

Disclaimer

These minutes reflect the actions taken by the Commission during its January 13, 2023 meeting. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on January 23, 2022.

PINELANDS COMMISSION MEETING

MINUTES

January 13, 2023

*All participants were either in-person or present via Zoom conference and the meeting was livestreamed through YouTube: <https://www.youtube.com/watch?v=k1sOzBsbIII>*

Commissioners Participating in the Meeting

Alan W. Avery Jr., Dan Christy, John Holroyd, Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Mark Mauriello, Davon McCurry, William Pikolycky, Douglas Wallner and Chair Laura E. Matos. Also participating were Acting Executive Director Susan R. Grogan, Deputy Attorney General (DAG) Nicolas Seminoff and Governor's Authorities Unit representative Janice Venables.

Commissioners Absent

Jonathan Meade.

Call to Order

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

DAG Seminoff read the Open Public Meetings Act Statement (OPMA).

DAG Seminoff administered the oath of office to Mark Mauriello, who was appointed by the Governor to serve on the Commission.

Acting Executive Director (ED) Grogan called the roll and announced the presence of a quorum. Twelve Commissioners participated in the meeting.

The Commission pledged allegiance to the Flag.

#### Recognition of Past Commissioners

Chair Matos introduced a resolution expressing the Commission's appreciation to former Commissioner Jane Jannarone.

Commissioner Pikolycky made a motion Expressing the Commission's Appreciation to Jane Jannarone for Her Service as a Member of the Commission From June 12, 2014 to December 1, 2022 (See Resolution # PC4-23-01). Commissioner Irick seconded the motion.

All were in favor and the resolution was adopted.

Chair Matos introduced a resolution expressing the Commission's appreciation to former Commissioner Gary Quinn.

Commissioner Avery made a motion Expressing the Commission's Appreciation to Gary Quinn for His Service as a Member of the Commission From July 27, 2011 to November 21, 2022 (See Resolution # PC4-23-02). Commissioner Irick seconded the motion.

All were in favor and the resolution was adopted.

#### Minutes

Chair Matos presented the minutes from the Commission's December 9, 2022 meeting.

Commissioner Pikolycky moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the December 9, 2022 Commission meeting were adopted by a vote of 12 to 0.

#### Committee Reports

There were no Committee meetings to report on.

#### Acting Executive Director's Report

Acting ED Grogan provided an update on the following matters:

- The consultant, Connolly & Hickey Historical Architects, LLC, who the Commission has contracted with to prepare the Fenwick Manor preservation plan

will be on-site next week with the structural engineer. Connolly & Hickey will report on its findings and recommendations at the March 10, 2023 Commission meeting, and the report will be used as a basis to apply for a capital grant from the New Jersey Historic Trust.

- A staff archaeologist has been hired and will begin on January 30<sup>th</sup>.
- The Commission received notice that later this month, Cumberland County will be appointing a new member to fill the vacancy on the Commission following Jane Jannarone's resignation. Staff will schedule an orientation for new Commissioners in February.
- A meeting with new staff members from the Pinelands Preservation Alliance has been scheduled for late January to go over procedures, ordinances and review periods.
- Recruitment continues for two positions: Web Developer and Research Scientist. Ed Wengrowski, the Commission's Environmental Technologies Coordinator, is scheduled to retire on March 1<sup>st</sup>, and recruitment for his position is also ongoing.
- The current union contract between the Commission and the Communications Workers of America (CWA) is set to expire on June 30, 2023. Staff is in the process of hiring outside labor counsel from the approved state list.
- The resolution on today's agenda related to water management amendments to the Comprehensive Management Plan (CMP) cannot be acted on today. The Policy & Implementation discussed the re-proposal at length at its November meeting, and staff subsequently met with both representatives of the mining industry and the New Jersey Department of Environmental Protection (NJDEP) staff in December. The Governor's office needs additional time to complete its review of the re-proposal. The changes that were made to the proposal were substantial in nature so the process must start from the beginning and will include a new public hearing and 60-day comment period.

Chuck Horner, Director of Regulatory Programs, provided information on the following regulatory matters. Additional details can be found in the Commission's December 2022 Monthly Management Report.

- At the December Commission meeting, the Mayor of Washington Township provided public comment related to its communication tower application. Staff met with the Mayor after that meeting and provided a copy of a June 2022 letter that was sent to the applicant, identifying the information required to complete the application.
- Staff continues to work with an applicant proposing development at a former resource extraction site in Manchester Township. After the submission of a

Threatened and Endangered (T&E) species study, staff determined that additional survey work is necessary.

- Staff believes it has found resolution to a land use matter in which over 600 single family dwelling units are proposed in Egg Harbor Township. A zoning change occurred after the applicant received a Certificate of Filing and municipal approval in 2007. The zoning change required that Pinelands Development Credits (PDCs) be redeemed for 25% of market rate units. After a thorough review of the municipal approvals and both the Permit Extension Act and the New Jersey Covid Permit Extension Act, the staff believes the applicant will be required to purchase PDCs for at least a portion of the proposed development.
- A change of use application for a food bank and retail convenience store in a former restaurant in Manchester Township has been resolved. The application was not meeting the ground water quality standards of the CMP. Staff advised the applicant that they needed to either install a new septic system, connect to sanitary sewer or acquire additional contiguous acreage in order to meet the ground water quality standard. The applicant provided documentation that 3.52 acres had been deed restricted and staff issued a letter that the Township site plan approval for the change of use could take effect.
- A public hearing was held on January 12<sup>th</sup> regarding an application to build a single-family dwelling in Lacey Township. Two T&E animals were found on the property, raising concerns about potential impacts on critical habitat. Staff will draft a report with a recommendation for Commission action.

Commissioner Avery asked about the acreage of the parcel subject of the public hearing.

Director Horner said the parcel is 1.75 acres.

Stacey Roth, Chief, Legal & Legislative Affairs, said a public hearing was conducted on January 4, 2023 for an amendment to an existing Memorandum of Agreement (MOA) between the Commission and Atlantic County regarding Lake Lenape Park in Hamilton Township. She said the only public comment received was from the county. The matter will be before the full Commission in February.

Paul Leakan, Communications Officer, provided details about the upcoming 34<sup>th</sup> annual Pinelands Short Course.

#### Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution for the installation of sidewalks in Pemberton Township and the construction of an artificial turf field in the Town of Hammonton.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1985-0641.014 & 1988-0706.023) (See Resolution # PC4-23-03). Commissioner Pikolycky seconded the motion.

Director Horner said the sidewalks will be installed at existing schools in Pemberton Township.

Director Horner said the Town of Hammonton is planning to replace existing grass recreation fields and construct artificial turf fields at a municipal recreation complex. He said as part of the construction, two acres of underground infiltration will be removed. However, the loss will be compensated for as part of a previously approved application for 11-acres of overland drip irrigation system. He noted that the artificial turf fields will not be constructed until the overland drip irrigation system is completed.

The resolution was adopted by a vote of 11 to 0. Commissioner McCurry abstained.

Chair Matos introduced a resolution for the soil capping of a closed landfill in Berkeley Township.

Commissioner Pikolycky made a motion Approving With Conditions an Application for Public Development (Application Number 1986-0127.001). Commissioner Holroyd seconded the motion.

Director Horner said this application is for a soil cap of a closed municipal landfill. He said the landfill was closed in the mid 1980's and has not accepted waste since its closure. He said the landfill is approximately 42 acres in size and will be topped with two feet of soil. He said multiple land development violations have occurred on the parcel over the years. The violations are outlined in the report and the town is in the process of resolving them. He noted that wetlands are present and the soil cap will maintain a 300-foot buffer to wetlands. He also noted that a T&E animal species was identified in a nearby wetland. He said staff is recommending a 300-foot buffer to that particular wetland. He said another T&E species was located on the site and a 400-foot buffer to that area will be maintained so that the capping will not result in an irreversible, adverse impact on the habitat.

Commissioner Lettman questioned the acreage of the landfill. She said the acreages outlined in the report do not match former Planning Director Larry Liggett's landfill acreage spreadsheet.

Director Horner said he could not comment on Director Liggett's acreage list.

Ernest Deman of the Regulatory Programs office said that a landfill investigation was undertaken to determine the exact extent of the landfill and based on that work, the landfill area is 41.8 acres.

Commissioner Lettman said there was a prior application to cap the landfill, and she asked if the capping material is the same as in the earlier proposal.

Director Horner said the only type of capping ever proposed was soil. He said he could not confirm whether the material is exactly the same. He said an analysis was completed as part of the current application, and it was determined that a soil cap would be sufficient at this specific landfill.

Director Horner added that the 16 outstanding land development violations at the municipal complex are being tracked under a separate application number. He said once resolved, an application will be on a Commission agenda for public comment and Commission action.

Commissioner Lohbauer asked if it was appropriate to act on the soil cap application with the town having so many outstanding violations. He said he feels the Commission will lose its leverage of resolving the violations.

Director Horner said staff and the Acting ED wrestled with the same question but the town is on a path to resolve the violations that have occurred. He said the fact that the landfill has not been capped is a violation and by approving the capping, the largest violation will be resolved.

Commissioner Lohbauer said the northern pine snake found on the parcel was tracked for a limited period of time, and he questioned whether the Commission has enough information about the snake and hibernaculum to determine that a 400-foot buffer is enough to provide protection. He also questioned whether the Commission was setting precedent by requiring a 400-foot buffer from the landfill cap to the snake hibernacula.

Director Horner began by stating that the Commission will maintain its leverage because the applicant is very interested in having its solar facility application move forward. He said the Certificate of Filing for the solar facility was conditioned based on the resolution of the existing violations.

Director Horner said T&E issues are complicated and never straightforward, especially when an animal has an activity range of thousands of feet. He said based on known snake foraging at adjacent Double Trouble State Park, staff felt that 400 feet is an adequate buffer. He said there have been instances where the Commission has required less than a 400-foot buffer to hibernacula found on other properties.

Commissioner Lloyd said he would like the Public Development report to be revised to clarify the following:

- Include language about the prior submission of a landfill closure plan;
- Add language in the T&E section of the report that specifies that the 400-foot buffer is a “unique circumstance” based on the expert opinion of Commission staff;
- Identify whether or not there was or wasn’t a plume associated with the landfill; and
- A remedy for the violations listed in the current report.

He suggested that the application be tabled.

Commissioner Lettman asked why there aren't T&E species timing restrictions defined in the report related to when work can be performed.

Director Horner said timing restrictions are typically associated with forestry applications. He suggested that Commissioner Lettman may also be thinking of the restrictions imposed in relation to the capping of the Stafford landfill, which was done through a Memorandum of Agreement with the Commission. He added that T&E survey work was completed for the Berkeley landfill project and based on the survey work, there are no required timing restrictions. He noted that the presence of T&E species raises many challenges and is difficult to regulate.

Commissioner Avery asked if there are multiple snakes on the site or if there is only one snake in question.

Director Horner said one snake was found in the hibernacula. He reiterated that the CMP requires an applicant to demonstrate that the proposed development will not result in irreversible, adverse impacts on the habitats that are critical to the survival of the local population of a particular species.

Commissioner Avery and Chair Matos both agreed that closing the landfill is a positive outcome. They also both agreed that the Commission is not losing leverage by approving the capping.

Chair Matos said the applicant is very motivated to move forward with its solar energy facility, which cannot happen without clearing the violations.

Commissioner Avery asked if there were any other approvals needed for the landfill closure.

Director Horner said the capping requires approval by the NJDEP, and that review is pending. He then provided additional information related to a prior application to cap the landfill. He said in 1990 the Commission approved a soil cap at the Berkeley Township landfill; however, no information related to groundwater or soil contamination was submitted. In the late 90s, the Commission revised its rules related to landfills, which caused the Berkeley Township landfill to no longer be in compliance with the CMP.

Commissioner Lohbauer said that he is not comfortable voting on the resolution today because of the Township's outstanding violations. He said he would like to see the revisions suggested by Commissioner Lloyd added to the report. He said he would like to second the motion made by Commissioner Lloyd to table the application.

Chair Matos said Commissioner Lloyd did not make a motion to table.

Commissioner Lohbauer said he would make a motion to table the application so the report can be amended to include Commissioner Lloyd’s suggestions and until the violations have been addressed.

Ms. Roth said currently there is a motion and a second to approve this application. She added that based on a Robert’s Rules, a motion to table simply holds the application to a later portion of the meeting. She said she believes Commissioner Lohbauer is requesting a motion to defer the application to a future meeting.

Commissioner Avery suggested that the resolution be modified to include Commissioner Lloyd’s suggestions.

Chair Matos asked if the rules permit the Commission to delay action on the application to another date.

Director Horner said the Commission has to act on the application today, whether it’s an approval or denial. He said that if the Commission wants to delay acting on the application, the applicant would have to agree to an extension.

Ms. Roth said any changes to the motion on the table would have to be agreed upon by Commissioner Pikolycky, the movant. She said if the Commission is not going to approve the Executive Director’s report, the application would go to the Office of Administrative Law. She said the best measure would be to contact the applicant while this meeting is occurring and request that they agree to defer the application to a future meeting.

Commissioner Pikolycky said he would amend his motion to include Commissioner Lloyd’s earlier suggestions. He said he was in support of the landfill closure and the future production of green energy from the solar energy facility.

Ms. Roth read Commissioner Lloyd’s earlier suggested changes to the report.

Commissioner Lloyd said he agreed that is an important application but he still wanted to defer one-month so the report can be revised to fully recite the history of the landfill and narrow the approval so a precedent is not set.

Chair Matos said by delaying today, the schedule of the overall project is affected. She requested a motion and a vote.

Commissioner Pikolycky made a motion to amend his earlier motion to include additional language. Commissioner Avery seconded the amended motion.

Acting ED Grogan called the roll

Commissioner Avery	Yes
Commissioner Christy	Yes
Commissioner Holroyd	Yes
Commissioner Irick	Abstain



Commissioner Lettman	No
Commissioner Lloyd	Abstain
Commissioner Lohbauer	No
Commissioner Mauriello	Abstain
Commissioner McCurry	Yes
Commissioner Pikolycky	Yes
Commissioner Wallner	No
Chair Matos	Yes

The motion failed.

Mr. Deman left the meeting to call the applicant.

Chair Matos said the next resolution is for a Waiver of Strict Compliance application in Manchester Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 2000-0667.001) (See Resolution # PC4-23-04). Commissioner Irick seconded the motion.

Director Horner said the Waiver is for the development of a single-family dwelling in Manchester Township that is not meeting the required lot size.

The resolution was adopted by a vote of 12 to 0.

Public Comment on Development Applications and Items Where the Record is Open

Chair Matos explained the public comment process to Michelle Forman.

Ordinances Not Requiring Commission Action

Chair Matos read the list of Ordinances:

- Barnegat Township Ordinance 2022-21
- Eagleswood Township Ordinance 2022-08
- Egg Harbor Township Ordinances 40-2022, 44-2022 and 47-2022
- Lakehurst Borough Ordinance 2022-10
- Ocean Township Ordinance 2022-18
- Shamong Township Ordinances 2022-4 and 2022-13

Acting ED Grogan said a number of these ordinances relate to the Department of Community Affairs (DCA) model ordinance related to electric vehicle charging equipment. She said the Lakehurst Borough ordinance relates to cannabis retail facilities in Pinelands Town Management Area. She said Egg Harbor Township Ordinance 47-2022 adjusts the design plan of the Timber Creek Redevelopment Plan previously approved by the

Commission in the summer of 2022. The number of units and PDC obligation remain the same.

### General Public Comment

Michelle Forman of Browns Mills, NJ, thanked Commissioner Lohbauer for voting no and Commissioner Lloyd from abstaining on the landfill application. She said if an applicant has active violations, they should not be allowed to move forward with other development. She said she had questions about the size of the solar energy facility at the landfill. She also raised questions related to Pemberton Township.

Alice Henry of Hamilton Township spoke about the negative effects a rezoning would have in her community to accommodate a development referred to as “Trophy Park.”

### Other

The Commission took a 30-minute break while staff contacted the applicant.

Director Horner said he spoke with representatives for the solar application and they were upset by the outcome of today’s meeting. They said the delay will jeopardize their schedule and funding. He said he also spoke with the Berkeley Township Mayor and Administrator and explained that the application did not receive the eight votes necessary to either approve or deny the application. He said in the end both parties agreed to defer the application until February 10, 2023.

Acting ED Grogan said there is a possibility of scheduling a special meeting before the end of January, at which the Commission can reconsider the application.

Chair Matos said she believes the Township will be even more motivated to resolve the violations now to not hold up the solar portion of the application any further.

Ms. Roth explained the motion to reconsider. She said the Commission will reconsider an application by Berkeley Township to install a soil cap on its landfill. The Commission may hold a special meeting for the reconsideration of the application to enable staff to revise the Public Development report to include additional information identified by the discussion today.

Commissioner Irick made a motion to reconsider the Berkeley Township landfill application. Commissioner Lohbauer seconded the motion. The motion carried by a vote of 11 to 0. During the break, Commissioner Christy left the meeting.

### Adjournment

Commissioner Lohbauer requested that the P&I Committee consider having a discussion regarding the use of forest thinning as a wildfire preventative measure and determine the Commission’s position before another NJDEP thinning application comes before the Commission.

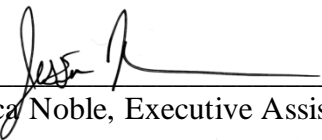
Chair Matos said the discussion can be placed on a future P&I Committee meeting agenda.

Commissioner Irick said at the November P&I Committee there was an in-depth discussion about the definition of non-consumptive use related to the water management amendments. He said he has concerns related to the quality of the diverted water when it is returned back into the ground after mining activities.

Acting ED Grogan said after the P&I Committee, staff had extensive conversations with the NJDEP and the mining industry. She said staff can provide a summary of what was learned at the January P&I Committee meeting.

Commissioner Pikolycky moved to adjourn the meeting. Commissioner Irick seconded the motion. The Commission agreed to adjourn at 11:56 a.m.

Certified as true and correct:

  
\_\_\_\_\_  
Jessica Noble, Executive Assistant

Date: January 23, 2023