

Adopted 02/26/2021

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted remotely

All participants were present via Zoom conference

The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/channel/UCBgpC8sbR3Acrjo7ppxs3Uw>

Meeting ID: 833 5477 1666.

January 29, 2021 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Richard Prickett, Alan Avery, Ed Lloyd and Mark Lohbauer

MEMBERS ABSENT: Jordan Howell and Jerome H. Irick

STAFF PRESENT: Nancy Wittenberg, Stacey P. Roth, Susan R. Grogan, Charles Horner, Ed Wengrowski, Ernest Deman, Jessica Lynch, Paul Leakan and Betsy Piner. Also present was Rudy Rodas, with the Governor's Authorities Unit.

1. Call to Order

Chairman Prickett called the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee meeting to order at 9:31 a.m. and Ms. Wittenberg identified all staff attending/participating in the meeting,

2. Adoption of minutes from the October 30, 2020 CMP Policy and Implementation Committee meeting

Commissioner Lohbauer moved the adoption of the minutes of the October 30, 2020 Committee meeting. Commissioner Lloyd seconded the motion. After confirming with Ms. Roth that, although not a Committee member on October 30, 2020, he had indeed read the minutes and was therefore eligible to vote, Commissioner Avery joined the other Commissioners in adopting the minutes unanimously.

Commissioner Lohbauer congratulated Ms. Wittenberg on her ten-year anniversary as the Executive Director of the Pinelands Commission.

3. Executive Director's Reports

Medford Township Ordinances 2020-21 and 2020-23, adopting a Redevelopment Plan for the Taunton and Tuckerton Rehabilitation Area and rezoning two lots

from the CC (Community Commercial) Zone in the Regional Growth Area to the RS-2 (Rural Suburban) Zone in the Rural Development Area

Mr. Lanute said Ordinance 2020-21 adopts a Redevelopment Plan for the Taunton and Tuckerton Rehabilitation Area, comprised of 28 lots in the vicinity of the intersection of Taunton Road and Tuckerton Road. He said Ordinance 2020-23 made some amendments to that Plan, based on input from Commission staff.

Mr. Leakan projected Exhibit #2 from the report while Mr. Lanute described the provisions of the ordinance. He said existing development within the rehabilitation area includes a mix of residential uses, non-residential uses, and vacant land. The rehabilitation area includes approximately 123 acres of which 113 acres were previously zoned CC (Community Commercial) and 10 acres previously zoned GD (Growth District). The entirety of the rehabilitation area is located within a Pinelands Regional Growth Area (RGA). He said the Plan creates a new zoning district, the Tuckerton & Taunton Rehabilitation Area (TTRA) Zone. He said a variety of commercial and institutional uses are permitted, similar to what had been permitted in the CC Zone. Residential development is not permitted. Design and performance standards are included to facilitate the Township's interest in revitalizing this area.

Mr. Lanute said the redevelopment plan also implements a few minor zoning changes to account for existing development that the Township deemed more appropriate for a residential zone. He said three lots, highlighted in blue, are being rezoned to the GD Zone, a residential zone in the RGA. As the new TTRA zone does not permit residential uses, these lots are either residentially developed or undersized lots in common ownership with residentially developed land. He directed the Committee to another rezoning, the two lots outlined in yellow that are being rezoned from the CC Zone to the Rural Suburban 2 (RS-2) Zone. He said he RS-2 Zone is located in a Rural Development Area (RDA); therefore, this rezoning constitutes a change in Pinelands management area designation from RGA to RDA and is the reason these ordinances are before the Committee today. Both lots are contiguous with the existing RS-2 Zone, contain single-family dwelling units on septic systems and have acreages slightly larger than 3.5 acres. Therefore, in recognition of the existing development, staff has determined that it is appropriate for these lots to be redesignated from RGA to RDA.

Mr. Lanute said the zoning changes implemented by the Redevelopment Plan in the Township's RGA have no effect on residential zoning capacity or opportunities for the use of Pinelands Development Credits (PDCs) since the new TTRA Zone is comprised of land that was previously within the CC Zone, a non-residential zone that does not permit residential development. The use of PDCs in the TTRA Zone is required only if a residential use is approved by the Township through a use variance or other means.

Mr. Lanute said Ordinance 2020-23 amends the Redevelopment Plan to address Commission staff concerns to include the aforementioned PDC requirement as well as adding a provision that

all development in the newly established TTRA Zone must comply with the minimum environmental standards of the CMP. Finally, Ordinance 2020-23 adds language to clarify that the Township's existing infill wetlands standards continue to be applicable to the properties within the TTRA Zone, as they are for all the Township's RGA zones.

Mr. Lanute said no testimony was received at the Commission's public hearing but one written comment was received and is attached to the report. He said staff is recommending certification of these ordinances.

In response to a question from Commissioner Lloyd as to the distinction between a rehabilitation area and a redevelopment area and whether it was derived from the Municipal Land Use Law, Mr. Lanute said the first step before adopting a redevelopment plan is the municipality's designation of a rehabilitation or redevelopment area. He said they have slightly different requirements, those for a rehabilitation area being slightly less onerous.

Ms. Roth says it comes from New Jersey Local Redevelopment and Housing Law.

Ms. Grogan added that a number of municipalities have designated their entire land area as an area in need of rehabilitation and then draft more detailed redevelopment plans for specific areas.

In response to Commissioner Lohbauer's questions about the public comment, Mr. Lanute said there are wetlands in the redevelopment area. All development must comply with CMP environmental standards. Language to that effect was added to the redevelopment plan by Ordinance 2020-23.

Ms. Grogan added that Medford's land use ordinance, as originally certified in 1983, contains unique wetlands standards. The ordinance provides specific pre-determined wetlands buffers for development in the various RGA Zones, whether 100' or 150', etc. Because the Commission approved those buffers back in 1983, unless something changes, such as the discovery of new wetlands, those are the buffers that apply to new development in the RGA.

Chairman Prickett said he was concerned about the presence of wetlands, as shown on the Commission's interactive map and that much of the existing development was built in wetlands. He said there is a lot of impervious surface in this area and that runoff and future climate change impacts will make this situation even worse. He asked if the stormwater rules will help address this potential for more runoff.

Ms. Grogan said that certainly is one of the goals of the draft stormwater amendments. She said there have been extensive discussions amongst staff and with the New Jersey Department of Environmental Protection (NJDEP) about their stormwater rules and new focus on green infrastructure. The Commission's draft amendments propose to require stormwater management for minor development, which should help address concerns with runoff from some of these

smaller lots. The new rules seek to capture more development projects. She said Medford's current ordinances contain the Commission's current standards for stormwater management.

Chairman Prickett said he appreciated the concerns expressed by the commenter. He showed the map of the development in the vicinity of the Taunton and Tuckerton intersection.

Ms. Grogan said any existing development in wetlands pre-dates the Pinelands Commission. She said the buffers to wetlands may be reduced in the RGA but no development is permitted "in" wetlands.

Ms. Grogan said the redevelopment plan is effectively just a new zoning district; the permitted uses and development standards remain as before. The environmental standards that all development must meet are not changed. After adoption by the Commission, the new stormwater rules will need to be adopted by all Pinelands municipalities and should serve to provide additional protection.

Commissioner Lloyd asked if there is an impervious limit per lot in Medford.

Ms. Grogan said most municipalities have impervious cover limits by zone and typically it is included with their schedule of bulk standards such as setbacks and lot size. She said that is something staff looks at when reviewing ordinances. For instance, for the Forest Area, one wants to be sure that the impervious coverage limits do not promote more development than what is appropriate. She said RGA coverage tends to be higher as that is where the development is supposed to go and generally is not of concern.

Mr. Scott Taylor, the Township's consultant, said Medford Township had noticed a lack of investment in the buildings in this area. The entire area was developed pre-Pinelands. He said in their pre-Covid study, they found eight of 28 parcels were vacant, and that qualified this as an area in need of rehabilitation.

Mr. Taylor said the rehabilitation area designation allows the Township to enter into a five-year tax exemption and abatement on the value of improvements. He said this had been done successfully in downtown Medford with the development of The Pop Shop at the site of an historic bank building. He said this is actually a downzoning since the residential uses have been pulled out of the CC Zone. The impervious coverage remains unchanged at 60%. Also, in recognition that this southern portion of Medford is more rural than the Stokes Road corridor, some design standards have been included such as architectural design and low-impact Kelvin lighting to reduce the impact to wildlife and neighbors. He concluded by saying the redevelopment plan is intended to bring an infusion of investment in this area.

Commissioner Lloyd moved the recommendation to the full Commission to certify Medford Township Ordinances 2020-21 and 2020-23. Commissioner Avery seconded the motion and all voted in favor.

Monroe Township Ordinances O:27-2020 and O:29-2020, adopting an amendment to the Williamstown Square Redevelopment Plan and a new redevelopment plan for the St. Mary's Redevelopment Area, both of which are located in the Pinelands Regional Growth Area

Ms. Grogan said Monroe has submitted two redevelopment plans and together they will accommodate affordable housing to implement the last portion of the Township's Fair Share Housing settlement agreement. As she has reported previously, Ms. Grogan has been involved in case management conferences nearly monthly with the Gloucester County judge regarding the Township's progress in implementing its settlement agreement. She said she believed this was the last piece that involves the Pinelands Area.

Ms. Grogan said Monroe Township Ordinance O:29-2020 adopts the St. Mary's Redevelopment Plan for a 4-acre portion of a larger lot that also contains a church, office and a school. The Plan permits development of a 100% affordable, age-restricted apartment complex, and it will likely accommodate about 75 to 80 apartments, but nothing else. She said Monroe Township felt that a fully affordable project should not have a PDC obligation as that might make the project infeasible. However, the CMP does not provide for the automatic elimination of PDCs based on the cost of the unit or whether they are affordable. She said staff worked with the Township to effectively transfer the PDC obligation from this site to another project in the RGA, the Williamstown Square Redevelopment Area, where the developer is interested in increasing the amount of permitted residential development.

She said Williamstown Square is a larger, mixed-use redevelopment area along the Black Horse Pike. She said in transferring PDC opportunities from the St. Mary's Redevelopment Area, one needs to be sure that they are going to a place where development potential is real. The minimum number of residential units at Williamstown Square will be increased by 75 to accommodate the use of PDCs transferred from the St. Mary's Redevelopment Area for a total of at least 425 units. She said PDCs were already required for 30% of the non-affordable units and that remains in place. Assisted living facilities have been added as a permitted use in the Redevelopment Area. The CMP considers such units to be a type of residential development. She said she was pleased how Monroe Township had worked with staff to achieve its redevelopment and affordable housing goals while meeting PDC requirements.

Ms. Grogan said Fred Akers had submitted comments generally supportive of the redevelopment plan but raised concerns with stormwater management and wetlands buffers. She

said wetlands are not an issue here as they were in the Medford redevelopment area. However, CMP stormwater management and wetlands buffer standards continue to apply.

In response to comments from Commissioner Lohbauer's concern about sprawl, Ms. Grogan said the development will be clustered in taller buildings, some of which will have residential above and commercial below.

Commissioner Lohbauer said he was pleased to hear that the commercial will not be separate from the assisted living development as the residents will benefit from easy access to goods and services.

Mr. Lanute added there is a height limit of 65' or five stories, and the plan calls for a variety of building heights to create some visual interest.

In response to a question from Commissioner Avery, Ms. Grogan said there is no automatic assumption that assisted living units are affordable.

In response to Chairman Prickett's comments about the concerns expressed by Mr. Akers concerning runoff and protecting headwaters and wild and scenic rivers, Ms. Wittenberg said this is a matter that might be considered by the climate committee.

Commissioner Avery moved the recommendation to the full Commission to certify Monroe Township O:27-2020 and O:29-2020. Commissioner Lohbauer seconded the motion and all voted in favor.

4. Discussion of draft Comprehensive Management Plan amendments for stormwater management

Ms. Grogan said staff was not yet ready to present draft rules to the Committee but have made a tremendous amount of progress within the last month or so. The Commission will be adopting the new New Jersey Department of Environmental Protection's (NJDEP) stormwater rules but modifying them for the Pinelands Area. She said staff was coordinating closely with NJDEP to make sure they are not creating issues and confusion for the Pinelands municipalities. She said NJDEP had sent a letter to all New Jersey municipalities to remind them of their obligation to adopt new stormwater control ordinances by early March. Unfortunately, the letter did not make clear that this obligation applies only to the non-Pinelands area. After coordinating with NJDEP, the staff issued written guidance to all Pinelands municipalities as to how they should proceed. The NJDEP ordinance should be adopted and applied only outside the Pinelands Area. Revised stormwater ordinances for the Pinelands Area will be drafted and distributed only after the Commission adopts amendments to the CMP.

In response to Commissioner Avery's statement that a number of agencies are involved with stormwater regulations, e.g., soil conservation districts, Ms. Grogan said the focus has been on the NJDEP stormwater rules and making sure that the Commission doesn't adopt anything less restrictive than those of NJDEP. She said staff is mindful of keeping other agencies in mind while still abiding by the CMP and its generally more restrictive measures.

Ms. Grogan said the draft rules will be presented in February. The longer they are delayed, the more some of the issues such as those raised today regarding Medford and Monroe will go on. She said there is too much of a gap in time between the new statewide standards and when the towns can adopt the new Pinelands standards; it is important to get these rules in place so the regulated community and the municipalities can be prepared.

In response to Commissioner Lloyd's question as to how many of the municipalities have adopted ordinances for their non-Pinelands portions, Ms. Grogan said the Commission might not be aware because the non-Pinelands ordinances might not be sent to the Commission. Mr. Lanute said he's seen the adopted ordinance from North Hanover and draft ordinances from Ocean and Jackson townships. He said he monitors ordinances quite closely and has not seen many updated stormwater ordinances.

Mr. Wengrowski said the mandatory adoption date for the NJDEP ordinance is March 2, 2021, so it is likely a flurry of ordinances will arrive shortly before then.

5. Discussion of Comprehensive Management Plan application exemptions and procedures (N.J.A.C. 7:50-4.1)

Ms. Wittenberg said the packet had included the list of the 23 current CMP exemptions but today's presentation will focus on just nine of them. She said overall, staff believes the application exemptions are appropriate. A few, such as accessory solar facilities, may be referred to the Land Use, Climate Impacts and Sustainability (LUCIS or "Climate") Committee for discussion. She said staff will discuss this initial list today and then see if the Committee is interested in pursuing the remainder.

Mr. Horner made a presentation on application exemptions and procedures (*Attachment A to these minutes and posted on the Commission's website at <https://www.nj.gov/pinelands/home/presentations/CMP%20Exemptions.pdf>*, noting that Mr. Deman was assisting with the presentation. He said the word "exemption" appears nowhere in the CMP. He said the CMP indicates that, for the purposes of subchapter 4 only, 23 specified development activities do not require an application to the Commission. That is the regulatory process. He said, although exempt, the proposed development must still be consistent with all subchapter 5 (land use) and subchapter 6 (environmental) standards.

Mr. Horner said in 1981 when the CMP was originally drafted, the intent of the exemptions was that they be self-executing and involve no contact with staff. In practice, Commission staff is

regularly asked to advise in writing that a particular development activity does not require application to the Commission. In 2004, the Commission amended its regulations to require an administrative fee of \$250 for the Commission staff to provide a written determination regarding information that is readily available to the public from other sources, including the 53 Pinelands Area municipal land use ordinances. He said those requests still arrive and staff advises the requestor that there is a fee but the alternative is to obtain the information from the municipal ordinance. Also, he noted, sometimes the Commission receives applications for exempt activities accompanied by a check for the fee. That also becomes an administrative issue as the funds must be returned.

Mr. Horner reviewed those exemptions of most concern to staff as described in the slides with examples of the challenges that they may present. He said sometimes these items become a concern when a neighbor reports what they believe to be a violation or a matter is less than clear in the CMP.

At the conclusion of the presentation, Commissioner Lohbauer thanked the staff for the presentation, noting that the issue had been raised at the November Commission meeting over an application replacing a utility distribution line. He said he found it a learning experience. He said it appears that exemptions will be the subject of many future discussions. He said they seem to have evolved to strain the limits as to how they are applied. He referenced, for example, Example 16, Forestry, and noted that the state is in the midst of changing the definition of forestry. He said four forestry bills were before the Agriculture committee and were the subject of much debate. He said that an understanding of terms like “forest stand improvement” is particularly important now that everyone is so sensitive to the concept of carbon sequestration.

He also noted that Commissioner Lloyd had pointed out, during Mr. Horner’s presentation, there is the issue of distribution lines and transmission lines. He said it was important to look at these exemptions that were adopted so long ago and make sure they serve our current purposes.

Commissioner Lloyd said he too appreciated the presentation and it is the Commission’s role to clarify these exemptions for staff and for applicants. He said, more important to him, was the request that he had made to see the exemptions that have been granted under 7:50-4.1(a)5 and 6 over the past 20 years.

Ms. Roth said she had done that exercise although she was not prepared to provide the data to him today. She cautioned that while she could provide the data, the Commissioners should recognize that it is only a subset of those activities occurring in the Pinelands Area. The Commission cannot report on a full range of activities under any exemption because requests for letters of exemption are not always made. In those cases, the Commission has no knowledge of the activities.

Commissioner Lohbauer said he also had raised legal questions regarding the exemption process. He said when these matters come to light, shouldn’t the Commissioners have the right to tell the

staff they want to review a particular exemption determination? He said he thought this was the matter the Deputy Attorney General was going to review.

Ms. Roth said she knew some Committee members were interested in the matter but, she was not sure the entire Commission by a vote of eight had directed the Attorney General's office to research the issue. She said the Commission would need to authorize that expenditure of time and money.

Commissioner Lloyd said he disagreed with that interpretation. He said he felt Commissioners or a Committee have the right to request information.

Ms. Roth said she needed to manage the Commission's legal expenses and they are increasing all the time. She said it was one thing to ask staff for information and she was here as a resource but she was not comfortable in seeking assistance from the Deputy Attorney General without authorization.

Ms. Wittenberg said perhaps the discussion should focus on which of the exemptions the Commissioners want to revise or make subject to a new review process.

Commissioner Lloyd said maybe the Commission should broaden its definition of development. Also, perhaps an entity that seeks to use the 4.1 provisions should be required to submit a letter to the Commission indicating the intent. At least then there would be a record.

Ms. Roth said this is similar to NJDEP's permit by registration process. Applicants submit this information through the NJDEP website.

Commissioner Lloyd responded that perhaps that is something the Commission should consider.

Ms. Wittenberg said that would be a big resource push for the Commission and the Committee should keep that in mind.

Commissioner Lloyd suggested that maybe it would save staff resources.

Commissioner Avery said many of the exemptions in the CMP were put there because the Commission and staff didn't want to deal with such issues as a change in use from a real estate office to an investment firm office. Even a letter describing a potentially exempt project will require a review by staff, because it is so thorough. Also, he said, the Commission needs to be sure that any terminology, such as distribution lines and transmission lines, is consistent with that of the Board of Public Utilities and other entities. He said he also wanted to make sure the definitions apply to all utilities before any changes are made to that exemption.

Commissioner Lohbauer said he agreed with Commissioner Lloyd and the request that non-applicants provide a notice as to how they have interpreted these exemptions to allow the Commission to take action, if needed. He said he felt that this has been a fruitful discussion and

that over the next few weeks he would like to draft his comments on those items for which he would like some refinements, and perhaps other Commissioners would like to do the same.

Chairman Prickett said that Mr. Horner had already agreed to review the other exemptions at a future meeting. At an upcoming meeting, the Committee will discuss comments on these exemptions and review the remaining exemptions.

Ms. Grogan reminded the Committee that the February meeting would focus on the stormwater rules, which will require a significant amount of time. She suggested the exemption discussion be deferred and Chairman Prickett agreed.

Commissioner Lloyd asked that Ms. Roth provide him with the information he previously requested regarding the exemptions in N.J.A.C. 7:50-4.1(a)5 and 6.

Following comments by the Committee regarding municipal notification of exempt activities, Ms. Roth said the municipalities may know about these issues because they are the ones issuing the zoning and construction permits. The CMP envisions a municipal partnership.

Mr. Horner said the Pinelands Commission is a regional land use agency that oversees 53 municipalities distributed over nearly a million acres of land. He asked if the Commission would want to be notified of every addition to a single-family dwelling. He asked which activities the Commission wants to know about.

Commissioner Lloyd said that was a fair concern but he was not sure he wanted 53 municipalities determining exemptions.

Mr. Horner responded he was not advocating either way but one has to ask how we can best administer our rules as a regional planning agency.

Commissioner Avery said if one registered with a municipality asking if a project were exempt, he suspected the municipality would advise the applicant to contact the Pinelands Commission out of concern that their interpretation might be incorrect.

Mr. Horner said if someone sends a notification of an exemption, invariably the staff will have questions.

Chairman Prickett said that he believed notification to the Commission would create a record.

Commissioner Lloyd said the Commission needs clarification as to what it calls an exemption but cannot anticipate everything.

6. Discussion of draft resolution celebrating the 40th anniversary of the Comprehensive Management Plan

Ms. Wittenberg said the celebration has been ongoing, as evidenced by the various interviews and messages that Mr. Leakan had been posting on social media.

Mr. Leakan described the virtual events that have been occurring since January 14, 2021 to celebrate the 40th Anniversary of the Pinelands Comprehensive Management Plan. He said the aggressive information campaign will raise awareness of the Commission's history and efforts. He noted the roundtable discussion with former staff and Commissioners, the related interviews and upcoming posts that will appear on various platforms.

Chairman Prickett said it was important to share this information, and Commissioner Lohbauer said how useful it was to have the interviews for posterity.

Mr. Leakan said every office is involved and discussed some of the upcoming features.

Commissioner Lohbauer moved the recommendation to the full Commission adopt the resolution Celebrating the 40th Anniversary of the Pinelands Comprehensive Management Plan. Commissioner Lloyd seconded the motion and all voted in favor.

7. Public Comment

Mr. Fred Akers, with the Great Egg River Watershed Association, said that while the Commission had done great work with the Williamstown Square Redevelopment Plan, his organization was concerned with the impacts from the Regional Growth Area on the watershed. He said keeping stormwater out of the headwaters of rivers is the last line of defense in protecting water quality.

Ms. Rhyan Grech, with the Pinelands Preservation Alliance, said she was interested in the thorough discussion of the "4.1" exemptions and was fully supportive of clarifying some of these definitions. She asked about the status of the South Jersey Gas project as related to the definition of utility distribution lines. She also asked about the request by Commissioners of DAG Miles regarding this matter and when an update could be provided.

In response to Chairman Prickett's question regarding the annual orientation for newly elected/appointed officials, Mr. Leakan said the 2020 orientation had been canceled but a virtual orientation is being planned for July 2021.

Commissioner Lohbauer said he had thought Mr. Al Horner would be commenting today on his project of videos of off-road vehicle (ORV) damage.

Commissioner Avery said the damage is well known and documented; it occurs not only on public lands but also private land, and some kind of enforcement is needed. He said he had had many conversations about this with local enforcement officials in his position with the Ocean County Natural Lands Trust.

Chairman Prickett said the Commission needs to hear what the counties and municipalities are doing relative to ORV damage and agreed with Commission Avery to convene a symposium of stakeholders.

Ms. Wittenberg said that would be a big initiative. She said NJDEP is focusing on ENDUROs and that Mr. Bunnell is in regular contact with NJDEP regarding the Science Office study sites.

Chairman Prickett said it is also an issue to berry farmers as he knows from his involvement with Whitesbog.

Chairman Prickett thanked Commissioner Avery for having joined this Committee.

There being no further business, Commissioner Lohbauer moved the adjournment of the meeting. Commissioner Avery seconded the motion and all agreed. The meeting adjourned at 12:04 p.m.

Certified as correct and true.



Betsy Piner
Principal Planning Assistant

February 16, 2021

CMP Exemptions

N.J.A.C. 7:50-4.1(a)

The CMP indicates that for the purposes of Subchapter 4 only, 23 specified development activities do not require application to the Commission.

These development activities are commonly referred to as “exemptions”

- **The Exemption Administrative Process:**

As incorporated into the CMP, it is intended that the exemptions be self-executing with no contact with the Commission staff.

In practice, the Commission staff is regularly contacted in writing to advise in writing that a particular development activity does not require application to the Commission.

In an attempt to change this practice, the Commission amended its regulations in 2004 to require an administrative fee for the Commission staff to provide a written determination regarding information that is readily available to the public from other sources, including the 53 Pinelands Area municipal land use ordinances.

The Commission staff continues to receive letters with and without the required administrative fee inquiring as to whether proposed development is exempt from application to Commission.

The Commission staff receives applications with accompanying application fees for development that is exempt from application to the Commission.

The purpose of this presentation is to identify the substantive issue(s) associated with 9 of the 23 exemptions.

Exemption #3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;

The substantive issue: What activities can occur in a proposed agricultural structure and the structure still be considered exclusively for agricultural use? For example, if it proposed to sort and/or process an agricultural crop in a proposed barn, is the proposed barn “exclusively for agriculture?”

Exemption #5. The repair of existing utility distribution lines;

The substantive issue is that the exemption does not indicate whether replacement is included. In addition, the CMP has a less than clear definition of utility distribution line.

Exemption #6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development that has received all necessary approvals and permits;

The substantive issue is that the CMP does not define what constitutes “areas that are effectively developed” nor what “development that has received all necessary approvals and permits” means. Again, the CMP has a less than clear definition of utility distribution line.

Exemption #15. Tree pruning;

The substantive issue is that the CMP does not define tree pruning. The absence of this definition has generated lengthy discussions and letters addressing proposals to remove the majority of the tree, leaving only the tree trunk with no branches.

Exemption #16. The following forestry activities:

- i. Normal and customary forestry practices on residentially improved parcel of land that are five or less in size;
- ii. Tree harvesting, provided that no more than one cord of wood per five acres of land is harvested in one year and that no more than five cords of wood are harvested from the entire parcel in any one year;
- iii. Tree planting, ...; and
- iv. Forest stand improvement designed to selectively thin trees and brush, provided that no clearing or soil disturbance occurs and that the total land area on the parcel in which the activity occurs does not exceed five acres in any one year;

The substantive issues is that the CMP does not define the term "forest stand improvement." Forestry exemption iv. allows for a forest stand improvement on up to five acres without application to the Commission. The intent of exemption iv. was to allow for certain limited forestry activity, but not the harvesting and removal of trees from a parcel. As written, the harvesting and removal of thinned trees is not prohibited.

Exemption #17. Prescribed burning and the clearing and maintaining of fire breaks;

The substantive issue is that the CMP does not define fire break.

Exemption #20. The installation of an accessory solar energy facility on any existing structure or impervious surface;

The substantive issue is that most accessory solar facilities are located over at least some pervious (grass) surface and/or require some disturbance of pervious (grass) surface. Another substantive issue: What information demonstrates that a proposed solar energy facility qualifies as accessory to an existing use? For example, does 51% of the energy being used by the existing use qualify as accessory? What if some percentage of unused generated energy is rerouted back to the energy grid?

Exemption #22. The establishment of a home occupation within an existing dwelling unit or structure accessory thereto, provided that no additional development is proposed; and

The substantive issue raised is that the CMP definition of development is all encompassing. Installation of one paved parking stall, signage or landscaping constitutes "development." What if the additional development, such as the paved parking stall, is otherwise exempt from application to the Commission?

Exemption#23. The change of one nonresidential use to another nonresidential use, provided that the existing and proposed uses are or will be served by public sewers and no additional development is proposed.

The same substantive issue as Exemption 22.

Other Substantive Exemption Issue

Although exempt, the proposed development must be consistent with the environmental and permitted land use standards.

This requirement consistently raises question of whether wetlands are present and the required buffer to any such wetlands.

This requirement can raise the questions of whether clearing of certain land for agricultural purposes is consistent with the threatened and endangered species protection standard.

This requirement can also raise permitted land use questions.