

Miller, Susanne

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Sent: Thursday, May 23, 2019 1:28 PM
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Subject: Department Ruling on May 22 Motion to Strike

Good afternoon:

This e-mail is a ruling by the Department on the May 22, 2019 Motion to Strike filed by the Applicant that requested that the pine marten habitat maps submitted by Group 6 witness Dr. Erin Simons-Legaard after the hearing be stricken. The Commission is not ruling in this matter as the maps pertain to topics not relevant to the Commission's role in certifying whether the project is a use allowed by special exception within the P-RR subdistrict.

During the hearing, Department staff and counsel requested the submittal of maps pertaining to pine marten habitat from Dr. Erin Simons-Legaard, Intervenor Group 6 witness. The Presiding Officer requested that the "existing" maps be submitted within a week of the hearing, however Department staff presumed that some form of work would need to be done to the maps (because of the date they were compiled) to provide information that would be useful for the Department in better understanding pine marten habitat.

At the end of the hearing the Presiding Officer allowed a week for the maps to be entered into the record, and subsequently confirmed that the deadline would be May 17, 2019. The maps were submitted on time by Intervenor Group 6. The Presiding Officer provided one week for all parties to submit responsive evidence and comment on the maps once they were submitted, and that deadline was May 24, 2019.

On May 22, 2019, Applicant filed a Motion to Strike the maps submitted on the basis that they were not "existing" maps as clearly requested by the Presiding Officer, and that some additional work was done to the maps creating new information that was now being introduced into the record. Intervenor Group 6 responded to the Motion to Strike arguing that while the Applicant is correct that the maps include new information, in the context of the questions and discussion Group 6 understood the Department's request to contemplate that some level of work would be necessary to make the map's information relevant and useful to the Department.

The Presiding Officer agrees that the actual language of the request at the end of the hearing was for “existing” maps. However, the Presiding Officer also agrees that the purpose of having the maps entered into the record is to provide the Department with relevant and useful information to assist in making a decision on the application. In this particular case, the “existing” maps were out of date and the modifications made helped to address the questions the Department had about pine marten habitat. For this reason, the Presiding Officer denies the Applicant’s Motion to Strike and will allow the maps to remain in the record.

The deadline for submitting responsive evidence and commenting on these maps for the remaining parties was May 24, 2019. However, in order to provide parties additional time to process the newer information contained in the maps, the Presiding Officer will extend the deadline for all parties for responsive evidence and comment until May 31, 2019.

The movement of this deadline does not extend to the deadlines for responsive evidence and comment on the other post-hearing document submittals, and it does not impact the post hearing briefing schedule which stays the same.

Thank you, and please direct any questions to Jim Beyer or Peggy Bensinger.

Susanne Miller

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