

Adopted September 28, 2012

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

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

15C Springfield Road

New Lisbon, New Jersey

August 31, 2012 – 9:30 a.m.

MINUTES

**MEMBERS IN ATTENDANCE:**

Chairman Mark Lohbauer, Robert Jackson, Richard Prickett, and Candace Ashmun (1<sup>st</sup> Alternate)

**MEMBERS ABSENT:** Leslie Ficaglia and Paul E. Galletta

**STAFF PRESENT:** Executive Director Nancy Wittenberg, Stacey Roth, Larry Liggett, Susan Grogan, Brian Szura, and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:44 a.m.

**1. Adoption of minutes from the July 27 2012 CMP Policy and Implementation Committee meeting**

Commissioner Jackson moved the adoption of the minutes (open and closed sessions) of the July 27, 2012 CMP Policy and Implementation Committee meeting. Commissioner Prickett seconded the motion and all voted in favor.

**2. Discussion of proposed Memorandum of Agreement between the Pinelands Commission and the Richard Stockton College of New Jersey**

*Present for the discussion were representatives of Stockton College: Mr. Jay Sciullo (with Marathon Engineering, the College's stormwater consultant), Mr. Rummy Pandit, Mr. Skip West and Ms. Melissa Hager, Esq.*

Mr. Liggett stated that the MOA under consideration between the Commission and the Richard Stockton College of New Jersey ("Stockton") was a streamlining MOA, rather than a deviation from CMP standards. He said that today the discussion of the proposed MOA would provide a preview of how public development might occur at Stockton over the next 20 years.

Mr. Liggett provided a PowerPoint presentation (*Attachment A*) noting that the previously approved Master Plan (*see Resolution PC4-10-48, October 2010*) had authorized various development areas throughout the campus. He said that today's discussion would focus on the likely impervious footprint of the development areas and the need for appropriate stormwater facilities as described in Stockton's Stormwater Plan (the Plan).

Mr. Liggett said that there are three existing and five proposed development areas. The MOA will allow the College to pre-select the maximum amount of area to be disturbed, the maximum amount of impervious area within each of the disturbed areas and then plan and build the necessary stormwater facilities. As the development proceeds, Stockton will match the cumulative impervious surfaces to the planned total to ensure that the total impervious surface does not exceed that which is approved through

the MOA. Currently, the College has a concept as to how each development area will be utilized but the MOA does not obligate Stockton to specify the exact type or time of development. Commission staff will monitor and track future development to assure consistency with the MOA. In some existing developed areas, the impervious surface is being removed and reconfigured.

Mr. Liggett introduced Mr. Brian Szura, (Environmental Specialist in the Commission's Regulatory Programs Office) and noted that it was he who had reviewed Stockton's stormwater plan. He also introduced Mr. Jay Sciullo, the author of the Plan, who described the efforts to maximize the use of forested lands as they serve as superior stormwater basins. Collection of stormwater will be a staged process with a bermed basin edge to direct overflow to the forest.

In response to questions from the Committee, Mr. Sciullo said that the College is very proud of its geothermal system at Parking Lot 1 and there will be no disturbance in its vicinity. The basins will have a natural appearance and maintenance will involve occasional removal of detritus patches. Although there are no published studies of the effectiveness of these forested basins, Mr. Sciullo said such a system is functioning in Mays Landing and, within a short time, Stockton will gain more experience with the effectiveness of its own basins. Some basins using this technique have been functioning since the 1980s.

In response to a concern expressed by Commissioner Jackson, Mr. Sciullo said that the use of low-glare window glass will reduce the potential for bird strikes on campus buildings.

Mr. Szura said that the use of a forested basin is a non-structural method and is encouraged by DEP. He said that such systems avoid the negative impact from construction compaction. He said that there are CMP concerns with soil permeability. Conversely, soils that allow water to percolate at greater than 20"/hour are too permeable. In the Pinelands, there is an interest that water not drain too fast. All the soils in these Stockton development areas are appropriate. He said that Stockton will have a recurring basin maintenance and observation obligation and will file annual reports.

Mr. Liggett added that the CMP requires permeability testing both before and after construction.

Commissioner Prickett said that, although natural recharge is great, he was concerned with the runoff from parking lots that would contain oil, antifreeze, and other contaminants.

Mr. Liggett said that all these stormwater facilities are outside wetlands and wetlands buffers. He said that the Stormwater Plan today is roughly 80% complete; the final reviews will occur at the time of development.

In response to Commissioner Ashmun's questions regarding sewer capacity, Mr. Liggett said that currently it is adequate but, in the future, with development demands in Egg Harbor, Galloway and Hamilton Townships, a new County-wide interceptor line will be needed. Commissioner Ashmun said that she would like to see an annual inspection and report over the next 20 years to provide assurance that Stockton was meeting the agreement.

Ms. Roth reminded the Committee that this is not a deviation MOA and that all development will be fully consistent with the CMP, thus no offset measures are needed. For each development area, all requirements of the MOA must be met and a licensed professional engineer must certify that all development is consistent with the CMP. If staff determines that it is not compliant, then development ceases. These are intended to be expedited permitting review processes with continuing communications over any issues.

In response to Commissioner Ashmun's concerns that the acres of impervious surface are listed as "approximate." Ms. Roth and Mr. Liggett clarified that the impervious cover cannot exceed that listed in the MOA and Ms. Roth said the language will be modified to indicate maximum impervious area.

Mr. Liggett said that if the College decides it wants development that deviates from the MOA, it can proceed through the normal application process. Ms. Roth added that, provided there are not more than *de minimus* changes from the approved agreement, the development approvals will be in the form of a letter from the Executive Director.

Ms. Roth said that the College has submitted a forestry stewardship plan to DEP. Currently it is uncertain if DEP can implement forestry plans with public entities. The MOA has built into it that the Commission will process the forest stewardship plan in accordance with the MOA should Stockton receive DEP approval of its forest stewardship plan.

Ms. Roth said that, regarding the annual report, one needed to determine if that were to be prepared by Commission or Stockton staff. She noted that Ms. Grogan had reminded her that the agreement with the Turnpike Authority calls for a report every two years and perhaps that would be a more realistic reporting schedule, depending upon the pace of development.

Ms. Roth also called the Committee's attention to the fact that Stockton would incur a PDC obligation if it chooses to develop traditional (non-student) housing such as the development of assisted living with apartments, nurses/residents' housing in association with the AtlantiCare Regional Medical Center at the southern edge of the campus. Mr. Liggett clarified that the hospital area itself is not part of the Master Plan

Mr. Liggett said that Stockton wants flexibility but it is difficult to draw a hard line as to what exactly will be developed. The College is aware that it should not go too far as, for example, they have been told to focus on their campus and not cross Pomona Road.

In response to questions from Commissioner Jackson regarding the maintenance facility, e.g., chemicals, leakage from trucks, etc., Mr. Sciullo said that this is a State regulated facility and is obligated to follow all requirements.

Ms. Roth said that with the adoption of this MOA, all previous MOAs with Stockton no longer exist and said that she would clarify that in Attachment 5 to the MOA.

In response to questions from Commissioner Prickett, Mr. Sciullo said that currently there are no septic systems on the campus although no more than one or two might be developed for the field house.

Ms. Roth said that she would provide the stormwater plan as a .pdf file via email to those Committee members requesting it, although the large maps would require review at the office. She said that the next step is scheduling a public hearing after which she would provide a report for the Committee's review. The Committee expressed support that the MOA go to public hearing.

Ms. Melissa Hager thanked the Committee members for their support for the MOA.

### **3. Executive Director's Report**

#### **Plumsted Township Ordinance 2012-04, Amending Chapter 15 (Zoning) of the Township's Code in response to amendments to the Pinelands CMP related to forestry, wetlands**

**management, and residential cluster development in the Pinelands Forest and Rural Development Areas.**

Ms. Grogan said that Plumsted Township 2012-04 is the Township's response to the three recent sets of CMP amendments. She said that Plumsted has much experience with clustering outside the Pinelands Area of the Township and she'd been working to help them incorporate their goals while being consistent with the CMP. However, the Township has made a few modifications to the model ordinance provided and will still need to make a few more changes to their implementing ordinance in order to receive full certification.

Plumsted is requiring that at least 50% of the cluster parcel be deed restricted to open space. Although the CMP has no such requirement, this provision does not appear to conflict with CMP clustering standards.

Plumsted is also allowing for larger residential lots within the cluster development, noting that the Planning Board engineer may authorize average lot size to increase to 1.5 acres if necessary to accommodate dilution problems requiring larger septic systems. Ms. Grogan said that she had reviewed this section with the Commission's wastewater coordinator, Mr. Ed Wengrowski. This is counter to the intent of the cluster rules that require one acre lots (with a slight deviation up to 1.1 ac. on average if demonstrated necessary). Plumsted must eliminate this provision as the use of alternate design wastewater treatment systems or development of fewer lots will accommodate a dilution problem. She said that she believed the Township preferred the appearance of larger lots as 2-acre lots and perhaps this was an attempt to allow larger lots than the clustering rules permit.

Plumsted requires that a developer use a yield plan in which no portion of any lot may be located within wetlands or wetlands buffer. Although the Commission encourages the use of a yield plan for conceptual purposes to guide development to appropriate locations on the site, the exclusion of all wetlands/buffers from a lot could potentially reduce the number of units. This provision must be revised to be consistent with the CMP. Ms. Grogan noted that there were a number of different people involved with the drafting of the ordinance and perhaps that led to a miscommunication. She said that Plumsted supports clustering and that she believed that the Township had its heart in the right place. These are fairly minor issues and the Commission needs to take action. Staff can recommend only conditional certification at this time.

In response to questions from Commissioner Prickett, Ms. Grogan said that Plumsted did not seem to be concerned about reducing the number of units in the cluster development but liked the way the lots look when the house is set back from the road. It is the developer's choice to determine the number of units in a project and they are not obligated to maximize that number. She said that the Commission staff have a cluster review committee and look at aerial maps, wetlands, etc. and find it a valuable tool.

Chairman Lohbauer asked about the Commission's interest in telling a municipality that it cannot be more restrictive.

Ms. Grogan responded that traditionally, the Commission allows municipalities to be more restrictive in the more conservation-oriented zones. However, the clustering rules are very specific and mandatory in order to reduce fragmentation. The bonus units are an incentive to encourage property owners to aggregate lands. One-acre lots are less valuable than "estate" lots. The developer is compensated with more lots through the bonus provision. The Commission is trying to preserve the intent of clustering to allow the maximum number of units allowed under the municipal zoning; any attempt by the municipality to reduce that number, such as requiring lots to be free of wetlands, undermines that intent. The Commission wants also to protect the landowner's right to the maximum number of units. She said that

at its September meeting, the Commission will discuss Hamilton Township's clustering ordinance that limits bonus units, and will have to determine if it is contrary to the goals of the CMP.

Ms. Grogan said that if a municipality is concerned with the amount of development to be allowed, rather than trying to handle it through the clustering provisions, it should examine its overall zoning scheme. Staff tries to get the municipalities to take a comprehensive approach to their zoning.

Chairman Lohbauer thanked Ms. Grogan for her thorough explanation and called for a vote.

Commissioner Ashmun moved the recommendation to the Commission of conditional certification of Plumsted Township Ordinance 2012-04. Commissioner Jackson seconded the motion and all voted in agreement.

### **3. Annual update on Pinelands Land Protection Initiatives**

Ms. Grogan provided a PowerPoint presentation (*Attachment B*) on permanently protected lands within the Pinelands Area. This has become an annual presentation over the past several years to advise the Commission of the status of various land protection programs. Ms. Grogan noted that, with recent improvements in technology and access to data sources, there is an ongoing effort to refine data and verify accuracy. In some instances, data had been recorded as lands protected through one program but have since been reclassified to a different program. In some instances, the Commission has been advised of protected lands long after the action was taken to preserve them. In no case have any lands been un-preserved, merely re-categorized.

Ms. Grogan noted the major contributions to the project by the MIS and GIS offices, most notably Mr. John LaMacchia and Ms. Janet Pierce. Ms. Pierce has been particularly effective in locating deeds that have been missing from our files and confirming the actual blocks and lots under various deed restrictions and separating those preserved for open space and farmland from recreation.

Within the past year, the Pinelands Conservation Fund protected 381 acres (Clayton Tract), the Pinelands Development Credit (PDC) Program protected some 55 acres and the Limited Practical Use program about 22 acres. Approximately 437,000 acres (roughly 47% of the Pinelands Area) are now protected through State, PDC, private and non-governmental organizations. She said that the PDC acres added this year are few but, that is a poor reflection of the activity of a Bank which receives almost daily inquiries regarding sales and severances and has been actively transacting much business.

Mr. Liggett reminded the Committee that the Commission does not own any land. He also said that now all these preserved lands are entered in our PCIS (Pinelands Commission Information System), so the data are readily retrievable in case unpermitted development is proposed.

In response to Commissioner Prickett's question regarding access to the deeds, Ms. Grogan said that those for PDCs and MOAs are in the Commission's files. For some other programs, staff can access them on line.

Ms. Grogan said that at next month's meeting, the Committee would be hearing about applications for the next round of Pinelands Conservation Fund projects as well as receiving an update on a long-time significant project in Atlantic County.

### **4. Public comment**

Mr. Fred Akers, with the Great Egg Harbor Watershed Association and the Great Egg Harbor River National Scenic and Recreational Council, spoke against what he characterized as the efforts by the Commission staff to lobby DEP to designate Pinelands Villages as sewer service areas. He said that the recently signed Memorandum of Understanding (MOU) between DEP and the Commission calls for a rule change and that sewerage of the Villages will increase development, leading to a need for more water withdrawal/stream depletion.

He read aloud from the MOU citing §III.2:

*All lands located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 750-6.84(a)2 to address a public health problem or a memorandum of agreement pursuant to N.J.A.C. 750-4.52(c) of the Pinelands CMP, as specified in GIs coverage provided by the Pinelands Commission, shall be **deemed** to be within a sewer service area;*

He emphasized the use of the word “deemed” as further evidence that the MOU does not mandate DEP to sewer the Villages but staff is advocating for it.

He cited a letter from one Commission staff member and an email from a former staff member as evidence of the increased build-out that staff was encouraging. He said that the public wants to know the build-out numbers and staff has not been forthcoming with that information. He also cited the 2011 MOA with Buena Borough and Buena Vista Township for an addition to the Borough’s wastewater treatment plant that will increase discharge into Deep Run. It also authorizes sewerage at Buena Vista Camping World which is located in a Rural Development Area. He said that this shows that an MOA will take away the protection of the CMP.

Ms. Wittenberg said that Mr. Akers’ and Buena Vista Township’s concerns have been a moving target and today staff was hearing new issues that have not been heard before. She stated that the purpose of the MOU was to respond to the Pinelands Counties requesting a resolution to issues of language differences between the Commission and DEP. The MOU says that DEP will comply with Pinelands Commission rules. Sewerage is allowed in the Regional Growth Area, Pinelands Towns and Pinelands Villages and is precluded elsewhere. The Commission staff is not “lobbying” DEP.

Ms. Roth said that it is unfortunate that the mischaracterization of the MOU continues. The sole intent of the MOU is to recognize existing municipal zoning and boundaries and for DEP to recognize those management areas and the “supremacy clause” of the Pinelands Protection Act. The MOU has not changed anything and there is much misinformation being disseminated. A Sewer Service Area permits a system capable of treating more than 2,000 gpd. to be installed. Those less than 2,000 gpd. are not very big systems.

She said that the word “deem” means “it is known as”. For all intents and purposes, these are areas where the Pinelands Commission has authority. As for the Buena Vista Camping World issue, this is a pre-existing non-conforming use with water quality issues that had to be addressed. The Pinelands Commission is not *lobbying* DEP but has asked DEP to follow management area lines. As the Counties were starting to make changes to their wastewater plans without Commission approval, they and DEP sought to use DEP’s water quality planning process as a means to change the Pinelands management area boundaries. The Commission preserves the existing management area boundaries through the MOU. A municipality can come to the Commission to change its zoning if it does not like the buildout that it has

created. The Commission staff is available to help with that process. The MOU is not foisting development on municipalities nor changing the amount of development that is permitted. A sewer service area does not require that sewer service be developed. However, if it is eliminated, then, should a developer want to put in sewer development the municipality could not develop sewer without going to DEP. The MOU has not changed anything.

Ms. Wittenberg said that DEP would like to have the ability to change management areas and this MOU precludes them from doing so. She added that she was unaware that staff was withholding facts from the public.

Chairman Lohbauer said that he was confident that the Commission was not lobbying DEP and said that if the public has concerns then they should be brought before the Commission again.

Commissioner Jackson said that there are many who have concerns regarding water availability as well as the effects of climate change and the Commission's ability to address it.

Commissioner Prickett said that he was interested in all points of view and welcomed members of the public coming forth. He said that the Commission felt that the Executive Director's negotiations with DEP had been necessary. He said that he believed the designation of sewer service areas allow one to apply to the USDA Rural Development program to build sewer plants.

#### **5. Other Items of Interest**

There being no additional items of interest, the meeting adjourned at 11:55 a.m. (moved by Commissioner Ashmun and seconded by Commissioner Prickett).

Certified as true and correct:

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Betsy Piner, Principal Planning Assistant

Date: September 11, 2012

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CMP POLICY & IMPLEMENTATION COMMITTEE MEETING  
Richard J. Sullivan Center / Terrence D. Moore Lecture Hall  
15C Springfield Road  
New Lisbon, New Jersey  
August 31, 2012 – 9:30 a.m.

SUMMARY

The Committee adopted the minutes of the July 27, 2012 meeting.

The Committee received a presentation on a proposed streamlining MOA with The Richard Stockton College of New Jersey focusing on the development footprint and associated stormwater facilities. A public hearing will be scheduled.

The Committee recommended the conditional certification of Plumsted Ordinance 2012-04, the Township's response to the 3 sets of CMP amendments related to cluster development, forestry and wetlands management.

The Committee received an annual update on land protection efforts in the Pinelands. Roughly 437,000 acres or 47% of the Pinelands Area has been permanently protected through Pinelands programs and other initiatives.