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Mark S. Lohbauer  
Chairman

Nancy Wittenberg  
Executive Director

## MEMORANDUM

To: MOA Policy Advisory Committee

From: Susan R. Grogan   
Chief Planner

Date: October 21, 2015

Subject: October 30, 2015 Committee meeting

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Enclosed please find the agenda for the Committee's upcoming meeting on October 30, 2015. We have also enclosed the following items:

- The minutes from the Committee's June 26, 2015 meeting;
- Draft revisions to the 2008 Process for Considering an Intergovernmental Agreement; and
- Another copy of the list of issues and suggestions raised at prior Committee meetings

/CS15

cc: All Commissioners (agenda only)



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### MOA POLICY ADVISORY COMMITTEE MEETING

Richard J. Sullivan Center  
Terrence D. Moore Room  
15 C Springfield Road  
New Lisbon, New Jersey

October 30, 2015

Immediately following the 9:30 a.m. Policy & Implementation Committee meeting

#### Agenda

1. Adoption of minutes from the June 26, 2015 MOA Policy Advisory Committee meeting
2. Review of revised procedures for intergovernmental agreements
3. Identification of remaining issues related to intergovernmental agreements
4. Public Comment

## MOA POLICY ADVISORY COMMITTEE MEETING

Richard J. Sullivan Center  
Terrence D. Moore Room  
15 C Springfield Road  
New Lisbon, New Jersey

June 26, 2015

Immediately following the 9:30 a.m. Policy & Implementation Committee meeting

### MINUTES

**MEMBERS IN ATTENDANCE:** Chairperson Candace Ashmun, Commissioners Ed Lloyd and Ed McGlinchey, Mr. Fred Akers, Mr. Chuck Chiarello, Mr. Ernest Kuhlwein and Commissioner Alan Avery (Alternate).

**MEMBER ABSENT:** Commissioner Paul E. Galletta

**OTHER COMMISSIONERS PRESENT:** Richard Prickett and Mark Lohbauer

**STAFF PRESENT:** Executive Director Nancy Wittenberg, Susan R. Grogan, Charles Horner, Paul D. Leakan, and Betsy Piner. Also present was Amy Herbold with the Governor's Authorities Unit.

Chairperson Ashmun called the meeting of the Memoranda of Agreement (MOA) Policy Advisory Committee to order at 10:56 a.m.

#### **1. Adoption of minutes from the April 24, 2015 MOA Policy Advisory Committee meeting**

Commissioner Lloyd moved the adoption of the minutes from the April 24, 2015 Committee meeting. Mr. Kuhlwein seconded the motion and all voted in the affirmative except Commissioner McGlinchey, who abstained as he had not read the minutes.

#### **2. Continued discussion of intergovernmental agreements**

Chairperson Ashmun said her intent was to review the list of items included in the meeting packet (*Memoranda of Agreement June 18, 2015*). Commissioner Ashmun reminded all present that there are deviation MOAs and streamlining MOAs. This Committee's focus is on the deviation MOAs.

Ms. Grogan began a review of the June 18, 2015 list, noting that she had broken it into two categories, one related to the MOA process, and the other to MOA standards. She said the

current process, *The Process for Considering an Intergovernmental Agreement –June 23, 2008* is posted on the Commission’s web site at:

[http://www.state.nj.us/pinelands/images/pdf%20files/Intergovernmental%20Agreement%20Process%20\(June%202023,%202008\).pdf](http://www.state.nj.us/pinelands/images/pdf%20files/Intergovernmental%20Agreement%20Process%20(June%202023,%202008).pdf) She said this is the long-time process to which staff directs applicants to guide them when pursuing an MOA.

Mr. Leakan presented the 2008 process document on the Smart Board.

Ms. Grogan said the packet list is not a set of recommendations, but rather a list of issues raised during Plan Review and on various occasions by staff, the public and the Commission itself. Some items contradict one another, which is understandable given the variety of sources of the comments. Referring to the 2008 Process, she said there are minor housekeeping issues that can be addressed readily, e.g., Item 1 indicates that the Public & Governmental Programs Committee no longer exists and should be replaced with the Policy & Implementation Committee to reflect the current committee structure.

Commissioner Ashmun said the important question is the role of the Commission in starting the MOA process. As it stands now, the Committee authorizes the *pursuit* of an MOA and directs the staff to start the work.

Ms. Grogan directed the Committee to Step 6 of the 2008 process, which calls for the Committee to make such a decision.

Ms. Grogan said the staff tries to provide applicants with guidance regarding the consistency of their proposed development with the CMP. This usually involves meetings with applicants and the review of a fairly comprehensive package of information provided by the applicants, so that staff will have a full understanding of what is being requested and why. If the proposed development cannot meet CMP standards, the applicant may request to come before the P&I Committee and explain why a deviation MOA may be warranted. The P&I Committee then decides if it is interested in pursuing such an agreement, as described in Step 6 of the 2008 Process.

Commissioner Lloyd said last year when a proposed MOA came before the P&I Committee, the Committee was told by staff that the decision would be that of the whole Commission, not the Committee.

Ms. Grogan said that a suggestion was made at the last MOA Committee meeting to add a step in the MOA process. As described in Item #3 of the packet list, after the P&I Committee has heard the applicant’s presentation about the need for an MOA, the full Commission would then determine whether it is interested in pursuing the agreement or not.

Commissioner Lloyd said the MOA process is very time consuming. The Commission needs to determine where it wants to allocate its resources.

In response to Commissioner Ashmun’s question regarding the point at which the applicant is told that a proposal will not meet CMP standards, Mr. Horner said when a public agency first

meets with staff and makes its proposal, typically staff can advise that a project may not work and offer suggestions, e.g., move a proposed municipal building to a site other than wetlands. If an agency proposes a public development project that does not meet CMP standards but is intended to address a public safety issue, staff will discuss the potential for an MOA. He noted that this is a rare occurrence.

Chairperson Ashmun said she would like the Commission to see a report that explains what is being proposed by the applicant and be given the opportunity to make the decision if an MOA is appropriate.

In response to Mr. Akers' question if an inconsistent Certificate of Filing (CF) could serve as a threshold for bringing a request for an MOA before the Committee, Ms. Wittenberg reminded him that there is no CF issued for a public development application. Also, she said that staff needs a significant amount of information before a project can proceed.

Ms. Grogan added that the Commission would not want a public agency to go through a lot of work before being advised that a project would not work.

Commissioner Lohbauer asked if there were some trigger point at which the applicant is told that a proposed project is inconsistent with the CMP.

Commissioner McGlinchey asked if there is any standard in the CMP identifying what qualifies as a compelling public need, e.g. as for the sewer line at Ancora Hospital. He said he found it disturbing that staff is accused of "helping" public agencies obtain MOAs when they are merely trying to gather the significant amount of information needed to provide appropriate guidance to an applicant.

Mr. Horner said the Committee might think of the process as a filtering process. If a proposed development does not meet CMP standards, then the next filter is that staff helps the applicant modify their application. If the application cannot be modified, the next filter is determining whether a compelling public need exists and looking for feasible alternatives. The CMP is clear that if there is a feasible alternative, a compelling public need waiver cannot be approved. For those applications that cannot be modified, staff typically issues a letter advising the applicant that a project does not meet CMP standards and that alternatives should be sought. The letter would also request that the applicant advise the staff whether the agency wishes to pursue a waiver based on compelling public need. Mr. Horner said, in practice, the application is usually modified to meet CMP standards, but if not, the MOA is the last step. He said it is the staff letter that is typically the trigger point for consideration of an MOA. Mr. Horner provided an example where several years ago Woodland Township wanted to use a sand pit in the Preservation Area District as a temporary Off Road Vehicle (ORV) park in exchange for revegetation of the site. It was clear to the staff that the proposal would not qualify for a compelling public need waiver. However, staff found some merit to the proposal and ultimately it was approved through an MOA.

Mr. Kuhlwein asked what would happen if the applicant were told that an MOA would not work yet the applicant insisted on pursuing it.

Mr. Horner said the Executive Director would put the issue on the P&I Committee meeting agenda. He added that it is difficult for staff to deny a public agency an opportunity to meet with the Commission.

In response to Chairperson Ashmun's question if requiring the Executive Director to bring a potential MOA application before the Committee requires a rule change, Ms. Grogan said she did not believe so as that was the current process under the 2008 guidelines. She reminded the Committee that the CMP does not recognize committees of the Commission. The public hearing process is basically all that is addressed in the CMP regarding MOAs.

In response to Mayor Chiarello's question as to why this was such a critical issue, Chairperson Ashmun said during the latest Plan Review, it was evident that there was uncertainty about the MOA process and it was felt that perhaps the Commission needed to have a more active role early on in the development of an MOA.

Commissioner Lohbauer said this MOA Committee will decide if changes are needed to the guidance document or if a rule change is required. He suggested that a "trigger" letter, not currently described in the process, should be included.

Chairperson Ashmun said she felt the issue is that the Commission has to get the process straight and publicly acknowledged.

Mayor Chiarello said he didn't like to see things get more complicated from the county and municipal viewpoint.

Chairperson Ashmun said that the Commission was trying to straighten out its own internal process.

Commissioner Avery said he had pursued both MOAs and compelling public need waivers on behalf of Ocean County. He said that no one wants to go through the MOA process. He said he was concerned with having the P&I Committee as the end point of an MOA discussion. He said the composition of the P&I Committee may not represent the balance of the Commission. He said that MOAs are generally related to large issues and all Commission members are aware of them. It is rare that an issue would develop into an MOA as most applicants want to go through the normal regulatory process because it is consistent. But when an MOA is developed, there is a benefit of going before the P&I Committee as a means of hashing out the details.

Commissioner Lohbauer said he concurred. He said he didn't believe the P&I Committee should have the power to circumvent the full Commission. He said the review by the P&I Committee should be procedural, not substantive, and address if an MOA is an appropriate approach.

Commissioner Avery said that he would not want to do anything to jeopardize the applicant.

Chairperson Ashmun said if the staff and the Commission start the MOA process, it is a huge commitment.

Commissioner Lloyd said he didn't want a situation in which the applicant dictates how the Commission uses its resources. He said he was comfortable with the P&I Committee making the decision to proceed and said, for example, he thought the Ocean Acres basin project had gone through a good process as it had been brought to the Committee early.

Ms. Wittenberg reminded the Committee that the P&I Committee had not been able to come to a consensus on the Stafford basin matter and ultimately made no recommendation as to how the applicant should proceed. These discussions need to end with a recommendation.

Commissioner Avery said only 14 applications have risen to the MOA level in the past 20 years. Mr. Horner added that it is only once a year when discussion of an MOA with an applicant even starts.

Commissioner Lohbauer asked what if the P&I Committee's review of an applicant's request for an MOA culminated in a recommendation to the full Commission.

Commissioner Lloyd said he agreed that the P&I Committee should be the first level of vetting.

Ms. Grogan said that Item #3 on the list of MOA procedural issues would have the P&I Committee review an applicant's request for an MOA and make a recommendation to the full Commission. It would then be the full Commission's responsibility to determine whether to authorize the staff to proceed with development of the MOA.

Ms. Grogan said whether or not rulemaking will be required will depend upon the final package of recommendations developed by this Committee.

Commissioner Prickett said when the P&I Committee reviews an MOA, it is performing due diligence on behalf of the full Commission.

Chairperson Ashmun said the Commission needed to provide guidance to staff early on in the process.

Commissioner Prickett asked if there were situations where an equivalent level of protection could not be identified.

Commissioner Lohbauer responded that this is a substantive issue and that the P&I Committee needed to determine procedural requirements.

Mayor Chiarello asked if that wasn't like having a veto power over something for which one does not have all the facts.

Commissioner Lloyd said with an MOA, the threshold is that a project is inconsistent with the CMP, but the Commission may want to proceed with one.

Chairperson Ashmun said that MOAs are extremely rare. If one cannot meet the CMP standards, there are big hoops through which one must jump. An applicant must demonstrate how it will deal with alternatives. She said she supported Mr. Horner in that many times there are alternatives.

Commissioner Avery said, from the applicant's point of view, much of the work on the process may have been done already by the time it gets to the Committee.

Commissioner Ashmun asked who should qualify for an MOA.

Mr. Akers said he thought a flow chart would be helpful and maybe staff needs to determine the process.

Commissioner McGlinchey said when discussing who should be eligible to apply for an MOA, he believed that public utilities are the lifeblood of a community and it would be wrong to exclude them.

Commissioner Lloyd said he did not feel that private utilities should be raised to the level of a public agency.

Commissioner Lohbauer said he believed utilities were not public agencies and should not be permitted to apply for MOAs. His understanding was that only a unit of government can apply for an MOA.

Commissioner Avery said he believed different entities should be allowed to enter into an MOA.

Commissioner Lloyd said an MOA, by definition, is for a public project that is not in compliance with the CMP. He said he did not believe that utilities could come under the guise of public agencies.

Ms. Grogan said that over the years the Commission had entered into agreements with a variety of agencies, such as for the Woodland Township ORV park and the Southern Ocean County landfill, that involved both public and private entities.

Ms. Wittenberg cautioned against ruling out certain types of agencies.

Commissioner Avery said the Southern Ocean County landfill was a project for which the Commission tried to bring a landfill in compliance but an MOA was required as the cover material was brought in from outside the Pinelands.

Mr. Kuhlwein said the parent company, a private company, was bankrupt and couldn't afford to cap the landfill.

Mr. Horner said the Woodland Township MOA had involved the NJ Department of Environmental Protection, the NJ Conservation Foundation and the Commission. He said the



Southern Ocean County landfill project was an example of a project for which there were significant obstacles in demonstrating a compelling public need.

Chairperson Ashmun called for public comment.

### **3. Public Comment**

Mr. Lee Rosenson, with the Pinelands Preservation Alliance and New Jersey Audubon Society, referencing the discussion of compelling public need, said that through some “voodoo” regulations, private companies have been transmogrified into public agencies. He said he believed an applicant must demonstrate the protection of Pinelands resources.

Ms. Ann Kelly, a resident of Mount Laurel, said that compelling public need should apply only for the protection of the Pinelands.

Ms. Marianne Clemente, a resident of Barnegat Township, said that the P&I Committee makes recommendations to the full Commission so the Committee has no veto power over the full Commission.

Chairperson Ashmun said the next meeting of the MOA Policy Advisory Committee will be following the August 28, 2015 CMP P&I Committee meeting. Commissioner McGlinchey added that the Agriculture Committee would meet following the July 31, 2015 CMP P&I Committee meeting.

The meeting adjourned at 12:15 p.m. (Moved by Commissioner Lohbauer and seconded by Mayor Chiarello)

Certified as true and correct:



Betsy Piner,  
Principal Planning Assistant

Date: July 8, 2015



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New Jersey Pinelands Commission  
 THE PROCESS FOR CONSIDERING AN INTERGOVERNMENTAL AGREEMENT  
 June 23, 2008, revised October 19, 2015

Under normal circumstances, the Pinelands Commission expects that a public agency's development plans will conform to 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 ~~Public and Government Programs~~ Committee] to evaluate requests for intergovernmental agreements and, if warranted, prepare a formal agreement for the full Commission's consideration. This process consists of thirteen ~~twelve~~ steps, as outlined below, and may take 12 months or longer to complete:

Step 1. A public agency should ~~contact the Commission's Executive Director if it believes its proposed development plan can not meet the land use or environmental standards of the CMP and wishes to pursue an intergovernmental agreement~~ 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 the Executive Director 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. The Executive Director will also provide the agency's representatives with a preliminary opinion as to whether the proposed project appears to be consistent with the types of other activities authorized by the Commission through prior intergovernmental agreements.

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 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.
5. The status of project financing, including an estimate of costs and preliminary or firm funding commitments.
6. 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.
7. 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.
8. A description of design measures to be taken to reduce the extent of the project's non-conformity with CMP standards.
9. A detailed listing of other CMP development standards for which insufficient information is currently available to assess the project's conformance.
10. A description of project alternatives [other locations for the project and other onsite designs] that were considered and why they weren't pursued.
11. 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 impacts on this tract or elsewhere.

Step 4. The Executive Director ~~Commission's Director of Regulatory Programs~~ 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 CMP Policy & Implementation ~~Public and Government Programs~~ Committee members. 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 ~~Public and Government Programs~~ Committee, in consultation with the Executive Director, shall ~~determine~~ 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 7~~ 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 8 9. The Executive Director shall consult with the CMP Policy & Implementation ~~Public and Government Programs~~ 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 9 10. The Executive Director shall conduct a public hearing and prepare a written report addressing the public's comments on the proposed agreement.<sup>1</sup> 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 10~~ 11. The Executive Director shall review the report, the final draft of the agreement and the proposed resolution with the CMP Policy & Implementation ~~Public and Government Programs~~ Committee.

~~Step 11~~ 12. The CMP Policy & Implementation ~~Public and Government Programs~~ 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 12~~ 13. The full Pinelands Commission shall consider the resolution(s) at its next available meeting.

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<sup>1</sup> 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.



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### Memoranda of Agreement

June 18, 2015

The following is a comprehensive list of the issues and suggestions identified by MOA Policy Advisory Committee members and Commission staff at the April and May 2015 MOA Committee meetings. Comments made by the public during the Plan Review Process and at subsequent Commission and Committee meetings have also been incorporated. The list is not a set of recommendations. Rather, it is a list of the identified issues for the MOA Committee to use as it continues to discuss current MOA procedures and standards.

#### MOA Process

1. The June 2008 MOA process on the Commission's website should be retained. It needs to be revised to indicate that the CMP Policy & Implementation (P&I) Committee reviews requests for MOAs and makes recommendations on such agreements to the Commission. The Commission's Public and Governmental Programs Committee no longer exists.
2. The P&I Committee needs to be an active participant in the process and "share the staff's burden" early on, beginning when a public agency makes its initial presentation to the Committee.
3. After a public agency makes a presentation to the P&I Committee on its need for an MOA, work should not proceed on that MOA until the full Commission has (a) been briefed on the proposal; (b) reviewed the P&I Committee's recommendation; and (c) adopted a resolution authorizing staff to draft an MOA.
4. When the Commission adopts a resolution to authorize staff to proceed with development of an MOA, the resolution should lay out the Commission's anticipated schedule for completing the MOA. The schedule must 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 should take into consideration the time constraints and deadlines of the public agency seeking the MOA.

5. MOAs are, by definition, negotiated agreements. They are not dictated by the Commission or the staff. By necessity, MOAs involve a significant amount of discussion between Commission staff and the public agency seeking the agreement. The staff may also need to seek the input of other public agencies and experts when developing an MOA. The process should recognize that negotiation and discussions between the staff and the public agency are an appropriate part of the process. A question remains as to the point in the process where negotiation should stop and a conclusion on the MOA must be reached based on the known information at that time.
6. More advance notice of any MOA public hearing should be required (e.g., 15 or 30 days) and a longer public comment period should be provided (e.g., 30 days).  
*Note: this would require amendments to the CMP.*
7. The process should recognize the staff's need to communicate with the public agency seeking the MOA following the public hearing, in order to obtain assistance in answering questions that may have been raised. The information obtained from the public agency would be incorporated in the written response to comments, thereby ensuring that it is made available to the public.
8. If substantive changes are made to an MOA in response to the comments made at a public hearing, the process should recognize that an additional public hearing may be necessary and this will delay the original schedule established by the Commission.
9. The Commission needs to establish and implement a tracking system for MOAs that can be used to ensure all conditions and requirements set forth in these agreements are met. Periodic reporting to the Commission on the status of MOA conditions should be scheduled.
10. A revised version of the MOA process should be formally endorsed by the Commission.

MOA Standards *(most would require CMP amendments)*

11. The CMP should be amended to more clearly define who is eligible to seek an MOA with the Commission, keeping in mind that anyone (public or private) can apply for and receive a compelling public need waiver while MOAs are intended to be available only to public agencies.
12. The Commission should determine whether regulated public utilities should be eligible for MOAs, as well as other private entities that are working to achieve a larger public purpose.
13. The Commission should define what constitutes a “public purpose.”
14. A definition of “equivalent protection” should be included in the CMP, with a series of formulas (perhaps based on past practice) that could be used to determine appropriate offsets for various types of deviations from CMP standards. A certain amount of flexibility should remain so as not to hinder future projects that benefit the overall protection of the Pinelands.
15. The mechanisms by which land acquisition is to occur under an MOA should be standardized. For example, the public agency entering into the MOA should be obligated to acquire the necessary lands within a certain time frame, after which the funds necessary to complete the acquisition should be given to the Commission and made part of the Pinelands Conservation Fund.
16. The Commission should determine whether an analysis of alternatives is required as part of an MOA and, if so, whether the cost of various alternatives should be a factor in the Commission’s evaluation.
17. The CMP should be amended to more clearly distinguish between the standards for an MOA and those for a compelling public need waiver, particularly with respect to the evaluation of alternatives.
18. Application fees should be required for MOAs. N.J.A.C. 7:50-1.7 allows the Commission to require an escrow from the public agency seeking an MOA; these funds may then be used to reimburse the Commission for staff time required for developing, implementing and monitoring the MOA.
19. MOAs should remain discretionary; however, the Commission should recognize that it is that discretion that makes its decisions on MOAs vulnerable to legal challenge.

20. MOA standards should remain flexible so that the Commission will continue to be able to approve worthy agreements and projects that benefit the Pinelands, even when they involve a partnership between public and private entities. The Commission should be careful not to make the standards and procedures so restrictive as to prevent valuable MOAs from being done in the future.
21. The CMP should be amended to eliminate deviation MOAs entirely in favor of comprehensive public facility plans to address the needs of existing facilities in the Pinelands.

#### Other Suggested CMP Amendments

22. With respect to public service infrastructure in various management areas, the Commission should consider whether the standards should refer to serving the needs of the Pinelands (i.e., the entire Pinelands National Reserve) or only the state-designated Pinelands Area.
23. CMP standards for public service infrastructure in the Forest Area should be revised to include a requirement that the proposed infrastructure will not generate subsidiary or satellite development in the Forest Area. There may be a need to do this for other management areas (Preservation Area District, Special Agricultural Production Area) as well.