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New Jersey Pinelands Commission
THE PROCESS FOR CONSIDERING AN INTERGOVERNMENTAL AGREEMENT
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Under normal circumstances, the Pinelands Commission expects that a public agency's development plans will conform to the goals and objectives of the Pinelands Protection Act and all of the land use [N.J.A.C. 7:50, Subchapter 5] and development standards [N.J.A.C. 7:50, Subchapter 6] of the Pinelands Comprehensive Management Plan [CMP]. However, there may be instances where a public agency believes that a specific development plan can not conform to all of the CMP's requirements.

Although the Pinelands Commission expects these types of situations to be very rare, the CMP [N.J.A.C. 7:50-4.52 (c)] does allow the Commission to enter into an intergovernmental agreement that authorizes a public agency to undertake development activities that are not fully consistent with Pinelands land use and development standards. The Pinelands Commission recognizes its obligation to exercise this discretionary authority very carefully and, under no circumstance can consider such an agreement unless the relief sought from CMP standards is offset by other measures that will provide at least an equivalent level of protection of the Pinelands.

In order to properly discharge its responsibilities, the Commission's Executive Director works with a committee of Commission members [the CMP Policy & Implementation Committee] to evaluate requests for intergovernmental agreements and, if warranted, prepare a formal agreement for the full Commission's consideration. This process consists of 13 steps, as outlined below, and may take 12 months or longer to complete:

Step 1. A public agency should meet with Commission staff to discuss its proposed development plan. If it is apparent that the proposed development does not meet CMP land use and/or environmental standards, Commission staff may identify appropriate options for the agency's consideration, including modification or relocation of the proposed development, a waiver of strict compliance or an intergovernmental agreement.

Step 2. The public agency should contact and meet with the Executive Director and the Commission Chair if it wishes to pursue an intergovernmental agreement. The Executive Director will advise the agency of the process and the need to submit a detailed proposal for review.

Step 3. If the agency wishes to proceed with its request, it will prepare a proposal that provides the following information and submit the proposal to the Executive Director.

1. A description of the project and at least a conceptual site plan. The project description and site plan must address both short term and long term development plans for the site.

2. If the project site is part of a larger tract of land, a description and at least a conceptual site plan illustrating any existing and future development and management plans for the remainder of the tract.
3. A detailed description of the need for the project and the public purposes it will serve.
4. A detailed description of the roles and responsibilities of all project partners and other parties, public or private, who will be involved in carrying out the project.
5. A list of public agencies and non-governmental organizations that have been consulted regarding this project and information about their views or recommendations about the project.
6. The status of project financing, including an estimate of costs and preliminary or firm funding commitments.
7. The status of project planning and design work. At a minimum, a preliminary assessment of wetland, rare plant and rare animal resources that may exist on the tract must be included.
8. A detailed listing of CMP land use and development standards that cannot or likely will not be met and why they can't be met.
9. A description of design measures to be taken to reduce the extent of the project's non-conformity with CMP standards.
10. A detailed listing of other CMP development standards for which insufficient information is currently available to assess the project's conformance.
11. A description of project alternatives [other locations for the project and other onsite designs] that were considered and why they weren't pursued.
12. The specific measures that are proposed to provide an equivalent or better level of protection of the Pinelands than would be achieved if the CMP's standards were strictly followed. These may include one or more environmental initiatives, including the protection of land elsewhere and the remediation of environmental or cultural impacts on this tract or elsewhere.

Step 4. The Executive Director shall organize the staff's review of the proposal and advise the agency's representatives of any supplemental information that should be incorporated into to the proposal to help in the Commission's evaluation.

Step 5. The public agency's proposal, along with the Executive Director's preliminary assessment of the proposal, will be provided to the CMP Policy & Implementation Committee. The agency will brief the Committee on its proposal at the Committee's next available meeting.

Step 6. Following the briefing, the CMP Policy & Implementation Committee, in consultation with the Executive Director, shall make a recommendation as to whether the Commission should consider entering into an intergovernmental agreement for the project.

Step 7. The Executive Director will brief the full Commission at its next meeting on the public agency proposal and the CMP Policy & Implementation Committee's recommendation. The Commission will then determine whether to authorize the staff to move forward with the administrative process and draft an intergovernmental agreement. Authorization of the administrative process does not guarantee or in any way imply that the Commission will ultimately approve the agreement itself. If an agreement is to be drafted, the Commission will set forth a schedule for consideration of the agreement. The schedule shall provide sufficient time for all of the steps in the process, including a reasonable period of time for the staff to compile and respond to public comments. To the extent possible, the schedule will take into consideration the time constraints and deadlines of the public agency seeking the MOA.

Step 8. If an intergovernmental agreement is to be prepared, the Executive Director shall determine whether the public agency will need to provide an escrow to be used to reimburse the Commission for staff time required for developing and implementing the agreement. The Executive Director shall then assign the appropriate staff member(s) to work with the agency to complete any remaining planning and design work and address any outstanding matters. Once all such matters have been satisfactorily addressed, the Commission staff will draft the intergovernmental agreement. The draft agreement will be shared and discussed with the public agency to ensure its accuracy and feasibility.

Step 9. The Executive Director shall consult with the CMP Policy & Implementation Committee as the agreement is being prepared and will fully brief the Committee as to the specific contents of the draft agreement before scheduling a public hearing on the proposal.

Step 10. The Executive Director shall conduct a public hearing and prepare a written report addressing the public's comments on the proposed agreement.¹ As necessary, Commission staff will consult with the public agency and other regulatory agencies in order to obtain assistance in answering questions that may be raised during the public comment period. The report shall present a formal recommendation as to whether the Commission should approve the agreement. A proposed resolution memorializing the recommendation shall also be prepared.

Step 11. The Executive Director shall review the report, the final draft of the agreement and the proposed resolution with the CMP Policy & Implementation Committee.

Step 12. The CMP Policy & Implementation Committee's recommendation shall be incorporated into the proposed resolution. If the Committee disagrees with the Executive Director's recommendation, it may request that the Executive Director also prepare an alternative resolution for the Commission to consider.

Step 13. The full Pinelands Commission shall consider the resolution(s) at its next available meeting.

¹ If substantive changes are made to the agreement in response to public comment or for any reason after the public hearing has been held, an additional public hearing may be necessary. This will result in a delay to the schedule originally established by the Commission.