

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted both remotely and in-person

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

<https://www.youtube.com/watch?v=qOV7I4IXl04>

Meeting ID: 859 5952 1332

Richard J. Sullivan Center

15C Springfield Rd

New Lisbon, New Jersey 08064

March 31, 2023 - 9:30 a.m.

MINUTES

Members in Attendance – Alan W. Avery, Jr., Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark S. Lohbauer, Chair Laura E. Matos, Douglas Wallner

Members Absent – None

Commission Staff in Attendance – Gina Berg, John Bunnell, Ernest Deman, April Field, Marci Green, Susan R. Grogan, Brad Lanute, Paul Leakan, Jessica Lynch, Trent Maxwell, Stacey P. Roth, Steven Simone. Also in attendance was Janice Venables from the Governor’s Authorities Unit.

1. Call to Order

Chair Matos called the meeting to order at 9:33 a.m.

2. Adoption of the minutes from the February 24, 2023, CMP Policy & Implementation Committee meeting

Chair Matos asked for a motion to adopt the minutes of the February 24, 2023, meeting of the CMP Policy and Implementation Committee. Commissioner Lohbauer made the motion. Commissioner Wallner seconded the motion. Commissioners Lettman and Irick abstained. All others voted in favor.

3. Review of Executive Director’s report on Waterford Township Ordinances 2023-1 and 2023-2, amending Chapter 176 (Land Use, Development, and Zoning) of the Township’s Code and adopting the Second Amendment to the Haines Boulevard Redevelopment Plan

Susan R. Grogan, Executive Director, summarized a presentation provided at the September 2022 P&I Committee meeting related to opportunities for the use of Pinelands Development Credits (PDCs) in association with nonresidential development (attached). She stated that the

Waterford Township ordinances under consideration incorporated a non-residential PDC component based on the approach discussed at the September 2022 meeting.

Brad Lanute, Planning Specialist, presented staff findings on Waterford Township Ordinances 2023-1 and 2023-2. He stated that both ordinances relate to the 142-acre Haines Boulevard Redevelopment Area located at the intersection of New Jersey Highway 73 and U.S. Highway 30, and entirely within a Pinelands Regional Growth Area. He referenced a map exhibit included in the Executive Director's Report throughout the presentation (attached).

Mr. Lanute summarized prior ordinances that came before the Commission related to the Haines Boulevard Redevelopment Area, including the original redevelopment plan adopted in 2001, a simplified permitting system for the Haines Boulevard Redevelopment Area adopted in 2011, as well as the first amendment to the redevelopment plan adopted in 2016. The first amendment to the redevelopment plan permitted residential and mixed-use development, allowing for up to 792 residential units. PDCs were required for 30% of all market-rate residential units in projects of five units or more in the redevelopment area.

Mr. Lanute went on to describe the ordinances under consideration. Ordinance 2023-1 repeals the simplified permitting system for the redevelopment area. He said that the Township had opted to repeal simplified permitting system due to the increasing complexity of the redevelopment plan. He described elements of the simplified permitting system that would be retained within the redevelopment plan via Ordinance 2023-2.

Mr. Lanute then described Ordinance 2023-2 adopting the second amendment to the Haines Boulevard Redevelopment Plan. The amendment establishes a Planned Industrial (PI) Overlay District of 63.5 acres that spans three lots. The PI Overlay District permits various non-residential uses and provides area/bulk standards for large and small tract developments. Any non-residential development is required to redeem PDCs at a rate of one right per every 17,000 square feet of gross floor area.

Mr. Lanute described the evaluation of Ordinance 2023-2 contained in the Executive Director's report, including staff's findings that: the new overlay district is an appropriate area for non-residential development, the remainder of the redevelopment area outside the overlay district would continue to meet the CMP-prescribed residential density requirements, and the PDC program will not be negatively impacted by the expected loss in residential development potential from the overlay district. He stated that staff has concluded that Waterford Township Ordinances 2023-1 and 2023-2 comply with the CMP and recommend that the Commission issue an order to certify these ordinances.

Commissioner Lettman asked for clarification on the smaller lot within the overlay district. Mr. Lanute identified Lot 3 on the map within the overlay district.

Commissioner Lohbauer thanked the Township for incorporating the solar-ready roof provisions in its ordinance. He asked about the existing Transit-Oriented Development (TOD) Zone, and if there is a commuter rail station within the redevelopment area. Mr. Lanute said yes and identified the rail line on the map. Commissioner Lohbauer asked how the zoning change would

impact the use of the rail line. Mr. Lanute said the 2016 plan amendments envisioned high-density development that could utilize the rail station.

David Patterson, Waterford Township attorney, was invited to comment on Commissioner Lohbauer's question. Mr. Patterson thanked the Commission for working with the Township on the ordinances. He said the Township has been trying unsuccessfully to develop a transit-oriented community at this site since 2001.

Commissioner Lloyd said he appreciated the staff's effort on the Waterford Township ordinances. He asked if staff was setting a binding precedent on a similar proposal in the future. ED Grogan said similar ordinances are coming, and that the staff will continue conducting thorough analyses of each. She added it is very site, zone, and municipality specific.

Chair Matos added that the Commission has approved the use of PDCs for nonresidential development on a case-by-case basis before.

Commissioner Lettman asked if the small lot between the two flag lots would still be zoned for residential development, and if the same number of PDCs will be redeemed in the residential zone under the new plan. Mr. Lanute said the 2016 plan amendment acknowledged that the lot configuration in the Redevelopment Area may require some consolidation or subdividing to achieve full development potential. He said the flag lots are not developable and potentially could be conveyed to an adjacent lot for mixed-use or residential development in the future.

Commissioner Irick said he advocated for the use of PDCs in non-residential areas. He acknowledged that the application is complex, and said he is concerned about loss of PDC potential following a zoning change.

ED Grogan said the PDC numbers discussed in the report are specific to a single project that is expected to receive Township approval. She said the number of potential PDCs that could be used in the redevelopment area is only a theoretical value. If the high-density residential development envisioned under the redevelopment plan never occurs, the rights will never be redeemed. She added the new PI district and PDC requirements for nonresidential uses are far more likely to result in PDC redemptions than the existing redevelopment plan.

Commissioner Irick asked if there had been any change in impervious cover over the entire parcel. ED Grogan said the Commission did not have specific figures for that, but some of the impervious cover from previous development remains.

Commissioner Irick said he would like to see no net change in impervious cover. He asked if the staff had evaluated the loss of forested area along the parcel. ED Grogan said staff did not calculate the amount of tree clearance that the PI Overlay District would permit as the existing zoning would already allow for the full development of the area.

Chair Matos asked for a motion to recommend certification of the ordinances to the full Commission. Commissioner Avery made the motion. Commissioner Lohbauer seconded. All voted in favor.

4. Review of 2022 all-terrain vehicle (ATV) State legislation and discussion of municipal ordinances

ED Grogan discussed new State legislation on all-terrain vehicles (ATVs) that would permit law enforcement to confiscate and destroy ATVs that are used in illegal riding activities. Some municipalities have adopted ordinances to authorize this type of law enforcement action. She requested feedback from the Committee on whether there are appropriate actions for staff to take in terms of drafting and distributing a model ordinance and the enabling legislation with municipalities.

Commissioner Lohbauer said enforcement is the biggest challenge with combating illegal ATV use in the Pinelands Area. He said the new rule will serve as an excellent deterrent. He thought a model ordinance for Pinelands towns would be the most appropriate response.

Commissioner Avery said several towns in Ocean County have adopted the ordinance, and that a model ordinance would be useful to communities who have not adopted one yet.

Commissioner Irick said he agreed that a model ordinance would be useful and suggested posting signage informing potential riders of the new rules. He added that a news release and social media postings would be appropriate.

Chair Matos said she agreed, and proposed the staff recommend best practices and promote model ordinances to Pinelands municipalities.

5. Update on Commission's March 7, 2023, Land Preservation Summit

Gina Berg, Planning Specialist, gave a brief update on the Land Preservation Summit that the Commission held earlier in March. She discussed the goals of the summit, the attendees, and the topics addressed through presentations and roundtable discussions. She said it was well attended and well received by land preservation partner organizations.

Ms. Berg said one of the goals of the summit was to gain insight on the reasons for the lack of project proposals in the last two Pinelands Conservation Fund (PCF) grant rounds. She said feedback from attendees indicated that the PCF project criteria align well with partners' land acquisition goals, but that partners struggle with the capacity to do more. With that feedback, Commission staff recommends holding off on launching a new round of PCF offerings at this time and is planning to prepare a pre-proposal to the National Fish and Wildlife Foundation's America the Beautiful grant program. If the pre-proposal is selected by the Foundation, then the staff would return to the full Commission for authorization to submit a full grant proposal.

Ms. Berg said the proposed grant project would build capacity for the Commission and its partners to do better stewardship on preserved lands and to preserve and protect more land in the

Pinelands Area. She continued that the pre-proposal is due in April and that the pre-proposal scope calls for a three-year work period that would start in November 2023.

ED Grogan added that the America the Beautiful program is looking for projects from state agencies working with non-governmental partners.

Commissioner Avery asked what the average grant was last year. ED Grogan said the amount of funding was high, but the exact amount is unknown.

Commissioner Avery asked if there were any discussions by other participants about the types of projects they would like to be funded. Ms. Berg said stewardship concerns were expressed most frequently, and that many non-governmental partners lack the necessary resources to do more stewardship.

No official action was required of the Committee on this matter.

6. Update on CMP amendments and priorities

Stacey Roth, Chief of Legal and Legislative Affairs, gave a presentation on upcoming CMP rulemaking amendments (attached). The presentation addressed the Black Run management area changes, the electric transmission line right-of-way vegetation maintenance program, application fee changes, expiration dates for old waivers and Certificates of Filing, and other minor amendments.

ED Grogan said the Black Run project has a long history, and that the recommended management area changes recognize the importance of protecting the watershed. She added that a change in management area boundaries of this size requires Commission action via a CMP amendment. She noted that a more detailed summary of the proposed changes would be provided to the P&I Committee in April.

Commissioner Wallner asked what the timeline might be for the Township to change its zoning. ED Grogan said the Commission's adoption of the CMP amendment would need to occur first. That amendment would then trigger the municipal rezoning process.

Commissioner Wallner said land surveying and negotiations regarding land acquisition for open space are going forward.

Commissioner Avery asked why the Black Run management area changes are taking longer than the Oyster Creek management changes did years ago. ED Grogan said the Commission at the time of the Oyster Creek management area changes was comfortable with the amendment, but it has not been as comfortable with moving forward with the Black Run management area changes.

Commissioner Avery asked if the Black Run project requires Secretary of the Interior review. ED Grogan said yes, as do all CMP amendments.

Commissioner Lohbauer said he supports prompt action concerning the Black Run changes. ED Grogan said she agreed, and that staff is moving as quickly as possible.

Ms. Roth added there is a 30-day veto period built into the Pinelands Protection Act for adoption of CMP amendments, and that rulemaking is a very long process. She said the staff intends to have the full rule proposal prepared for the P&I Committee in June and that, if authorized, the notice would be published in the NJ Register in September with the public hearing scheduled in October.

Commissioner Lloyd asked if there are other factors that may hold up the Black Run management area changes. ED Grogan said there are affected landowners, and in the past, the Commission was unwilling to proceed without support from Evesham Township. She added that municipal support is not required for the Commission to move forward with the amendment.

Commissioner Wallner added that currently only a portion of the Black Run headwaters is being designated for open space in Evesham Township's currently proposed Open Space and Recreation Plan, and that there is a pocket carved out for potential development.

Commissioner Irick said he supported implementing a sunset provision on Certificates of Filing. He added that it would be beneficial to revise exemptions and definitions related to utility distribution lines. ED Grogan said that amendments related to distribution lines could be part of a future set of amendments.

7. Public Comment

Ms. Roth stated that the public comment period for the Waterford Township ordinances was closed.

Fred Akers, Operations Manager at Great Egg Harbor Watershed Association (GEHWA), thanked the Commission for discussing the ATV legislation and considering model ordinances. He said it took 10 years to pass legislation about ATVs, and that the GEHWA plans to work on legislation to require vehicle tagging. He then introduced Brooke Handley as the new Great Egg Harbor Watershed River Administrator.

Brooke Handley, River Administrator of the GEHWA, described actions by the Watershed Association to have municipalities adopt the model ordinance. She said Egg Harbor Township and Hamilton Township have adopted the model ordinance.

Michelle Forman of Pemberton Township asked about the availability of the list of preapplications that have been denied by the Commission. She also asked who she can talk to about rule amendments. She questioned why all Commissioners were not in attendance and about taking roll call during votes at P&I Committee meetings. She also asked when the public hearing was held on the Waterford Township ordinances.

David Roberts thanked the Commission for its work with Waterford Township on the amended redevelopment plan.

Heidi Yeh, Policy Director at the Pinelands Preservation Alliance (PPA), thanked the Commission for holding the Land Preservation Summit. She said PPA is generally supportive of the use of PDCs for nonresidential development as well as moving to a percentage-based model. She said the current model only applies to bonus density and creates a financial incentive to build with low-density sprawl.

Chair Matos closed public comment at 11:27 am.

Commissioner Irick said he assesses applications thoroughly and that all his votes occur in a public forum. Chair Matos agreed.

Chair Matos asked for a motion to adjourn the meeting. Commissioner Lohbauer made the motion. Commissioner Wallner seconded. All voted in favor.

The meeting adjourned at 11:28 a.m.

Certified as true and correct:



Trent R. Maxwell, Planning Technical Assistant

Date: April 14, 2023

PRIOR P&I DISCUSSION ON OPPORTUNITIES FOR USE OF PDCS WITH NON-RESIDENTIAL DEVELOPMENT

Pinelands Commission
Policy & Implementation Committee
3/31/2023

WAREHOUSE DEMANDS REACH REGIONAL GROWTH AREAS

- Pinelands municipalities are fielding many warehouse development proposals
- Developers are targeting tracts of land with access to highways to site large ($\frac{1}{2}$ million sqft+) warehouses
- Municipalities are interested in the tax ratables and associated economic development impacts; expect that residents will have similar concerns as seen statewide
- Multiple Pinelands municipalities are actively considering zoning changes to allow warehouse development via redevelopment plans



A PATTERN EMERGES IN RESPONSE

- Warehouse proposals for sites in residentially zoned RGAs with existing, mandatory PDC requirements
- Without a zoning change, the CMP imposes a large PDC obligation through a use variance
- Rezoning vacant land from residential to non-residential within the RGA has barriers based on CMP rules
- Opportunities to transfer residential development potential to other lands in a municipality's RGA have become more limited over time



PDC USE IN RGA NON-RESIDENTIAL DEVELOPMENT

A POTENTIAL APPROACH

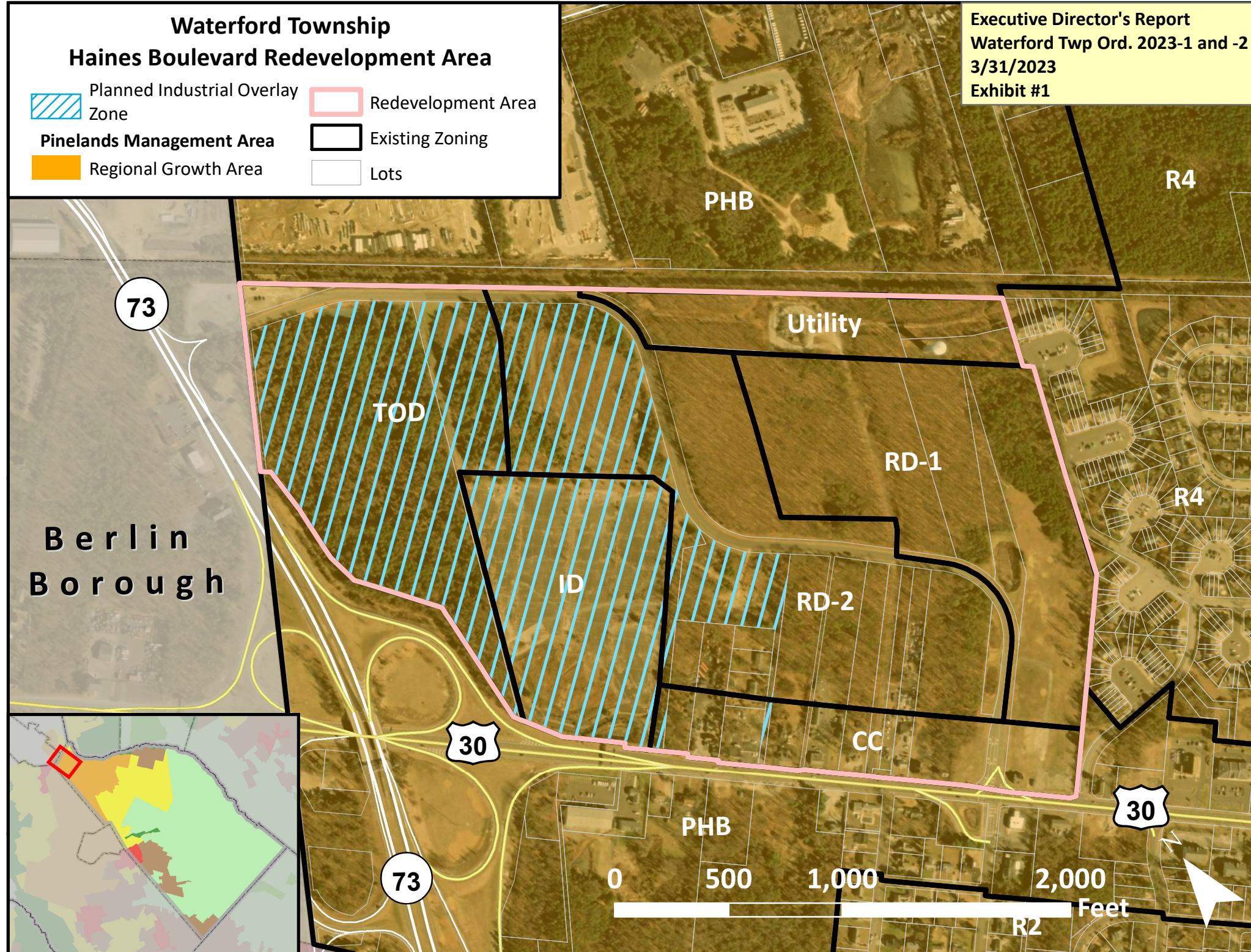
- Drawing upon CMP's municipal flexibility provisions
 - Allow municipalities to meet their PDC obligations by adopting mandatory PDC requirements for non-residential uses
 - Precedent: Berlin Township & (formerly) Winslow Township - Bonus FAR achieved via PDC use
 - Allow reduction in authorized residential units in municipal RGAs where overall residential zoning capacity exceeds CMP base/bonus density minimum
 - Many RGA municipalities have been opting to increase RGA residential density above the required CMP minimum. Mandatory PDC requirements were incorporated in these zoning plans to accommodate affordable housing and ensure redemption of PDCs.
 - A municipality should be given the flexibility to reduce residential zoning capacity so long as the CMP minimum continues to be met
- Calculate PDC obligation required by the CMP for lands being rezoned and assign that obligation to the newly permitted non-residential uses

Waterford Township

Haines Boulevard Redevelopment Area

Planned Industrial Overlay Zone	Redevelopment Area
Pinelands Management Area	Existing Zoning
Regional Growth Area	Lots

Executive Director's Report
Waterford Twp Ord. 2023-1 and -2
3/31/2023
Exhibit #1



2023 Rule Package #1 Update

P & I Committee

March 31, 2023

Amendments

Black Run

- ▶ Redesignates an area in Evesham Township, Burlington County, from a Pinelands Rural Development Area to a Pinelands Forest Area
- ▶ Authorizes a new pilot program to address the location and intensity of future development of lands in Evesham Township through conservation of lands in Evesham's new and existing Forest Area

Electric Transmission Line Right-of-Way Vegetation Management

- ▶ A new rule to make permanent the Electric Transmission Right-of-Way Vegetation Management Plan (“ROW Plan”)
- ▶ Plan currently administered through a pilot program, which will be repealed.

Amendments (cont.)

Fees

- ▶ Increased fee for applications to resolve violations
- ▶ Fee for resubmittal of application for expired waiver

Expiration of Old Waivers and Certificates of Filing

Minor Amendments

- ▶ Clarifications, Codifications of Existing Practices, and amendments to address statutory name change to County Boards of Commissioners

Next Steps

- June 2023 P&I Committee reviews rule proposal
- July 2023 Commission reviews and authorizes rule proposal
- August 2023 Rule proposal filed with Office of Administrative Law
- September 2023 Rule proposal published in New Jersey Register
- October 2023 Public hearing
- November 2023 End of 60-day comment period
- January 2024 P&I Committee reviews rule adoption
- February 2024 Commission reviews public comment and adopts rules
- March 2024 Adoption notice filed with Office of Administrative Law
- May 2024 Amendments take effect