

## **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=SGikCguX65s>

Meeting ID: 890 0604 8756  
Richard J. Sullivan Center  
15C Springfield Rd  
New Lisbon, New Jersey 08064  
**November 30, 2022 – 9:30 a.m.**

**Members in Attendance:** Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Chair  
Laura E. Matos

**Members Absent:** Alan W. Avery

**Other Commissioners in Attendance:** Douglas Wallner

**Staff Members in Attendance:** Gina A. Berg, John Bunnell, Ernest Deman, April Field, Marci Green, Susan R. Grogan, Charles M. Horner, Paul Leakan, Jessica Lynch, Trent Maxwell, Stacey P. Roth, Steven Simone, Ed Wengrowski

### **1. Call to Order**

Chair Matos called the meeting to order at 9:31 am.

### **2. Adoption of the Minutes from the September 30, 2022, Meeting of the CMP Policy and Implementation Committee**

Chair Matos asked for a motion to adopt the minutes from the September 30, 2022, meeting of the CMP Policy and Implementation Committee. Commissioner Irick made the motion. Commissioner Lohbauer seconded. All members voted in favor.

### **3. Proposed Kirkwood-Cohansey Water Management CMP Amendments**

Planning Specialist Gina Berg gave a presentation on the Kirkwood-Cohansey (K/C) Water Management CMP Amendments (attached). She described comments provided to the Commission during the public comment period. The Commission received 20 comments on the rule proposal, including comments from representatives of the sand and gravel industry. The comments were attached to the November P&I Committee meeting packet.

Ms. Berg described revisions staff was recommending to the K/C rule proposal to address the comments received from the aggregate industry. Specifically, staff recommended including a definition of a non-consumptive use, identifying an exemption for non-consumptive resource

extraction diversions, and clarifying a technical reference to the Low Flow Margin in the Statewide Water Supply Plan. Ms. Berg also noted other minor corrections to the draft rule are necessary. Due to the substantive nature of the revisions, particularly the exemption for non-consumptive resource extraction operations, a notice of re-proposal is required.

Ms. Berg described the rule schedule for the re-proposal. She advised publication in the New Jersey Register by March 2023 and estimates adoption of the rules by July 2023.

Chair Matos thanked Ms. Berg for the presentation and noted that the Committee is not taking any formal action today.

Commissioner Lohbauer asked about the definition of non-consumptive use in the updated rule language. He said he would favor something more quantitative and less open to interpretation. Citing public comments from Bill Layton of the New Jersey Concrete and Aggregate Association (NJCAA) about an informal agreement with the New Jersey Department of Environmental Protection (NJDEP) to return at least 90% of the water they use back to the source, Commissioner Lohbauer said he would be more comfortable setting a threshold amount. He also indicated that a specific value should be set for water quality in the definition of non-consumptive use.

Commissioner Lohbauer said the Commission had worked closely with the NJDEP and the U.S. Geological Survey (USGS) in developing the original amendment and noted there was no comment received from USGS. He asked for additional feedback from those agencies on defining non-consumptive use and allowing a new exemption.

Acting Executive Director (AED) Grogan said the rule language was shared with the NJDEP and the NJCAA. The Commission did not hear from USGS during the comment period, but that is not atypical. Ms. Grogan said all other parties have seen the material.

Commissioner Lohbauer noted staff did not seek to propose using the Hydrologic Unit Code-12 (HUC) area rather than HUC-11 as suggested by the NJDEP.

Ms. Berg said the Commission held discussions with the NJDEP, and they are looking to issue a new Statewide Water Supply Plan in 2023 and that plan is planned for updates once every five years. Although the NJDEP is still looking to move forward with the change to HUC-12, the Water Supply Plan planned for release in 2023 will still use HUC-11. Therefore, the staff is recommending continued use of the HUC-11 watershed because the Statewide Water Supply Plan is an easily accessible document for both applicants and staff and there is no set timeline for the release of Low Flow Margin data for the HUC-12 watershed.

Stacey Roth, the Commission's Chief of Legal and Legislative Affairs, also noted that the rule proposal references the Statewide Water Supply Plan, as amended, which may allow the Commission to transition to HUC-12 watersheds when that data becomes available.

Commissioner Lloyd said he agreed with everything that Commissioner Lohbauer had said. He discussed his concerns with the definition of non-consumptive use. He stated that the definition should specify a use that returns no less than 95% of the water withdrawn from the aquifer. He

also stated that the definition should more clearly state that the return water should be as close as possible to the location where it was taken.

Commissioner Lloyd said he was surprised that this is the first time that the issue of impacts on the mining industry has been raised considering the decade-long rule development process. He added he would like to hear more from the USGS on the exemption. He asked for an inventory of mining sites in the Pinelands Area. He said he wanted the definition of non-consumptive use tightened significantly.

AED Grogan said the number of mines located in the Pinelands Area will be included in the write-up of the full rule proposal. Ms. Grogan said most mines are in the Forest Area (FA) and Preservation Area District (PAD).

Commissioner Lloyd stated that he supports the comment from Winslow Township that the rule should be clear that the 50,000 gallon per day threshold is based on existing withdrawal plus the proposed withdrawals by the applicant.

AED Grogan asked if NJDEP defines 90% as the threshold for determining that a use is non-consumptive. Ms. Berg said the 90% threshold is not codified in any NJDEP rule.

AED Grogan said the exception applies only to the resource extraction industry and not to other entities seeking diversions from the Kirkwood-Cohansey.

Commissioner Lettman asked if the mining industry receives permits from the Commission or the NJDEP or both, and if they want to amend that process.

Ms. Berg said the Water Allocation Permits (WAPs) are issued by the NJDEP on a routine basis, and they are instructed to return the water to the source, undiminished in quantity or quality. Resource extraction operations also are required to apply to the Commission to allow mining to continue.

Commissioner Lettman asked if the industry would have to approach both the NJDEP and the Commission after the rules take effect.

Ms. Berg said resource extraction operations will have to continue to go to NJDEP for Water Allocation Permits and apply to the Commission for resource extraction operations.

AED Grogan said a development application is required whether a proposed diversion is consumptive or non-consumptive. CMP application requirements and procedures are not being changed. The CMP would contain new water management standards and an exception from those standards for certain non-consumptive uses.

Commissioner Lettman asked why the sand and gravel issue came up so late in the rulemaking process. AED Grogan said resource extraction had not been raised as an issue by any party during the lengthy time period during which the rules were being considered and discussed with stakeholders. Ms. Berg noted that the non-consumptive condition of water use by resource extraction may have played a role. AED Grogan indicated that this is the reason for having a public comment period.

Commissioner Wallner asked what standards would be applied for contaminants in water returned to the aquifer. He said he is for looking a definition that is more quantitative and demonstrable about water quality of the return water.

Commissioner Irick said he wanted to see a 95% quantification for non-consumptive use, and that he wanted to see a measurement for water quality impairments. He asked if the exemption only refers to the non-consumptive use. He asked if resource extraction entities are required to let the Commission know if they have received a WAP. Commissioner Irick said the applicant should be required to document to the Commission when they are applying for the WAP with the NJDEP.

Ms. Berg said the NJDEP has committed to sending WAPs to the Commission, but it is not always a reliable process. AED Grogan said the NJDEP has expressed renewed commitment to cooperation on all permitting processes.

Commissioner Lloyd said the Commission may want to develop a new monitoring regime for water quality of return water. He also asked if staff would return to P&I with new language.

AED Grogan said the recommended next step is to bring a revised draft rule to the full Commission in January. She noted a full rule proposal would be prepared for the Commission meeting. Upon review of the revised rule language, the Commission could decide to move forward with re-proposal or refer the matter back to the P&I Committee in late January 2023.

Chair Matos asked the Committee to confirm their recommendation that the draft rule should advance to the full Commission meeting on January 13. The Committee agreed.

#### **4. Review of Draft Amendments to 1998 Memorandum of Agreement (MOA) with Atlantic County regarding Lake Lenape Park**

Ms. Roth gave a presentation on the 1998 Memorandum of Agreement (MOA) with Atlantic County concerning Lake Lenape Park in Hamilton Township (attached). The Commission negotiated the MOA with the County to allow certain development projects on 76 acres of the park, while placing the remaining 1,822 acres under a Deed of Conservation Restriction (DCR). Her presentation provided background on the MOA, amendments to the deed-restricted lake area, and the proposed dock that the County hopes to construct at the lake. She noted that the County wished to redesign and replace the existing dock and construct a second one for safety purposes.

Ms. Roth commented that the existing MOA is very specific about the dock configuration and requires specific dimensions and design standards. She explained the deed of conservation restriction (DCR) was based on the MOA and restricts the reconfiguration proposed by the County. She recommended an amendment to the MOA to allow for the creation of a 300' x 200' area to allow the County to reconfigure the docks as needed within the area. She indicated that the County has offered to deed restrict a comparable 300'x 200' area to the north of the camping area at the park and to abandon a dock that had previously been approved for this area under the

1998 MOA. She advised that the County will need to go to the NJDEP to revise the DCR and that the staff would support the County in that effort.

AED Grogan asked if the offset area was comparable in terms of size and acreage.

Ms. Roth said that the offset is equal and that this was confirmed by metes and bounds surveys.

AED Grogan asked Ms. Roth to describe the MOA process for Commissioners who were not present when the issue was last discussed in 2019.

Ms. Roth said the P&I Committee authorized staff to move forward with the MOA amendment in 2019. At this time, staff anticipates conducting a public hearing on the amendment in early January. Staff will compile a report that documents any public comment received at the hearing and bring the findings back to the P&I Committee in early 2023.

Commissioner Lohbauer asked if the dock could be built and completed in time for the summer of 2023 if the Commission moves expeditiously.

Ms. Roth asked the Atlantic County officials, who were attending the meeting remotely, to respond. She added that the process to revise the deed restriction through the NJDEP is not within the control of the Commission or the County.

Commissioners Lohbauer and Irick expressed support for the amended MOA.

Anthony Pagano, Atlantic County Assistant Counsel, thanked Ms. Roth and the Commissioners for moving the project forward. He added that he was involved in drafting the original 1998 agreement and has a stack of complaints from parents concerned about the existing dock.

Jerry DelRosso, Atlantic County Administrator, also thanked Commission staff for their work on the amendment.

Chair Matos indicated that the Committee supports moving forward with the MOA amendment process.

## **5. Continued Review of Stockton University's Proposed Changes to Deed of Conservation Restriction (DCR)**

Ms. Roth gave a presentation (attached) regarding revisions to the lands on Stockton University's Galloway Township campus that are subject to the restrictions contained within the 2014 Deed of Conservation Restriction (DCR). She introduced Rick Ricciardi and Craig Harris of Marathon Engineering & Environmental Services, Inc., both consultants for Stockton University on the project. She noted that the exhibit from the Master Plan used to prepare the deed restriction was not accurate and failed to include existing utilities and areas needed to maintain this infrastructure. As a result, when Stockton applied for infrastructure improvements in 2018, it found that infrastructure was located in a deed-restricted area. This initiated discussions with the University about revisions to the Master Plan and the deed restriction.

Ms. Roth shared the exhibit from the 2010 Master Plan depicting the deed-restricted area on the campus and maps depicting the changes being proposed to same. The University is proposing to deed restrict 35 acres to replace lands that would be removed from the prior deed-restricted area for existing infrastructure. The DCR will need to be amended by the NJDEP through the process required by the New Jersey Conservation Restrictions and Historic Preservation Restrictions Act.

Commissioner Lohbauer asked about the areas that have been described as being reserved for future development. Ms. Roth said they are reserved for future infrastructure improvements that will allow the University to accommodate the growth it is experiencing.

Commissioner Lohbauer asked why the map is not expressly limiting those areas to those specific upgrades. Commissioner Lohbauer asked if by approving the DCR map, the Committee would not be restricting its own ability to review future development on those sites.

Staff and the consultant for the University indicated that any development of the area would require an application to the Commission. Commissioners would have the opportunity to review and approve development within the areas reserved for future development through the public development application process.

AED Grogan added the Commission is in receipt of Stockton's 2020 Facilities Master Plan and can use this document to help implement the desired changes at the University. Changing the actual boundaries of the deed restriction is the NJDEP's job. Once the Committee agrees on the boundary changes, staff will return to the Facilities Master Plan and work through the normal review and approval process. This will include new maps, a review of proposed projects, a report, and a public hearing.

Commissioner Lohbauer said this is technically a violation of a deed restriction and asked if it is appropriate to require more than a one-for-one replacement as compensation.

Ms. Roth said staff does not recommend requiring more compensation because the original mapping was not clear on the limits of the deed-restricted area. This was not an intentional violation. The University has been cooperative with the Commission and has made a significant effort to address the mapping problems and to correct the deed restriction.

AED Grogan added that the 2010 Stockton Master Plan did not represent any significant deviation from the Commission's environmental standards. It was a master planning effort that resulted in a deed restriction and a designation of certain development areas. There was no offset requirement, which is typically seen in a deviation MOA. No deviation was granted to satisfy CMP standards such as the threatened or endangered species (T&E) or wetlands buffer standards.

Mr. Ricciardi said the University will submit a metes and bounds description of the deed restricted area so that Commission staff can ground truth the boundaries and prevent any situation where it is open to interpretation.

Commissioner Lohbauer said he did not want to set a precedent for violating DCRs.

Ms. Roth said the proposed changes to the boundaries of the deed-restricted lands on the campus are intended to correct a lack of clarity in the DCR.

Ms. Roth listed the next steps in the process. Specifically, Stockton will approach the NJDEP about amending the boundaries of the DCR in accordance with the agreed upon maps. Commission staff will help with the DCR amendment process.

Commissioner Lettman asked if the NJDEP will have a public hearing on the revised deed restriction.

Ms. Roth indicated that public hearings are required if the NJDEP allows a release of acreage from the deed restriction. The NJDEP will determine whether a release is required or if a clarification of the DCR is all that is necessary.

Commissioner Lloyd asked if the Commission is bound by the DCR in reviewing the Master Plan.

AED Grogan explained that staff is not asking the Committee to approve the changes to the DCR and instead is asking the Committee to voice any concerns they may have or if they are comfortable with the changes. She said staff will ensure the 2020 Master Plan is consistent with the corrected DCR and discuss any discrepancies with the University. No formal action is needed from the Committee at this time.

Commissioner Lloyd asked if today's meeting would be the only public vetting of the issue, since the Committee does not know what action the NJDEP will take.

Ms. Roth said any future development would go through the public development application process with the opportunity for public comment.

AED Grogan added that the Commission will also hold a public hearing on the 2020 Master Plan. The Commission is not able to amend the DCR of its own accord. It does have purview over master planning and future growth, and that is part of the review process for the University's 2020 Master Plan.

## **6. Continued Discussion of Upcoming CMP Amendments**

AED Grogan discussed upcoming CMP amendments that are on the priority list, including the Electric Transmission Line Rights-of-Way (ROW) Rule and the Black Run management area changes. Many of these are drafted, and Commission rule writing attorney Marci Green has been working on the language. Ms. Grogan said she hopes to bring new draft rules to the Committee in early 2023.

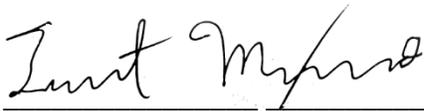
## **7. Public Comment**

Kyle England of the New Jersey Concrete and Aggregate Association (NJCAA) thanked the Commission for its work and willingness to hear the association's concerns. He said to ensure continuing supply of sand, gravel, and fresh stone, it is necessary to identify and protect existing aggregate resources. The State already faces a shortage of cement, stone, and asphalt, and mining operations are already severely constrained.

Chair Matos closed public comment at 11:29 a.m.

Chair Matos asked for a motion to adjourn. Commissioner Lohbauer made the motion, and Commissioner Irick seconded. The meeting was adjourned at 11:30 a.m.

Certified as true and correct:



Trent R. Maxwell, Planning Technical Assistant

Date: December 20, 2022

# Water Management Rule Proposal

Comments, Revisions, and Timeline

P & I Committee

November 30, 2022

## Key Revisions

- ▶ Definition of nonconsumptive use
- ▶ Exemption of nonconsumptive resource extraction diversions
- ▶ Clarified reference to the Statewide Water Supply Plan for Low Flow Margin calculations

# Nonconsumptive Use Definition (7:50-2.11)

- ▶ "Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the source surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality.

# Exemption for nonconsumptive resource extraction diversions

7:50-6.86 2.iii. Any proposed diversion for a resource extraction operation that is demonstrated to be a nonconsumptive use.

# Reference to Statewide Water Supply Plan

Refer specifically to Appendix A and current depletive-consumptive use

- ▶ **6.86(d)6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all current depletive-consumptive net use in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use. For this analysis, applicants shall use Appendix A of the New Jersey Statewide Water Supply Plan at <https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf> as amended and supplemented, and refer to the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as “the affected HUC-11 watershed”). Applicants shall use the tables in Appendix A entitled “Summary of HUC11 area, Low Flow Margin and Remaining Water” and specifically, the values for the HUC-11 Low Flow Margin in the column labeled LFM(mgd) and the values for current depletive-consumptive net use in the column labeled “Current Net Dep-Con (mgd).2**

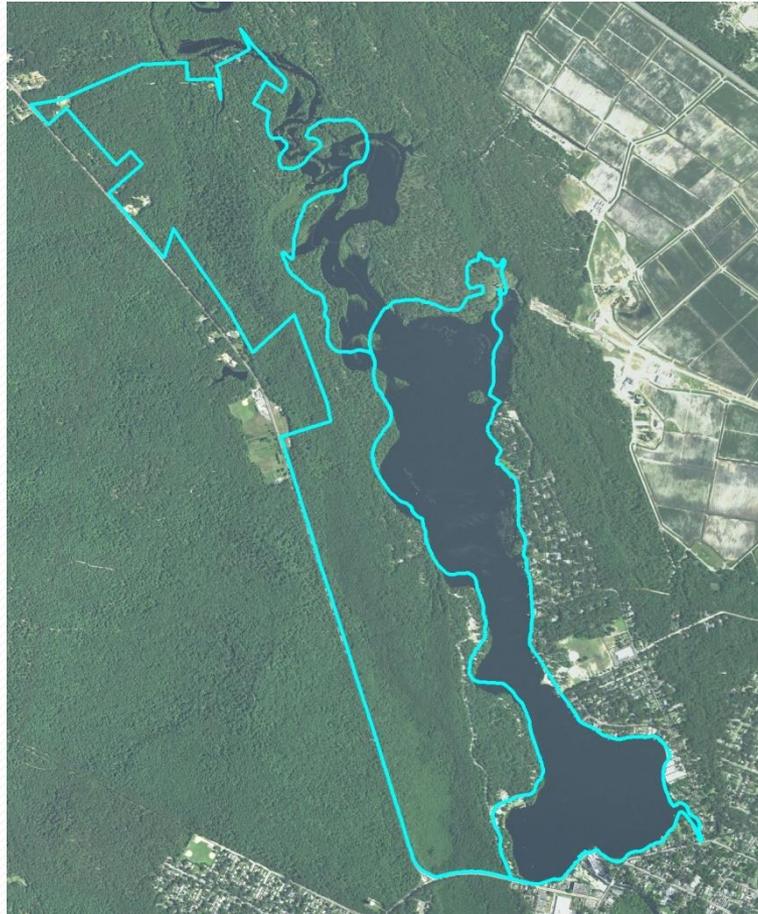
# Minor corrections and clarifications

- ▶ Cite for NJDEP rule for replacement wells recodified at 7:9D
- ▶ Use same definition of Stream Low Flow Margin as found in glossary of Statewide Water Supply Plan
- ▶ Combined new and existing diversions considered for 50,000 gpd threshold
- ▶ Interbasin transfer applicable to water sources within the Pinelands Area

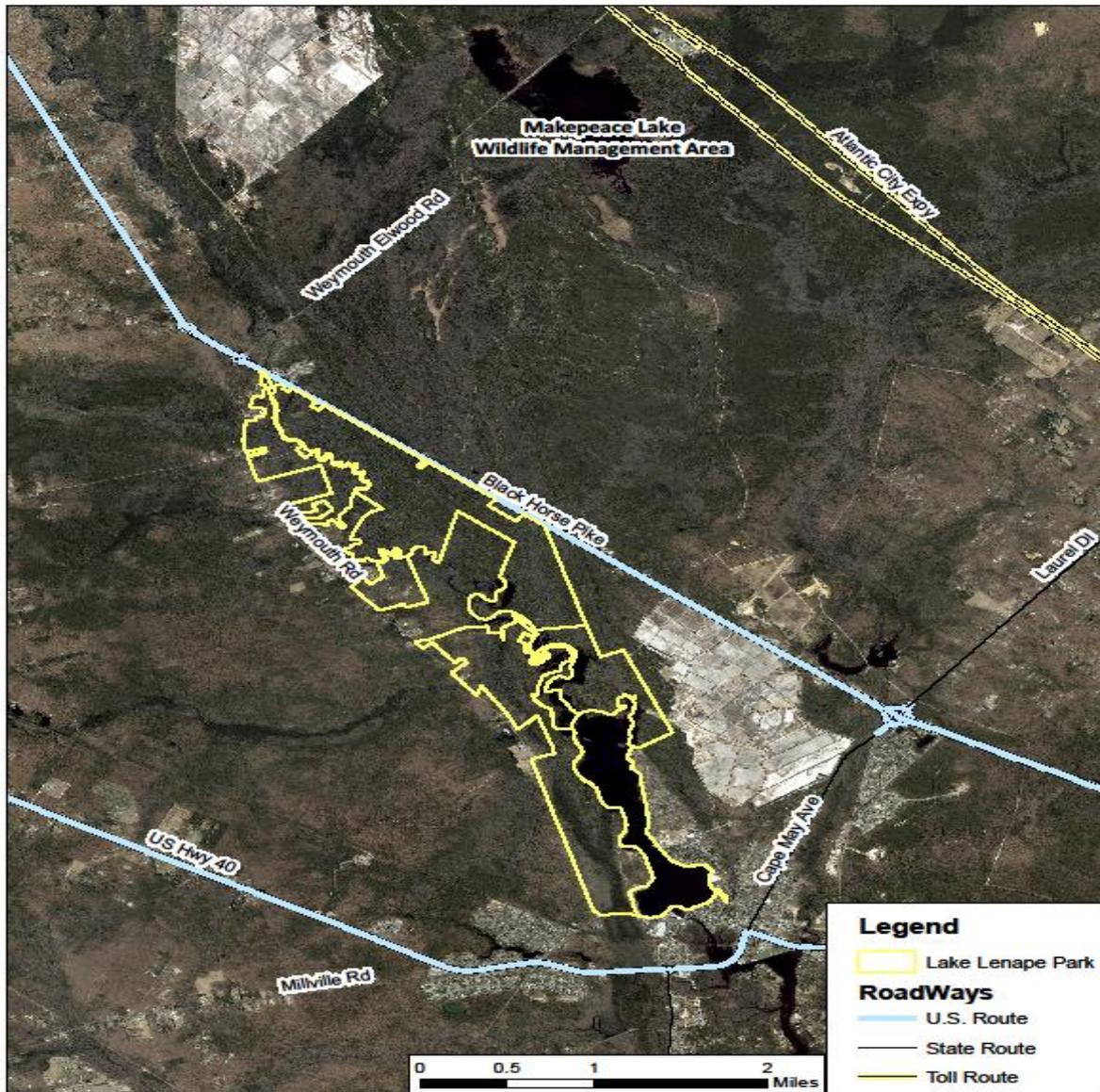
# Rule Schedule

- ▶ Substance of revisions requires re-proposal of rule
- ▶ November 2022 P&I Committee review
- ▶ Governor's office review and approval
- ▶ Full Commission authorization - January 2023
- ▶ Publication in NJ Register - March 2023
- ▶ 60-Day comment period & public hearing
- ▶ Response to comments preparation
- ▶ P&I Committee and Governor's office review
- ▶ Adoption by Commission - July 2023

# Atlantic County Park at Lake Lenape



P&I Committee  
Meeting  
November 30, 2022



Makepeace Lake  
Wildlife Management Area

Weymouth Elwood Rd

Atlantic City Exp

Black Horse Pike

Weymouth Rd

Laurel Dr

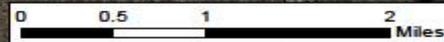
US Hwy 40

Cape May Ave

Milville Rd

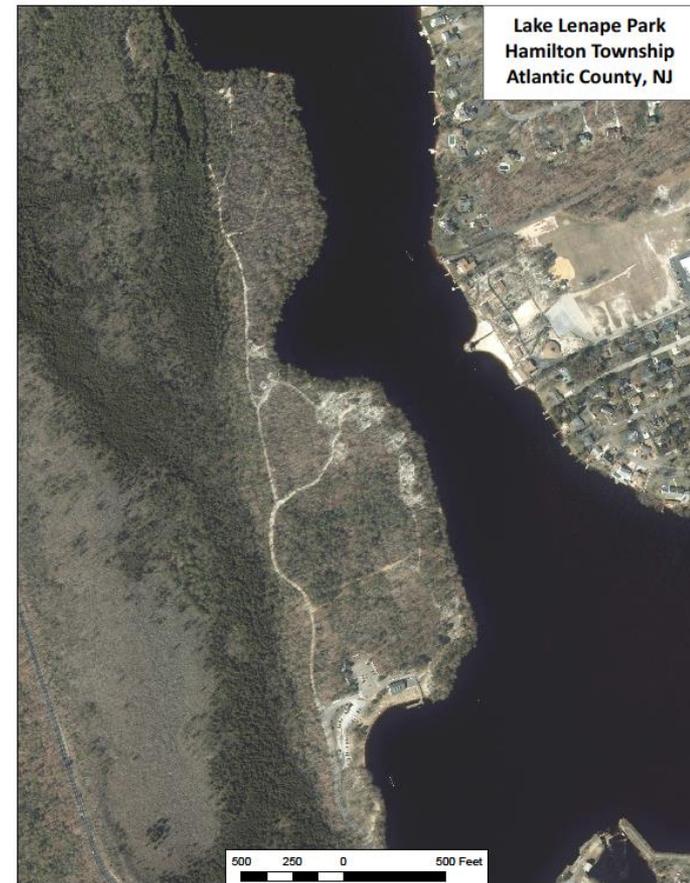
**Legend**

- Lake Lenape Park
- Roadways**
  - U.S. Route
  - State Route
  - Toll Route



# Atlantic County Park at Lake Lenape

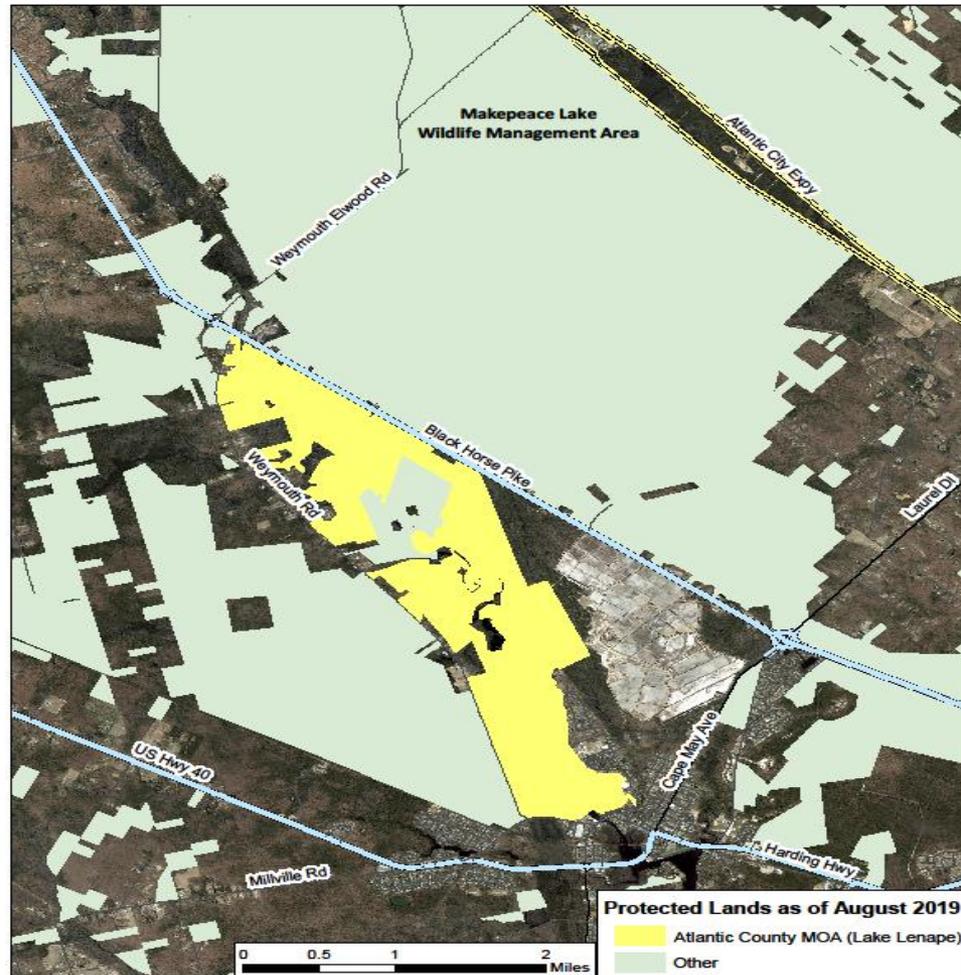
- Consists of Approximately 1,898 Acres
- In March 1998, County Executed an MOA with the Pinelands Commission for Certain Development Projects at the Park.
- As part of that MOA, limited development to 76 acres
- Deed Restricted the Remainder



# 1998 Memorandum of Agreement

- Deviation/Alternate Permitting Process MOA
  - Purpose – Permit Certain Development within Atlantic County Park at Lake Lenape
- Deviation MOA
  - Wetland Buffer Requirement
  - Centralized Waste Water Treatment and Collection Facilities in a Forest Area

# Deed Restricted Portions of Atlantic County Park at Lake Lenape

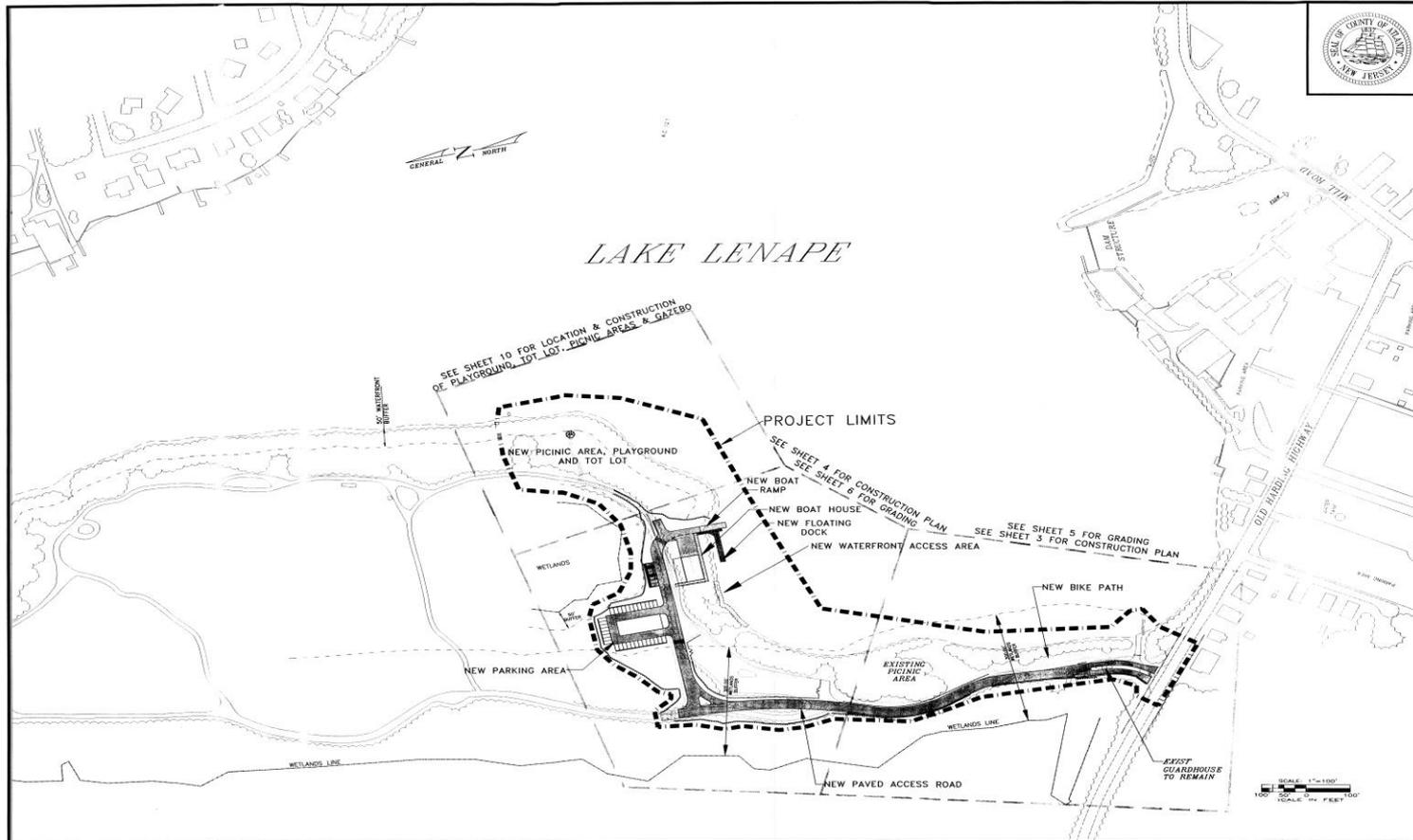


# Development Areas under 1998 MOA

- Permitted Development in Four Areas:
  - The Western Lakeshore Area ( $\approx$  35 acres)
  - Existing Group Camping Area ( $\approx$  29 acres)
  - Existing Camping Area and Canoe Launch ( $\approx$  12 acres)
  - Existing and Proposed Trails



# Dock per 1998 MOA



**D.O.G. & E.T.**  
DOUGLAS A. WHITE  
NEW JERSEY  
REGISTERED PROFESSIONAL ENGINEER

**adams, rehmann & heagan**  
ARCHITECTS  
PLANNERS  
1000-1000-1000  
1000-1000-1000

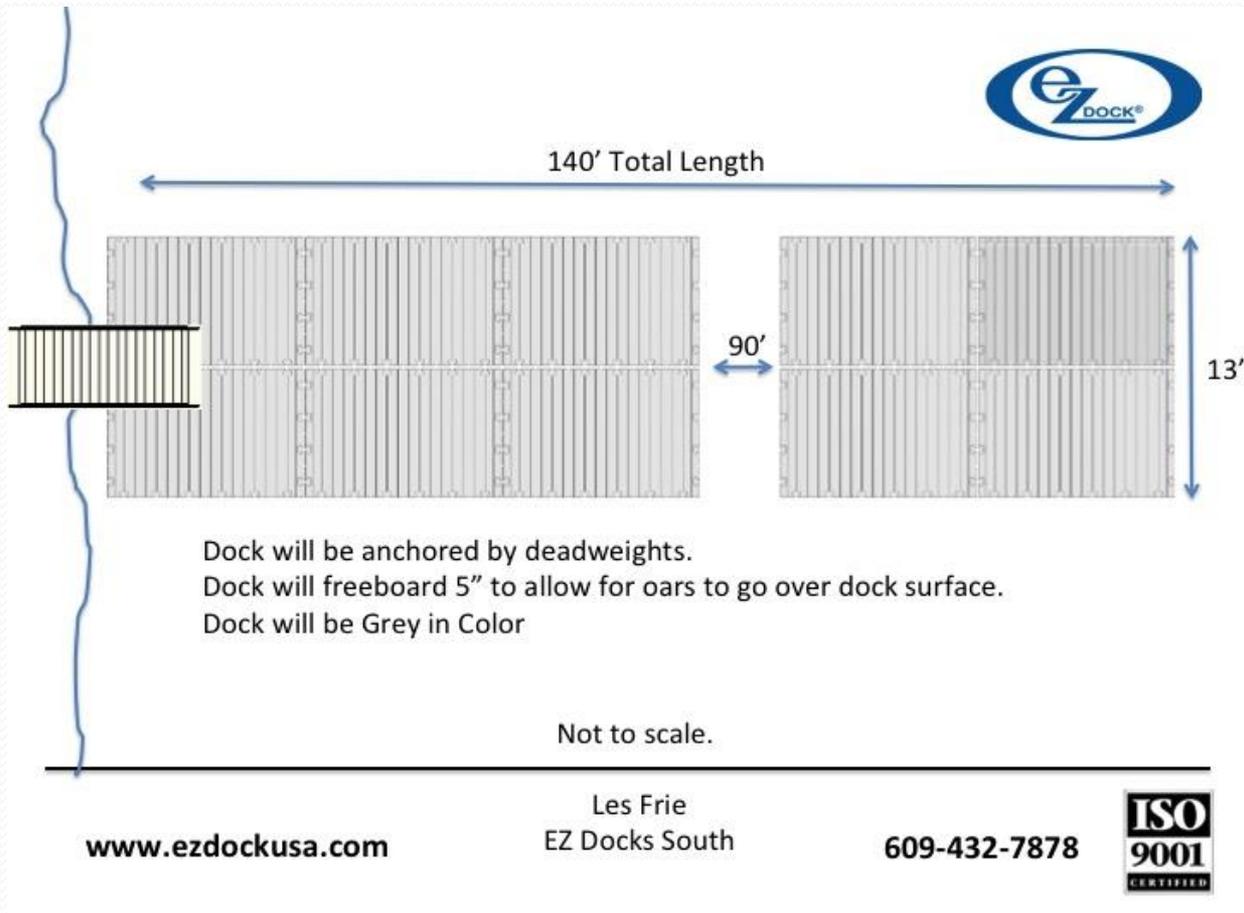
ATLANTIC COUNTY PLANNING & DEVELOPMENT  
OVERALL PLAN  
LAKE LENAPE  
WESTERN LANESIDE AREA SECTION 1  
MUNICIPALITY OF WESTERN LANESIDE - ATLANTIC COUNTY - NEW JERSEY

DATE: 10/1/00  
SCALE: 1" = 100'  
SHEET NO. 11  
OF 11 SHEETS

2 of 11

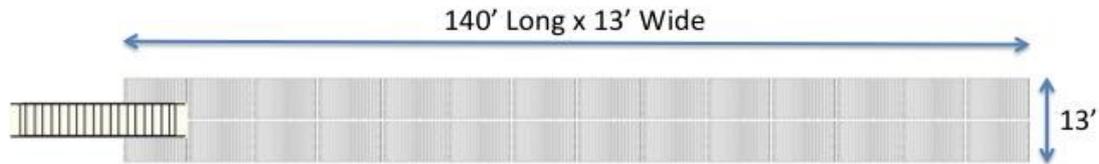


# Dock Proposal



# Dock Proposal

Rowing Dock Atlantic County



Gangway is 25'x5' All Aluminum Double Rail with Ground mount and Transition Plates  
Anchoring will be by Dead Weight systems



# Offset



# Stockton University

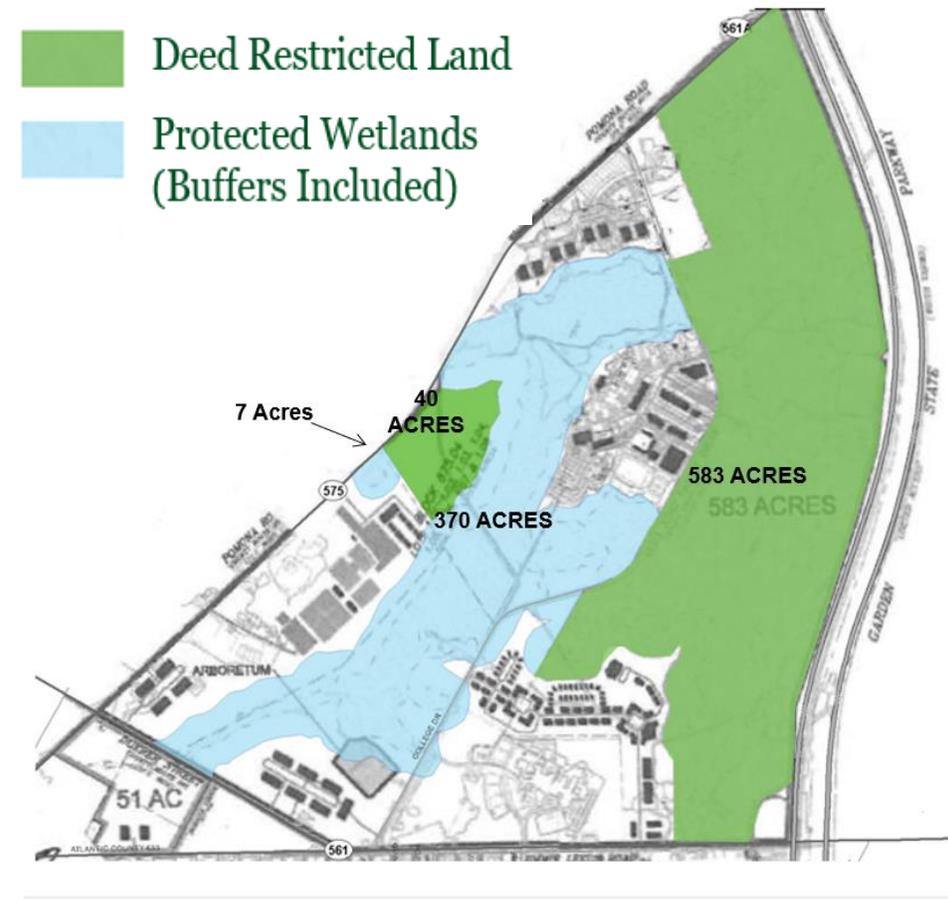
Amendment to the Areas Subject  
to Conservation Restriction

Pinelands Commission  
CMP P&I Committee Meeting  
November 30, 2022



# Resource Areas that Contributed to Areas Identified for Deed Restriction – 2010 Master Plan

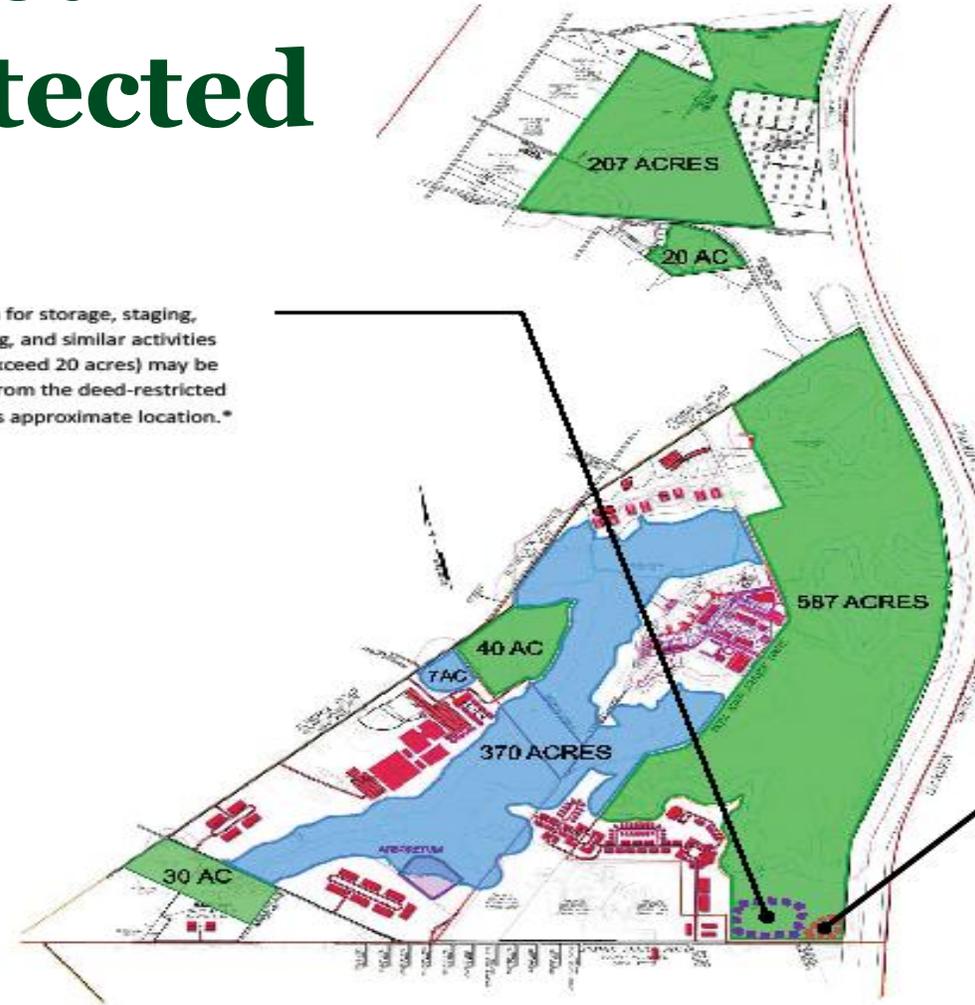
Suitable Habitat for  
T & E Species



# Deed Restricted Land and Protected Wetlands

-  Deed-Restricted Lands
-  Protected Wetlands (Buffers Included)

An area for storage, staging, stockpiling, and similar activities (not to exceed 20 acres) may be excluded from the deed-restricted lands in this approximate location.\*



Approximately 9 acres may be excluded from the deed-restricted lands to accommodate a proposed Garden State Parkway exit ramp and improvements ancillary thereto in this approximate location.\*

Exhibit C. – Sensitive Lands to be Deed Restricted  
(amended from Exhibit 7 of the Richard Stockton College  
of New Jersey April 2010 Master Plan)

\* Area not drawn to scale

# Changes to Deed Restricted Lands

## Land Area Summary

Unchanged Unencumbered Lands	550.965 AC.
Unchanged Deed Restricted Lands	1,187.120 AC
Lands Excluded from DCR	28.252 AC.
Lands to be Removed from DCR	33.001 AC.
Lands to be Added to the DCR	35.345 AC.
Total Acreage that will be in ADCR	1,189.464 AC.