

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center  
Terrence D. Moore Room  
15 C Springfield Road  
New Lisbon, New Jersey  
February 22, 2019- 9:30 a.m.

**MINUTES**

**MEMBERS IN ATTENDANCE:** Chairman Sean Earlen, Robert Barr, Jordan Howell (by telephone), Ed Lloyd and Richard Prickett

**MEMBER ABSENT:** Candace Ashmun and Paul E. Galletta

**STAFF PRESENT:** Nancy Wittenberg, Stacey Roth, Larry L. Liggett, Susan R. Grogan, Charles Horner, Ernest Deman, Paul Leakan, Joel Mott and Betsy Piner. Also in attendance was Craig Ambrose with the Governor's Authorities Unit.

**1. Call to Order**

Chairman Earlen called the meeting of the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee to order at 9:40 a.m.

**2. Pledge Allegiance to the Flag**

All present pledged allegiance to the Flag.

**3. Adoption of minutes from the November 30, 2018 CMP Policy & Implementation Committee Meeting**

Commissioner Prickett moved the adoption of the January 25, 2019 meeting minutes. Commissioner Lloyd seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

**4. Continued discussion of an amended Memorandum of Agreement between the Pinelands Commission and the South Jersey Transportation Authority related to the Atlantic City International Airport**

Ms. Wittenberg said there have been ongoing communications with the South Jersey Transportation Authority (SJTA) regarding an amendment to the Memorandum of Agreement (MOA) related to an offset for removal of the grassland conservation area at the Atlantic City Airport.

Ms. Roth said staff had met with SJTA about a week ago to review the discussion that had taken place with this Committee at its January 25, 2019 meeting and discuss potential changes to the current grassland conservation area at the Atlantic City Airport. She said the properties SJTA identified as an offset for the grassland bird habitat will not work but she relayed to them the fact that the Committee appeared to accept their offset for frosted elfin butterfly habitat. Also, she said she had relayed to SJTA that the Commission will entertain an offer of a donation to the Pinelands Conservation Fund (PCF) in lieu of or perhaps as a supplement to creation and management of a smaller grassland conservation and management project. She said she thought SJTA should look for some nearby sites for such a project or at least determine if there are any such properties available in the Pinelands, including properties adjacent to the Pinelands Area, perhaps in the politically negotiated “Perskie’s thumb” area.

Ms. Roth said Ms. Grogan had assisted with determining the cost of lands acquired through the PCF and the State Agriculture Development Committee (SADC) programs. Based on that information she stated that a conservative estimate of agricultural land values would be about \$8,000 per acre. She said SJTA is looking at providing a monetary offset and is awaiting the results of today’s meeting but is adamant that the mowing occur by April 15. SJTA indicated that there is a potential for it to be fined by the Federal Aviation Administration (FAA) if it does not mow by the deadline.

Ms. Roth said her FAA contact, Ms. Sue McDonald, is looking into the need for a National Environmental Policy Act (NEPA) review and issues pertaining to compliance with an FAA grant agreement with the airport. She said Ms. McDonald said the FAA has indicated that if the Commission is satisfied with whatever offset is developed, then it will be satisfied, noting that previously there had been some concerns regarding an offset based solely on monetary compensation.

Ms. Roth said the mowing at the airport must occur before April 15, 2019 and SJTA has offered a monetary deposit of \$500,000 to allow that mowing to occur now. These funds will be supplied up front but no additional development will occur before the MOA is amended.

Mr. Deman said under the current MOA, there is an application for a de-icing pad currently being reviewed by the Commission staff.

Ms. Roth said SJTA representatives also had a pre-application meeting with Pinelands staff for a hotel, but that application will not be allowed to move forward until the MOA issues are resolved.

Ms. Roth said the source of the funding for the offset may include assistance from Atlantic County for land acquisition but if it is lands acquired through County Open Space funding, the Commission might not find that acceptable as it would amount to open space double-dipping.

In response to Ms. Wittenberg's question as to how much of Atlantic County is in the Pinelands, Mr. Leakan displayed on the SmartBoard the Long Term Economic Monitoring Program fact sheet for Atlantic County <https://www.nj.gov/pinelands/landuse/current/economic/LTEM%20%202017%20Report%20Municipal%20Fact%20Book.pdf> and said 63 percent.

Ms. Roth said the Commission needs to determine if financial assistance from Atlantic County is acceptable.

Ms. Wittenberg said NJDEP funding for land acquisition might also be a possibility.

In response to Commissioner Prickett's question as to the source of the \$500,000 deposit, Ms. Roth said SJTA has budgeted that amount. She clarified that the FAA owns the land where the airport is sited and is not providing any funding. SJTA owns the airport and toll roads. Staff has asked SJTA for the source of its funding.

Ms. Roth said SJTA is still looking for suitable habitat sites and may find smaller sites.

In response to Commissioner Lloyd's question if, under the MOA, SJTA can mow the grasses now, Ms. Roth said currently mowing cannot be done April 15 through August 15. She said SJTA wants to cut down all the grasses to a height of 6" as opposed to the current 10" to 14". The smaller birds will not stay in low grass and the lower vegetation height will reduce hiding spots for predators. The mowing will reduce the likelihood of bird strikes, which are of particular concern to the single engine aircraft operated by the New Jersey Air National Guard.

Ms. Wittenberg said no serious incidents have ever occurred. Ms. Roth added that although no bird strikes have been catastrophic, they have caused significant monetary damage.

In response to Commissioner Lloyd's question as to how the Commission will proceed, Ms. Roth said to amend the MOA requires the full public process including a hearing. To accept the \$500,000, the Commission would need to approve an amendment to the 2004 MOA. In this case, time is of the essence and the Commission would need to act at its April 12, 2019 meeting.

Mr. Leakan added that the April 12, 2019 Commission meeting would occur just prior to the mowing deadline.

Chairman Earlen asked whether the mowing would occur without Commission approval. Ms. Roth said SJTA is not looking to violate the terms of the agreement. Also, the FAA has given no indication of any imminent threat.

Commissioner Lloyd said it appeared SJTA is operating in good faith.

In response to Commissioner Prickett's question regarding the value of an offset, Ms. Wittenberg said it could be 290 acres @ \$8,000/acre, plus additional expenses for creating and maintaining habitat.

Ms. Roth said the value could be roughly \$3-\$4 million and that another expense would be the cost of planting indigo for the butterfly. She said if the Commission allows Atlantic County to contribute, it could provide a sizeable amount. She said staff has not pursued that part of the amendment because it was waiting for Committee guidance.

Commissioner Lloyd said he sees the \$500,000 as separate from the overall offset. He said he viewed it as permission to cut the grasses now since doing so is outside the MOA.

Ms. Roth said she views the \$500,000 as part of the entire package.

Commissioner Lloyd responded that the cutting is independent of the MOA. There are two deviations: 1. Mowing now and 2. Replacing the land that will be lost as habitat. He said the Commission could allow the cutting now and never get an amended MOA. He said he believed the Commission could allow the mowing now but was not sure about a global settlement.

Commissioner Prickett said he didn't believe it will cost SJTA any more to provide the \$500,000 now, while Chairman Earlen stated the Commissioner Lloyd is saying it *will* cost them more because the \$500,000 is a separate contribution to allow mowing now and not a deposit towards an offset.

A discussion ensued as to whether the \$500,000 was a deposit towards future offsetting measures through an amended MOA or a payment to allow mowing at this time.

Ms. Roth said she would let SJTA know that the full Commission will consider how the \$500,000 will be applied and asked if she should take the same approach with Atlantic County and assume that the Commission will consider a contribution but needs to know the source of the funding.

Commissioner Lloyd said he had concerns with "double-dipping."

A discussion ensued regarding timing and the public process. Ms. Grogan said with only two weeks before the March 8<sup>th</sup> Commission meeting, there is inadequate time to advertise and conduct a public hearing prior to Commission action. A special meeting or action at the April 12, 2019 Commission meeting are the two possible options.

Ms. Roth said after today she will speak with SJTA and ask about its Board process.

The discussion concluded with Ms. Wittenberg noting that the birds are away and are expected to return to the site by April 15.

## **5. Discussion of the Commission's policies and procedures related to violations of the Comprehensive Management Plan**

Mr. Horner made a PowerPoint presentation (*Attachment A to these minutes and posted on the Commission's web site at: <https://www.nj.gov/pinelands/home/presentations/ViolationPP.pdf>*).

Mr. Horner said that violations of a CMP regulation are also violations of local land use regulations. He said, as a regional land use agency, the Commission deals with a wide range of violations. He said the Commission is made aware of violations by members of the public, public officials, when development applications are submitted to the Commission, and through review of aerial photography. He noted that aerial photography has become an excellent tool for resolving violations as it can provide clear evidence of when development occurred.

In response to Commissioner Lloyd's question regarding the number of violations reported by each entity, Mr. Horner said roughly 25 percent are reported by the public and 25 percent by public officials but the bulk are found by staff while reviewing development applications. He said clearing of vegetation is the most frequent violation along with clearing in wetlands and wetlands buffers, establishment or expansion of commercial uses and construction absent Commission approvals.

He said the illegal expansion of a commercial use often involves clearing for storage areas. This may occur due to lack of familiarity with the requirements. He said as the Commission has no direct enforcement authority, it must rely on the municipal courts, the office of the Attorney General or, in the case of certain wetlands violations, the New Jersey Department of Environmental Protection (NJDEP) to assist with enforcement. He said these are cumbersome mechanisms.

Ms. Roth said currently there are two cases where the property owner had ignored the violation notices and the Commission is seeking injunctions to stop a violation. She said although the Commission has no ability to impose civil penalties, it can seek an injunction to stop harm from continuing.

Mr. Horner said Pinelands municipalities have different reactions when the Commission seeks enforcement assistance. Most appreciate the presence of the Commission staff and attempt to help resolve violations. However, in some cases, they are not inclined to issue summonses to businesses in their communities. They cite court costs, and the sensitivity of local issues and personalities.

Mr. Horner provided three examples (*slides eight, nine and ten*) of significant violations in which aerial photography provided clear evidence through before/after views of the sites. The first instance is a 4-acre expansion of a contractor's yard within the Preservation Area District (PAD).

This was in a remote area and was found through the review of an application on an adjacent parcel. He noted the “before” (violation) slide from 2010 contrasts sharply with the 2018 slide, indicating how the storage structure and materials were removed and the entire area then revegetated.

Mr. Horner said his second example is a 10-acre parcel, also in the PAD, showing a heavily wooded area on the 2006 view that in the 2018 view is cleared to establish a vegetable stand in an area where the soils are unsuitable for vegetables. He said the individual has since paid a \$1,000 fine and planted blueberries in wetlands, which is a permitted use.

Mr. Horner’s third example is a vehicle salvage yard that was in existence in 1981, the effective date of the CMP. The aerial shows expansion beyond the permitted 50 percent. He said once the Commission became aware of this violation, the municipality was helpful in having vehicles removed and resolving the problem.

In response to a question from Chairman Earlen, Mr. Horner said, in the past, there were prolonged conversations about what was pre-existing. Now, with aerial photography, one can resolve that question in moments.

Mr. Horner summarized other types of violations and their frequency. His final slide summarized potential strategies to address land development violations.

In response to Ms. Wittenberg’s statement that previously there were more staff dedicated to violations, Mr. Horner said, yes, there had been one staff member focused on violations. He said it remains challenging when there are 53 municipalities with varying degrees of zoning and construction code officials versus ten Commission staff members to pursue and resolve violations.

Mr. Horner said staff can substantially resolve all the issues but must prioritize how to pursue the violations. He said court summons issued by municipal courts tend to be an impetus to resolve violations.

Ms. Roth said if an issue is not resolved through the municipal process, then it is advanced for litigation.

In response to Commissioner Lloyd’s question as to how the violations are broken down by management area, Mr. Horner said the more neighbors there are, the more likely a violation will be reported.

Ms. Roth said the Commission is not always successful in engaging the Attorney General's office on the Commission's schedule. There has been some degree of success with the NJDEP in resolving wetlands issues.

In response to Commissioner Prickett's question as to what sort of model staff was thinking of regarding enforcement ability, Ms. Roth said she looked at NJDEP's existing structure but it would require more Pinelands staff. Also helpful, she said, would be the ability to go to court with an automatic penalty process. She said the Commission needs the ability to penalize and to move independently of the municipalities.

Commissioner Lloyd said he was cautious about going to the legislature over this enforcement issue.

In response to Commissioner Prickett's question about drone imagery, and if there were legal issues, Mr. Horner said the Commission has received drone footage only once and already knew of that particular violation.

Ms. Roth said drone footage raises evidentiary issues regarding the property owner's granting access and the chain of custody of the footage.

Commissioner Prickett suggested perhaps the local environmental commissions and "green teams" might assist with violations to which Mr. Horner responded that numerous parties are copied on all violation letters in order to engage more municipal officials.

Ms. Wittenberg reminded the Committee that a previous rule proposal included an increase in fees for applications involving violations. That rule proposal was rejected by the prior Governor's office but perhaps the proposal should be pursued again.

Commissioner Prickett said he felt some great information had been received today and Commissioner Lloyd added that he believed the Commission should still see what can be done through the CMP.

## **6. Public Comment**

Ms. Rhyan Grech, with the Pinelands Preservation Alliance, said she was pleased to hear of the public participation in resolving violations. She said she was concerned with the MOA process, including the offset to replace habitat at the Atlantic City Airport and double-dipping issues.

Mr. Jay Mounier said pursuing enforcement authority was comparable to kicking a hornet's nest. The public will see the imposition of fines as a means of the Commission's funding itself. He

said he would alert others to look at the final slide of Mr. Horner's presentation and comment on the enthusiasm of some of the staff for getting penalizing powers.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, said he appreciated the live streaming of Commission meetings as, although he was unable to attend the meeting, he had been able to see Mr. Bunnell's February 8, 2019 presentation on off- road vehicle damage. Referencing the airport issue, he said he recalled an issue with grasshopper sparrows at a ball field on Leipzig Avenue so that might be worth investigating as part of the search for new habitat to replace the habitat at the airport.

Ms. Wittenberg said the enforcement discussion is one of the longstanding frustrations of staff but it is not a money grab.

Commissioner Lloyd said the goal of enforcement is to eliminate violations and a daily fine gets the attention of violators.

In response to Commissioner Prickett's comment that the Short Course was to be held on March 9, 2019, Mr. Mott said that the registration for the 30<sup>th</sup> Annual Pinelands Short Course at Stockton University has been robust, that there were roughly 150 vacancies left and some courses have closed. He said following the event, refreshments will be served and attendees will be invited to reminisce over the last thirty years of the program.

There being no other items of interest, Commissioner Barr moved the adjournment of the meeting and Commissioner Prickett seconded the motion. The meeting was adjourned at 11:15 a.m.

Certified as true and correct:

  
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Betsy Piner,  
Principal Planning Assistant

Date: March 14, 2019



**Identifying, Pursuing and Resolving Land Development Violations in the Pinelands Area**

Violation of a CMP regulation is also a violation of a municipal land use ordinance regulation.

**Threshold Question:**

What is the role of the Commission in pursuing and resolving land development violations?

**How are violations identified?**

- Reported by members of the public.
- Reported by public officials.
- Many are identified when development applications are filed with the Commission.
- Review of aerial photography.

**Common Land Development Violations:**

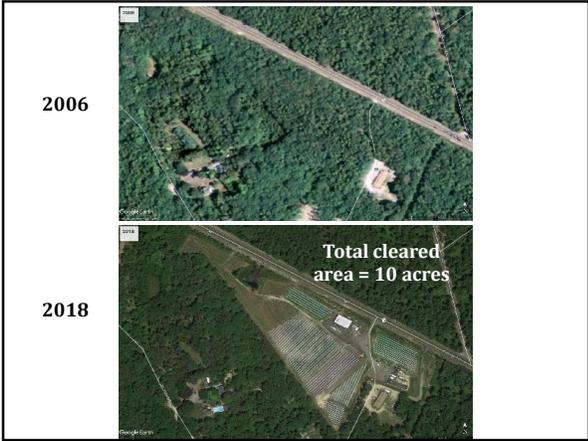
- Vegetation clearing.
- Wetlands/wetland buffer vegetation clearing.
- Establishment/expansion of commercial uses.
- Construction prior to receipt of a Commission staff letter notifying that municipal permits/approval may take effect.

**The CMP provides no direct enforcement authority**

- Indirect enforcement options:
  - Municipal Court
  - New Jersey Attorney General's Office
  - NJDEP can assist with certain wetland violations based upon the State's Freshwater Protection Act.

(Challenging issue when a property owner ignores our violation letters and, for various reasons, a municipality is not inclined to pursue the violation.)

### Examples of Significant Violations



### Other Land Development Violation Issues

- Land use violations occurring on farms: Right-to-farm in the Pinelands Area.
- Land development violations by public agencies.

### Calendar Year 2018 Violations

144 land development violations reported to Commission in 2018

99 violations, including violations reported in prior years, were resolved in 2018

Potential Commission Strategies to  
Address Land Development Violations:

- Amend the CMP to provide staff with enforcement authority.
- Amend the CMP to provide for enforcement authority when authorized by the Commissioners.
- Maintain status quo.
- Encourage/foster greater cooperation and education between municipalities and Commission staff.