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## Potential Amendments to the Comprehensive Management Plan October 2021

### CMP Amendments in Progress

- Stormwater management:** The New Jersey Department of Environmental Protection (NJDEP) adopted revised stormwater management rules in 2019. In response, the Commission staff developed the amendments necessary to harmonize the CMP's stormwater management provisions with the new NJDEP rules in a manner that recognized the special resources of the Pinelands.
  - Status: Proposed CMP amendments were authorized by the Commission and published as a formal rule proposal in the July 19, 2021 New Jersey Register. The 60-day public comment period ended on September 17, 2021 and a draft adoption notice has been prepared for discussion by the P&I Committee on October 29, 2021.
- Electric Transmission Right-of-Way Maintenance Pilot Program:** This pilot program was enacted in 2009 and is scheduled to conclude at the end of 2021, at which time the Commission must determine whether and how to institute the ROW Plan on a permanent basis.
  - Status: The staff's inspection and monitoring efforts have concluded and a series of reports have been presented to the Commission. A full evaluation of the Pilot Program was completed in accordance with the CMP. The staff's findings and recommendations were presented to the P&I Committee in September 2021. Continued discussion of recommended CMP amendments is scheduled for the P&I Committee's October 29, 2021 meeting. A full rule proposal will need to be prepared as soon as possible.
- Water supply (Kirkwood/Cohansey):** Using the results of the Kirkwood/Cohansey aquifer study, the Commission is seeking to establish a regional threshold and concrete definitions for what constitutes minimal impact to wetlands and surface waters. These new standards would be applied to applications for new and expanded non-agricultural wells and diversions as a means of protecting water quantity and supply. These amendments were identified as a priority in the 2014 Plan Review Report.
  - Status: Staff have made a number of presentations to the P&I Committee, most recently in June of 2019, and held several meetings with stakeholders to discuss proposed standards and application procedures. Draft CMP amendments have been prepared; however, rulemaking was delayed so that staff could identify available implementation

mechanisms. An agreement with USGS is nearing completion, after which the draft amendments will be presented to the P&I Committee.

#### 2014 Plan Review Priorities

4. ***Pinelands Development Credit (PDC) program:*** The need for PDC enhancements (largely to increase demand and stabilize the market) was identified many years ago and led to a formal rule proposal that was endorsed by the P&I Committee in 2009. The full Commission did not take action on that proposal, which involved: the designation of Pinelands Towns as receiving areas; mandatory use of PDCs for all residential development in Regional Growth Areas and Pinelands Towns based on a sliding scale tied to project density; the use of PDCs for some nonresidential development; exemption of affordable housing units from PDC requirements; and expansion of PDC sending areas to certain portions of the Forest Area. These amendments were identified as a priority in the 2014 Plan Review Report.
  - Status: After 2009, Commission staff met with groups of stakeholders (e.g., the New Jersey Builders Association and the New Jersey Farm Bureau) to discuss the amendments and possible revisions to address a variety of concerns. Multiple presentations were made to the P&I Committee but little progress was made on a comprehensive set of amendments. Since that time, staff has been able to work successfully with Pinelands municipalities to accommodate municipal objectives for higher density and affordable housing while at the same time ensuring the required use of PDCs. PDC demand has increased significantly and the market is once again quite active. Staff now advocate consideration of simplified amendments to codify current policies and correct or clarify various PDC allocation and variance provisions.
  
5. ***Black Run management area changes:*** A Sub-regional National Resource Protection Plan for Southern Medford/Evesham Townships was completed and endorsed by the Commission in 2006. The Plan identified a number of innovative zoning, land preservation and resource management recommendations designed to provide enhanced protection to the Black Run watershed. These included the redesignation of 3,700 acres from the Rural Development Area to the Forest Area and a residential density transfer program. Additional management area changes were recommended (from Rural Development to Regional Growth Area) to recognize large existing sewered developments in Evesham Township. These amendments were identified as a priority in the 2014 Plan Review Report.
  - Status: The P&I Committee reviewed draft CMP amendments to implement management area changes and recommended them to the full Commission for formal proposal November 2009. The Commission elected not to proceed with the rulemaking process. Subsequently, staff held multiple meetings with Evesham Township representatives and the primary affected landowner to explain the amendments and discuss possible refinements. More recently, Evesham Township adopted a master plan amendment that recommends rezonings to implement some of the management area changes identified in the Southern Medford/Evesham Plan. The Township is working on an implementing ordinance and may proceed with adoption in early 2022.
  
6. ***(Organized) recreational vehicle events:*** Commission approval of route maps for Enduro events has been required since adoption of the original CMP. However, the CMP does not

contain specific standards or application requirements for such events. The need to codify existing application practices and address documented instances of rider or entire event course deviations was identified as a priority in the 2014 Plan Review Report.

- Status: Staff conducted a series of meetings with stakeholders in 2015-2016 and drafted CMP amendments primarily intended to codify application practices. Consensus on other aspects of the rules, such as deviations from approved event courses and obtaining permission from landowners for applications and site inspections, was not achieved.

7. ***Native Pinelands vegetation:*** The 2014 Plan Review Report identified several options to improve the CMP's protection of native, rare, threatened and endangered plant species. These included converting current guidelines into requirements for the use of native Pinelands species in post-development stabilization, landscaping and restoration, as well as expansion of the CMP's list of protected plant species to include NJDEP's Plant Species of Concern.

- Status: Drafting of CMP amendments commenced shortly after the 2014 Plan Review Report was issued but was not completed due to unresolved issues with the supply and available sources of native plants and grass seed mixes.

#### New State Initiatives

8. ***Climate change:*** The Commission adopted a resolution in November of 2020, calling for the Climate Committee to identify existing CMP standards that could be strengthened and new CMP standards that could be adopted to mitigate the effects of climate change in the Pinelands Area. These standards may include the addition of overarching language to the CMP to emphasize the importance of mitigating the effects of climate change on Pinelands resources. This topic was identified as a priority in the 2014 Plan Review Report.

- Status: The Climate Committee discussed a series of topics and received a number of presentations throughout 2020-2021 but has not yet developed specific recommendations or CMP amendment language.

9. ***Environmental Justice:*** New Jersey's Environmental Justice Law was enacted by the State Legislature and signed by the Governor in September of 2020. It requires NJDEP to evaluate the contribution of eight types of facilities (e.g., incinerators, landfills and major sources of air pollution) to existing environmental and public health stressors in "overburdened communities". It further requires NJDEP to adopt implementing regulations that will govern the Department's review of permits involving development, expansion or renewal of these facilities in overburdened communities.

- Status: NJDEP has identified all "overburdened communities" in the State based on the criteria set forth in the Environmental Justice Law. These criteria focus on household income, minority population and English proficiency by census block. A number of the identified communities are located in the Pinelands Area. NJDEP has also conducted six rulemaking stakeholder meetings. Commission staff are reviewing the summaries of these meetings and the maps posted by NJDEP to determine what role or authority the Commission might have to incorporate environmental justice considerations into the CMP.

10. ***Cannabis facilities:*** The State's Cannabis Regulatory Commission adopted new rules in August 2021. Pinelands municipalities have been adopting various ordinances that either prohibit all cannabis facilities or permit certain types of facilities in certain zoning districts.
- Status: Staff reviewed the new state rules and made a presentation on their relationship to the CMP at the September 2021 P&I Committee meeting. The need for CMP amendments to address application requirements and development standards for large indoor cultivation facilities was identified.

### Land Use and Development Standards

11. ***Cluster development:*** The CMP's requirements for cluster development in the Forest and Rural Development Areas took effect in 2009. Since that time, a number of issues and recommended revisions were identified through the staff's review of development applications, particularly those involving minor development (less than 5 units).
- Status: Staff completed a comprehensive evaluation of the current CMP standards and recent development applications and made a presentation to the P&I Committee in May 2019. Drafting of CMP amendments commenced shortly thereafter but has not been completed.
12. ***Solar energy facilities:*** The CMP's current solar energy facility standards have been in effect since 2014. A number of possible clarifications and revisions have been identified, including standards to address floating facilities, the siting of community solar facilities on closed landfills, clearing limits, tree replacement requirements and mandatory solar installation for new construction.
- Status: Solar facility rules and applications were discussed on multiple occasions with the Climate Committee during 2020-2021. Staff generated a list of potential CMP amendments but the Committee has yet to make specific recommendations.
13. ***Horizontal Directional Drilling (HDD):*** The CMP does not currently contain specific application requirements or standards governing the use of HDD. Commission members have proposed a number of approaches, including prohibiting the use of HDD, limiting the use of HDD to certain management areas and requiring applications for the development of utility distribution lines that propose the use of HDD.
- Status: The need to amend the CMP to address HDD has been a topic of ongoing discussion at P&I and Commission meetings throughout 2020-2021. Most recently, NJDEP made a presentation on its draft HDD rules at the P&I Committee's July 2021 meeting.
14. ***Forestry:*** A comprehensive review of CMP forestry standards last occurred in 2004-2006, resulting in the CMP's current standards and application procedures. A number of issues have arisen with definitions, application exemptions, standards for fuel breaks, fire breaks and plow lines, herbicide use, threatened and endangered species accounts and other standards.

- Status: Amendments to clarify the current application exemption for prescribed burning and the clearing and maintaining of fire breaks were formally proposed in 2017 but not adopted after significant concerns were raised during the public comment period. A more comprehensive reexamination of CMP forestry standards has not been scheduled or discussed.
15. ***Herbicides***: The CMP permits the use of herbicides for forestry activities but does not permit application of herbicides to any road or public utility right-of-way, unless necessary to protect an adjacent agricultural activity. A comprehensive analysis of whether and where herbicide use is appropriate should be undertaken.
- Status: Issues have been identified through the Commission’s review of forestry applications and the Electric Transmission Right of Way Maintenance Pilot Program; however, specific amendments have not been discussed or drafted.
16. ***Fish and wildlife management and mitigation***: In recent years, lands in the Pinelands Area are being targeted for habitat enhancement and other fish and wildlife management activities to satisfy mitigation obligations imposed by the NJDEP through its review and approval of CAFRA permits. These CAFRA permits generally involve development in the Pinelands National Reserve, outside the Pinelands Area. Mitigation banks have been established, some involving mitigation activities in the Pinelands Preservation Area District, occasionally on properties that have already been preserved through the PDC program.
- Status: Applications for fish and wildlife management have been submitted to the Commission for review, as have CAFRA permits for development in the Pinelands National Reserve. Commission staff have expressed concerns with the continued use of land in the Pinelands Area for mitigation purposes.
17. ***Local communications facilities***: The CMP’s current standards for local communications facilities (cell towers) have been in effect since 1994, with periodic minor revisions. These standards need to be simplified and updated to address changes in technology and siting requirements.
18. ***Historic, Archaeological and Cultural Resources***: The CMP’s current standards for cultural resource management have been in effect since 1987, with periodic minor revisions. These standards could be clarified and updated.
19. ***Threatened and Endangered Species***: Over the years, staff have developed survey and deed restriction practices to address the protection of threatened and endangered species for applications that propose development of one single family dwelling. These practices could be codified in the CMP.
20. ***Miscellaneous***: permitted uses; temporary uses; septic maintenance and inspection requirements; septic wastewater flow values; Cape May Landfill timeframes and limitations; updated wetlands buffer model; total nitrogen vs nitrate/nitrogen; wastewater treatment systems for nonresidential development; non-degradation and background water quality standards for PL (Pinelands) Waters.

## Application and Review Procedures

21. ***Coordinated permitting process:*** CMP amendments are needed to set forth a process for the Commission's review and approval of private development applications that do not receive local (municipal or county) approvals. Typically, these are linear infrastructure projects located in multiple municipalities, for which the Board of Public Utilities has granted pre-exemption from municipal review pursuant to N.J.S.A. 40:55D-19 of the Municipal Land Use Law.
  - Status: Staff drafted CMP amendments that were discussed by the P&I Committee at its April 2020 and May 2020 meetings. After concerns arose with various hearing procedures and the ability of interested persons to participate, the amendments were put on hold pending the outcome of third party appeals in the New Jersey Natural Gas matter.
  
22. ***Utility distribution lines:*** The CMP currently provides two application exemptions related to the repair and installation of utility distribution lines. Commissioners have expressed interest in revising, curtailing or repealing one or both of these exemptions so that applications will be required and any HDD activities associated with them can be reviewed.
  - Status: The utility distribution line exemptions have been discussed at several P&I Committee and Commission meetings during 2021 but no decisions have been made.
  
23. ***Application exemptions:*** The CMP contains a list of activities that do not require application to the Commission, ranging from additions to single-family homes to prescribed burning to the repaving of roads.
  - Status: Staff made a comprehensive presentation on application exemptions and procedures at the January 29, 2021 P&I Committee meeting. Staff has identified a number of potential amendments to clarify existing exemptions.
  
24. ***Violations:*** Without enforcement authority in the form of fines or penalties, the Commission's ability to address violations of the CMP is limited. Increased fees for applications submitted to resolve violations would help to offset the significant amount of staff time often required to address these situations. The CMP could also be clarified to address instances where a development application is submitted but a violation has been identified on contiguous lands in common ownership.
  - Status: Amendments to increase fees for applications involving violations were drafted and included in a larger rule proposal endorsed by the Commission in 2017. The proposed amendments were deleted from the rule proposal at the request of the Governor's office.
  
25. ***Expiration of approvals:*** With the exception of some categories of Waivers of Strict Compliance, approvals issued by the Commission and documents issued by the staff do not expire. The need to establish expiration dates for Certificates of Filing, letters of no further review, all waivers and public development approvals should be considered.
  - Status: CMP amendments to establish an expiration date for waivers of strict compliance issued between 1985 and 1992 were drafted and endorsed by the Commission in 2017.

These amendments were deleted from the rule proposal at the request of the Governor's office.

26. ***Expiration of protection from zoning changes:*** The Municipal Land Use Law provides applicants with protection from municipal zoning changes for specified periods of time once preliminary or final subdivision or site plan approval has been granted. Coupled with the Permit Extension Act and the fact that Certificates of Filing and letters of no further review do not expire, complicated situations have arisen over the years when “old” unbuilt or partially built projects resurface. In the Regional Growth Area, the issue typically involves the application of new or increased PDC requirements. In the Forest and Rural Development Areas, the CMP's mandatory clustering rules come into play.
27. ***Private development application and hearing procedures:*** The CMP sets forth a process for private development applications that often results in review of multiple approvals (subdivision, site plan, septic permits, building permits) for the same project. This process could be streamlined to avoid duplicative reviews. The Commission could also consider revising the hearing procedures that apply when staff determine that an approval raises a substantial issue with respect to the CMP.
28. ***Public development and waiver procedures:*** Over the years, the Commission has instituted certain public comment practices for public development and waiver applications. These practices should be codified in the CMP, with regulatory timeframes adjusted as necessary. The Commission might also consider revising requirements for the automatic referral of applications to the Office of Administrative Law when the Commission fails to act or disagrees with the recommendation of the Executive Director.