent of developing consistent guidelines on the impact of total noise on communities. Mr. Bury referenced Appendix 13.4 of the JLUS as a source for more information related to FICUN. The FICUN developed a DNL (a day/night noise level) which is a 24-hour weighted average of all noise experiences during that time. It is not a minimum or maximum and doesn't represent the noise at any one time. He noted that, at night, noise is perceived as being more annoying than during the day, hence the need to weight the average noise by a few decibels (See Section 6 of the JLUS).

Mr. Bury responded to Commissioner Lloyd's question regarding how much weight was given to the night time noise, stating that he believed that it was about 5-10 decibels but was not absolutely sure as he was a planner, familiar with all these concepts, but was not a noise expert. He said that he could provide that information at a later time.

Mr. Bury read from page 29 of the JLUS and described how the DNLs led to the various noise contours based upon the percentage of the population that would be highly annoyed by noise levels experienced in a given zone. Zones were assigned to those various percentages ranging from <15% in Zone 1 to >39% in Zone 3. In addition there is a Land Use Planning Zone (LUPZ), a transition zone with DNL of 60-65 dBA and in which 9%-15% of the population would be highly annoyed. The zones are all based on computer modeling of the noise. Mr. Bury said again that the contours are averages and do not represent single noise events.

Mr. Bury said that double pane windows and reinforced construction are mitigation measures to deal with indoor noise but outdoor noise issues are also a factor.

Commissioner Ficcaglia asked if any of these studies deal with the health impacts of noise and Mr. Bury said that they do not but that the Department of Housing and Urban Development as well as the Veterans Administration recognize that noise levels are relevant to guaranteeing a mortgage.

In response to Mr. Stokes' questions regarding better methodology upon which land use decisions could be made, Mr. Bury said that the LPUZ provides an extra 5 dBA buffer from the Zone 2 level. Specific recommendations are included in the JLUS.

Referring to Attachment B, Mr. Warren said that due to the configuration of the air base and the location of the airstrips, there are potential impacts that are specific to Jackson Township. He said the Township does not want any further development close to the base. Their recommendations include a reduction in the size of the Pinelands Village of Legler along Route 571 to reduce the potential for development. Also the Township recommends that the Clayton property be split into three areas, one for resource extraction, one for a planned office industrial zone (in line with the noise levels and

accident potential zone) on sewer, and finally a Forest Area Zone (FA-2) at the northern fringe (the Glidden Area) near an excavated lake.

In response to Mr. Stokes' question as to the intensity of use in the planned office zone, Mr. Warren said that bulk warehousing and open storage at 20% lot coverage is being proposed, with clustered development if the area can be sewerred. Mr. Stokes noted that 20% was high for the Pinelands and Commissioner Ficcaglia noted that T/E species tend to move into sand mines.

Mr. Warren said that the Township is also concerned about how to treat the RGA and establish what type of growth is appropriate in the long term. It would not be responsible to promote growth in areas where residential development is incompatible with noise levels. Development with vested rights will be allowed to proceed and the Township has encouraged deed notices and attenuation measures but voluntary compliance has not been successful.

Ms. Erika Stahl, with the Ocean County Planning Department said that her office was in partnership with the JLUS and would be distributing the final report next Thursday (April 30, 2009). Also, she said that New Jersey has a standard building code which municipalities cannot change, even to require noise reduction measures, as per the Department of Community Affairs (DCA).

Mr. Warren said that the JLUS had made certain assumption that only one plane at a time would be involved in the training exercises but now the Navy says that they will involve two planes at a time. The Navy readily admits that this is not a conservative study and that the noise levels may be much worse than initially projected. The next EA study is expected in 2011, after the merger of the military installations but Jackson wants to address potential impacts now, and not wait for another study.

Mr. Bury said that there are already complaints based on 55dBA levels. He identified on a map (*Attachment #4*) the clusters of noise complaints (indicated by stars). He said, currently there are 12,000 Navy operations annually. When the Joint Base is fully operational, some 40,000 flights per year are anticipated. That is more than 100 flights per day, 6 days per week. As much of the practice is done at night, during the summer time, with shortened periods of darkness, the night operations will be particularly challenging.

Commissioner Haas asked if the noise levels are different from those experienced by Ocean County previously.

Mr. Bury responded that the noise levels will vary. He said that when the pilots practice touch-and-go operation, they need time to circle around to allow the brakes to cool. This has resulted in more community concern than had been anticipated further out from the airport.

Commissioner Lee said that he appreciated Jackson's interest in this issue and said that there needed to be a comprehensive plan to deal with the impacts from the base. He asked if there had been participants who really understood the flight operations. He said that such an understanding was not reflected in what he had heard this morning. He said that in touch-and-go operations, no brakes are applied because the plane never actually touches the runway. Furthermore, some noise impacts could be reduced by using a different runway approach than that described during the presentation.

Ms. Stahl said that the Department of Defense recognizes the problems created by the BRAC decision, has financed the study and wants to help resolve them through the JLUS. She said that the recommendations for the Clayton site would include a clear zone, an Accident Potential Zone 1 (APZ1) and an Accident Potential Zone 2 (APZ2). Those are areas which, based on past data, have a high likelihood of being potential crash sites. The Clayton sand mine lies in the APZ1. Also, the JLUS was looking at a comprehensive plan for the entire joint base but has not necessarily examined Jackson's RGA to the north of the base.

Ms. Grogan added that the money for the study was not targeted for acquisition, rather for noise and transportation issues. Also the JLUS recommends zoning changes from residential to industrial/commercial for the Clayton site consistent with the Toms River Corridor Plan but there are no specific zoning recommendations for Jackson's RGA contained in the JLUS. She also identified the permitted densities in the various zones to assist the Committee with their discussion.

Mr. Stokes said that it was likely that the Commission would have issues relative to the potential intensity of development at the Clayton site.

Mr. Warren said that Jackson Township did not want to interfere with the mission of the base yet did not want to deal with conflicts that would result from allowing development in areas where there were noise issues.

Mr. Liggett said that staff had suggested that higher density development might be permitted when accompanied by noise attenuation techniques.

Mr. Stokes said that the Commission needed to see what the JLUS recommends, check on the status of the Township's wastewater treatment works approval for the sewer line, explore alternatives such as purchasing land and zoning changes and follow up with the DCA regarding building codes. Commissioner Ashmun said that she wanted also to take another look at the Toms River corridor plan.

Mr. Stokes said that even if the JLUS does not make specific recommendations, it might be worthwhile to have the base commander discuss what NAES recommends and to pursue Commission questions relative to future operations. From what he has heard, outside the clear zones, the biggest recommendation is for sound attenuation. Obviously the fewer homes the better, but he said he wanted hear from NAES see what resources are available. Also, the Township would be asked to look at some alternatives.

Mr. Liggett said that most of the open space lands purchased thus far have been very close to the base where lands are cheaper.

The Committee asked that future presentations include maps identifying areas of open space, road names or route numbers, a legible map key, and the boundaries of the Lakehurst facility.

In response to Commissioner Lee's question as to why so many of the noise complaints appear to come from one particular subdivision, Mr. Warren said that it was an age restricted community.

Commissioner Ashmun said that she wanted to hear more about the Department of Defense purchase program and for staff to have further discussions with Jackson Township in order to provide the Committee with more information. She also said that noise ordinances applicable to new development are enabled and should be explored further. She called for public comment on this discussion.

Mr. Dennis Kelly said that he was an attorney representing a property owner in the RGA with development approvals. He said that he had personally accepted the restrictions (deed notices) recommended by the Navy for the RG-2 Zone, as have his clients. He said that the Township is developing an ordinance to determine where such deed restrictions should be included, e.g., sales brochure? Deed? Sales contract? He said that the Navy has never indicated that it was opposed to development in the RGA (for the applications that he has represented before the Planning Board) He said that his client has run sewer lines and a pump station at Megan's Run and has a C/F for the project.

Mr. Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance, said that he supported the RGA changes proposed here. In addition to the EIA and the noise issues, the Commission must also consider the protection of Barnegat Bay. The Bay is dying. Eutrophication resulting from excess nutrients would be curbed if the classic sprawl development on Grawtown Road were limited. He said that the Toms River Corridor Plan should not be used as an excuse to keep Grawtown Road in the RGA management area. At the time of the Toms River Corridor Plan, the Township Planner had indicated that the Grawtown Road project had been approved, thus was not considered for increased protection.

Mr. Kelly said that the Grawtown Road project was a 493 du project with local planning board approval. The court has affirmed that approval although there is still related litigation.

Commissioner Ashmun stated that the agenda sequence would be adjusted and that the discussion of PDCs would follow that of Affordable Housing.

#### 4. Affordable Housing – review of draft rules

Mr. Stokes said that last year there had been an amendment to the State's Fair Housing statute, generally referred to as A-500. That statute includes a specific reference to regional planning agencies (Pinelands Commission, Meadowlands Commission and Highlands Council) and their role in affordable housing. The Commission had developed and endorsed an MOA with the Council on Affordable Housing (COAH), based on its earlier comment on the COAH rules, to establish a framework for implementing A-500 and the Council's rules in the Pinelands. Unfortunately COAH has not responded to this request for an agreement. Thus, a different approach has been taken and Ms. Grogan has drafted rules, which Mr. Stokes characterized as elegant, simple and straightforward, to implement A-500 and address Pinelands concerns with COAH's rules. Mr. Stokes said that the Committee would review these draft rules today but that he was not expecting any action to be taken. The draft will also be provided to others to review. After reviewing the rules, the Committee will need to discuss how to proceed in the interim until new rules are adopted.

Ms. Grogan made a PowerPoint presentation (*Attachment E*) of the April 19, 2009 draft rules provided to the Committee prior to the meeting (*Attachment F*).

Ms. Grogan reminded the Committee of the history of COAH's rules noting that there had been two earlier sets of rules for which the Commission had provided comment. Those comments are reflected in these draft rules. The third round rules rely on a growth share approach; affordable housing obligations are based on a percentage of future residential and non-residential development within a municipality. COAH's projections for the period 2004 through 2018 are that 115,000 affordable housing units will be needed statewide. The basic formula by which the municipalities are supposed to abide is one affordable unit for every five market rate units and one affordable unit for every sixteen new jobs created within a municipality. The COAH rules authorize either development of affordable units on site or a developer can meet the obligation through an in-lieu payment for development to occur elsewhere in the municipality. There is an average in-lieu cost of \$161,000 per affordable unit although the cost varies according to the housing region; there are portions of three housing regions in the Pinelands Area and the in-lieu costs are significantly higher than those of previous COAH rules.

Ms. Grogan said that the third round rules provide for presumptive densities that ensure financial feasibility for inclusionary housing. In a market rate project, there is an assigned number of affordable units to be built along with the market rate units. These assigned densities are based on State Planning Areas. There is also a concept of cost generating features. In order to promote affordable housing, COAH does not want the cost of other requirements imposed by the municipalities or the Pinelands Commission to prevent affordable housing from being feasible. There is also a provision for expediting approvals of affordable housing. These issues caused concern to the staff and comments were provided to COAH. For instance, wetlands buffers, PDC obligations and the cost of T/E surveys could be viewed by COAH as cost-generating features yet must be applied in the Pinelands. The presumptive densities are meaningless in the Pinelands Area which

has no State Planning Areas and COAH rules do not recognize Pinelands Management Areas. If a municipality feels that it cannot meet its fair share obligation, it can undertake a detailed analysis to justify an alternative arrangement, but the rules are unclear as to how this would apply in the Pinelands. The Commission wants the COAH rules to be clear that the more conservation oriented management areas (PAD, SAPA, FA, and APA) are excluded from such an analysis as they have very limited residential development potential.

In response to Commissioner Lee's question as to why the Forest Area should be excluded, Ms. Grogan said that, even with the clustering rules and bonuses, there is still such limited development potential in the FA that it would not make a significant contribution towards the growth share obligation; it seemed unreasonable to ask municipalities to include (in some cases, huge), Forest Areas in their analyses. The RDA has a greater likelihood of significant development so should not be excluded.

Ms. Grogan noted that the Commission's concerns had been conveyed to COAH twice but the response was that, while they acknowledged the concerns, they would prefer to deal with these issues through a Memorandum of Understanding rather than in the rules themselves.

Ms. Grogan said that in addition to the COAH rules, the Commission must also respond to A-500 (now Public Law 2008, Chapter 46) which directs regional planning agencies to require that 20% of all newly constructed residential development be reserved for affordable units, to the extent economically feasible. These regional agencies must also work with the municipalities to identify appropriate sites for such affordable housing based on access to infrastructure, employment and public transportation.

Mr. Stokes added that the regional authorities also have the ability to change a municipality's fair share by up to 50%.

Ms. Grogan said that she had taken the requirements of the COAH rules and A500 and developed the draft rules provided today. She described the various minimum standards that, if adopted, municipalities would be required to incorporate into their ordinances. She said that new 7:50-6.132(a) (page 3 of the draft rules) implements A-500 with the 20% set-aside requirement for major development (5 or more dwelling units) noting that 1 affordable unit would be built for every 4 market-rate units. These proposed rules rely upon COAH's rules to define economic feasibility by providing for, in those sewered areas within PT, RGA or PV, a density bonus (at least 4 du/acre or a 40% bonus density) as an incentive to development of such projects. Such a bonus is not authorized in FA and RDA.

Mr. Stokes referenced COAH's designated housing regions and said that, based on a quick review, some of the housing prices assigned to the Pinelands housing regions seem abnormally high. Ms. Grogan said that in Housing Region #6 (Atlantic, Cape May and Cumberland Counties) the housing subsidy is \$183,000 while in Housing Regions #4 (Ocean County) it is \$152,000.

Mr. Stokes said that, in general, the farther north one travels in New Jersey, the higher the housing and land costs so perhaps the shore communities, which are well positioned financially (based on the Commission's fiscal stress project), have a disproportionate effect on the prices.

Commissioner Ashmun said she would find it interesting to see if there were any conflicts between the Commission's Housing Task Force (HTF) study and COAH rules.

In response to a question from Commissioner Ashmun regarding a time frame in which a municipality must use any in-lieu payments, Ms. Grogan said that there is a time limit within COAH's rules with provisions for extensions. Mr. Stokes added that the Commission will rely upon the COAH rules as they are the establishing agency; the Commission has no interest in becoming a "new" affordable housing agency.

Mr. Liggett said that the HTF numbers were close to the overall state numbers but what is difficult is how they are applied town by town. He said that the Commission's economic studies, as noted previously, have always shown that the further south one goes, the less expensive so the \$161,000 in-lieu payment seems counterintuitive.

In response to Commissioner Lloyd's question about the process for certifying the ordinances implementing the COAH rules, Ms. Grogan said that the Commission would be reviewing ordinances and fair share plans but will focus on the Commission's concerns (CMP standards).

Mr. Stokes added that there is an existing MOA with COAH and there had been ongoing discussions with COAH for two years to update it. He said that it would be helpful if the new rules were supplemented by a new agreement.

Ms. Grogan reviewed the standards for certification and said that A-500 gives the Commission the ability to adjust a municipality's fair share obligation by up to 50% based on local conditions. She said that these rules clarify the Commission's interest to expressly require that PDC obligations and other CMP standards are met and that affordable housing obligations can be transferred to other municipalities, e.g. where there might be better transportation or job opportunities. She noted that these rules recognize that there are unsewered municipalities in the Pinelands in which an affordable housing obligation can not be met.

Commissioner Lloyd asked if, for a case in which in-lieu payments are made, can the Commission collect that money and then help with its distribution. Ms. Grogan responded that such an arrangement exists in the Meadowlands. Mr. Stokes added that it might not be the best approach to take but it could be considered through an intergovernmental agreement.

Mr. Stokes said that Ms. Grogan will distribute these draft rules to a variety of interested parties and will expect comment. He said that when the Commission is ready to proceed

with proposing the PDC and density rules, then these affordable housing rules will be advanced with them at that time.

Mr. Stokes said that staff had discussed with the Attorney General's office the legal obligation to implement the statute during the interim period; they feel that the statute is clear enough for the Commission to implement it. Mr. Stokes said that, while the 20% set-aside is clear, what is not clear is the exception if a project is not economically feasible. The peculiar circumstances are fact specific and a developer must provide information to justify why a project is not economically feasible. He said that it was his intent to present a resolution to the Commission and put a notice in the New Jersey Register indicating the mechanism by which it will be applied by the Development Review staff on an interim basis. He noted that there is a continuum of development applications that pass through the Development Review system and it will be difficult to determine at what point an affordable housing obligation will be attached. He said that Ms. Grogan has advised him that if the Commission authorizes the rules in June, the earliest they would be adopted would be in December, followed by publication in the New Jersey Register in March, 2010, at which time they would become effective.

Mr. Stokes suggested that for the May 8, 2009 Commission meeting staff will provide a draft resolution. Both DAG Haynes and DAG Donlon will be present and an informal discussion can take place. The Committee concurred.

In response to Commissioner Lee's question about how the affordable housing rules would be applied if a town were to come in for a rezoning, Mr. Stokes said that the obligation is applied on a project-by-project basis. He said that if a municipality comes in with a comprehensive zoning proposal, they will be advised to put at least the minimum requirements for affordable housing in place. Most of the standards in the proposed rule go beyond the minimum statutory requirements.

Commissioner Ashmun asked if there were any public comment on the affordable housing rules.

Mr. Montgomery noted the incoherence among state policies regarding housing and the environment. He said that these rules appear to be an elegant model of how to bring about coherence. He said that he had looked at a number of Fair Share Plans and believed that they had all been written to avoid inclusionary housing. He said that although he did not find that surprising he said that if a town is going to use an alternate analysis then it should receive COAH certification prior to coming before the Commission.

## **5. PDC Program Reexamination – Review of Draft Rules and rule proposal**

*Commissioner Lee recused himself and left the meeting at 12:15 p.m. Commissioner Ficaglia had left earlier in the meeting although her departure was not noted at the time.*

Mr. Stokes noted that Commissioner Haas had recused himself previously from PDC discussions although it appears that he may now be eligible to participate. Mr. Stokes said that Commissioner Ashmun, no longer associated with the New Jersey Conservation Foundation (whose properties might qualify for PDCs in the Forest Area in the future), may now participate. Mr. Stokes said that there might be other issues leading to recusals of Commissioners, ultimately leading to the invocation of the rule of necessity. He said that from his conversations with DAG Valerie Haynes, it seems that, based on the review of court cases, the Commission would need to find ways to eliminate elements of a rule proposal to remove potential conflicts. As described in his April 20, 2009 packet memo, this has been accomplished by removing a previously proposed PDC obligation for public non-residential projects. Mr. Stokes said that this was a relatively minor part of the rule but would serve to allow Commissioners Haas and Kennedy, both of whom have County affiliation, to participate in the PDC recommendations.

Commissioner Lloyd said, for the record, that previously he had represented NJCF, but that did not constitute a disqualifying action.

Mr. Stokes said that the Committee had been sent the preliminary draft of a full rule proposal however staff is still conducting its own internal review and there may be some minor changes forthcoming. He said that the rules are the same as those distributed last month with a couple of minor changes. He said that he wanted to highlight five items.

Mr. Stokes referenced page 63 of his April 20, 2009 packet memo and said that, as expressed by Mr. Montgomery, inclusionary development is preferable in general and this provision calculates a PDC percentage requirement based on the overall density of a project. But if a large project has an area for affordable housing that is separate from the market rate units, then the developer may not use the overall density of the project for purposes of that calculation. Commissioner Lloyd questioned if perhaps a 200 unit development were proposed with apartment units scattered throughout, might not this become an implementation question.

Ms. Grogan responded that he was correct and that clusters throughout the overall project might be alright. Mr. Stokes added that perhaps one or more "separate" development areas scattered throughout the project might be permitted.

Mr. Stokes referenced page 65 of his memo and noted that the draft rules offer some relief to stressed municipalities (specifically Buena, Chesilhurst, Toms River, Wrightstown and Woodbine Boroughs, Egg Harbor City and Pemberton Township). These municipalities were identified as stressed in the Long Term Economic Monitoring Program Municipal Fiscal Health Project, which is still in draft form. The study is not referenced in these rules because the Commission has not yet adopted it and there might be some consideration to adding additional towns.

Mr. Liggett said that the Public and Governmental Programs Committee asked staff to submit the draft fiscal health report to the potential users, primarily the academic community and state agencies. Some responses have been received.

Mr. Stokes asked the Committee to recall that Chesilhurst Borough had come before them some time ago to appeal the cost of PDCs as being higher than that of a building lot. He said that that was an example of the circumstances under which a reduction in a PDC obligation might be authorized.

Mr. Stokes directed the Committee to p. 66 and said that these proposed rules delete the current standards for variances which are complicated and difficult to administer.

Additional provisions include certification standards on page 41 that encourage a variety of housing types in order to achieve a reasonable density. Mr. Stokes said that the growth policies of municipalities have a very strong conservation element as 0.25 PDCs protects about 8 or 9 acres of land in PDC sending areas. Conversely, in growth areas, the Commission wants to see efficient use of land.

On page 42, the rules address the revocation of certification based on the failure to allow residential densities to be achieved. On pages 43 and 44 the rules deal with permitting and the call-up of local permits if they fail to allow permitted densities to be achieved.

Mr. Stokes said that his last major point relates to the allocation of PDCs in the Forest Area (page 72). He said that there are four standards related to this new designation including: only the Forest Areas with the highest EIA scores would be considered for a PDC allocation; no designation of FA as a PDC sending area unless it is apparent that the clustering and density transfer programs are not likely to achieve the conservation objectives of preserving lands; the allocation formula will be that of the APA; and no more than 500 PDCs (2,000 rights) will be allocated and they will not substantially impair the private PDC market.

Mr. Stokes said that the Agricultural Advisory Committee was not in favor of allocating PDCs to the FA. In response to Commissioner Haas' question if the Municipal Council had reviewed these rules, Mr. Stokes said that these proposed rules have been in the works for several years and Mr. Liggett added that staff has done briefings to many entities.

Mr. Stokes said that he hoped that the P&I Committee would be ready to recommend these rules to the commission at its May meeting, along with the affordable housing rules.

## **6. Public Comment**

Mr. Bill Fox, Jackson Township resident, said that he was a member of the Agricultural Advisory Committee and that the PDC program is vitally important to its members. Mr. Stokes was correct regarding the AAC's opposition to the PDC rules and he asked that the AAC be provided with an opportunity to review the rules.

Ms. Piner stated that the draft rules had been mailed to the AAC on April 22, 2009 along with an invitation to comment or schedule an AAC meeting.

Mr. Stokes noted that the AAC was concerned with allocating PDCs to the Forest Area prior to the exhaustion of PDCs from current sending areas. Mr. Liggett added that, at its February meeting, the AAC was concerned also with the ability of a farmer to subdivide his lands in the RGA or PT to build a home for a family member without a PDC obligation.

Mr. Stokes said that there were an estimated 9,500 opportunities for PDC use in the growth areas and the supply was estimated to be at 6,600. If another 2,000 rights were added to the FA, the total of 8,600 would be available, so there would still be an excess of opportunities over supply for the use of PDCs.

Mr. Greg Bury offered to attend a future meeting and demonstrate an interactive sound system, a device to simulate noise, should the Committee so desire.

Mr. Fox said that he was a property owner in Grawtown and said that the presentation by Jackson Township today was not complete. He said that the sewer line and pump station are both installed and there is a greater commitment of projects than was represented. He said that the municipality knows that they are impacting property owners and that they should purchase these lands.

## **7. Other Items of Interest**

The meeting adjourned at 1:20 p.m. (moved by Commissioner Haas and seconded by Commissioner Lloyd).

/CS15A

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall  
15C Springfield Road  
New Lisbon, New Jersey  
April 24, 2009 - 9:30 a.m.

**SUMMARY**

The Committee adopted the Minutes from the March 27, 2009 meeting.

The Committee recommended that the Commission certify Jackson Township's stormwater management plan and ordinances.

The Committee received a presentation by Jackson Township regarding proposed master plan and zoning amendments.

The Committee reviewed draft rules and rule proposal related to the PDC Program.

The Committee reviewed draft rules related to affordable housing.

**CMP POLICY & IMPLEMENTATION SPECIAL COMMITTEE MEETING**

Monroe Township Municipal Building  
125 Virginia Avenue  
Williamstown, New Jersey  
May 4, 2009 - 9:30 a.m.

**SUMMARY**

The Committee adopted the minutes of the April 6, 2009 Special Meeting.

The Committee continued its discussion of proposed map changes.

The Committee voted to eliminate one of the 11 proposed polygons due to its public ownership.