

Disclaimer

These minutes reflect the actions taken by the Commission during its February 11, 2022 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 February 22, 2022.

PINELANDS COMMISSION MEETING

MINUTES

**February 11, 2022**

*The February 11, 2022 Pinelands Commission meeting was conducted remotely. All participants were present via Zoom conference and the meeting was livestreamed through YouTube: [https://www.youtube.com/watch?v=L90XMrsLn\\_Q](https://www.youtube.com/watch?v=L90XMrsLn_Q)*

Commissioners Participating in the Meeting

Alan W. Avery Jr., John Holroyd Jr., Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Jonathan Meade, Davon McCurry, William Pikolycky 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

Daniel Christy, Shannon Higginbotham, Jane Jannarone & Gary Quinn.

Call to Order

Chair Matos called the meeting to order at 9:33 a.m.

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

DAG Seminoff administered the Oath of Office to John Holroyd Jr., who was recently appointed to the Commission by Camden County.

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

The Commission pledged allegiance to the Flag.

Minutes

Chair Matos presented the minutes from the Commission's January 14, 2022 meeting. Commissioner Lloyd moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the January 14, 2022 Commission meeting were adopted by a vote of 9 to 0. Commissioner Holroyd abstained from the vote.

Recognizing Past Commissioners

Chair Matos introduced the following two resolutions regarding former Commissioner D'Arcy Rohan Green and Chairman Richard Prickett.

Commissioner Lohbauer made a motion to adopt a resolution Expressing the Commission's Appreciation to D'Arcy Rohan Green for her Service as a Member of the Commission From June 29, 2011 to January 7, 2022 (See Resolution # PC4-22-05). Commissioner Lloyd seconded the motion.

Acting ED Grogan read the resolution into the record.

Commissioners Lohbauer and Lloyd expressed their thanks to Commissioner Rohan Green for the time she spent serving as member of the Commission.

The Commission adopted the resolution by a vote of 10 to 0.

Commissioner Lohbauer made a motion to adopt a resolution Expressing the Commission's Appreciation to Richard H. Prickett for his Service as a Member of the Commission From January 9, 2012 to January 7, 2022 (See Resolution # PC4-22-06). Commissioner Lloyd seconded the motion.

Acting ED Grogan read the resolution into the record.

Commissioner Lohbauer thanked Mr. Prickett for his terrific service to the State.

Commissioner Lloyd expressed his appreciation for Mr. Prickett's dedicated service to the Pinelands and for leading the Commission through some difficult times. He noted that Mr. Prickett is extremely knowledgeable and that he considers him to be a valued friend.

Commissioner Avery said that he had worked closely with Mr. Prickett during his time as Chairman. He said that Mr. Prickett is a man of integrity and dedication and that he hopes Mr. Prickett will continue to participate in Pinelands matters.

Commissioner Irick said that Mr. Prickett was a dedicated Pinelands Commissioner. He noted that Mr. Prickett always provided opportunities for the public to participate.

Chair Matos expressed her thanks to both former Commissioners for their service.

The Commission adopted the resolution by a vote of 10 to 0. An image of the gifts for the former Commissioners was displayed on the screen.

### Committee Reports

There were no Committee meetings to report on.

Vice Chairman Avery noted that application fees are up and the Commission has received 125% of the estimated fees for Fiscal Year (FY) 2022. He added that he will be traveling at the end of February, and the March 1st Personnel & Budget Committee will be canceled. He requested that a grant application to the New Jersey Historic Trust for Fenwick Manor be considered by the full Commission at its March 11<sup>th</sup> meeting.

Chair Matos said she supported consideration of the resolution at the Commission's March meeting.

### Acting Executive Director's Report

Acting ED Grogan provided information on the following matters:

- Staff is preparing a grant application that would provide funding to create a Preservation Plan for Fenwick Manor. The application will be submitted to the New Jersey Historic Trust. As part of that application, staff is seeking letters of support. Staff has also submitted a memo and photographs of Fenwick Manor to the Governor's office as part of a request for a special appropriation for the building in the Fiscal Year 2023 budget.
- On February 7<sup>th</sup> staff held an in-person orientation for new Commissioners and Janice Venables, who is the interim representative from the Governor's Authorities Unit. A member of each office provided an overview of its work and functions.
- The Policy & Implementation (P&I) Committee and Climate Committee will hold back-to-back meetings on February 25<sup>th</sup>. The P&I Committee will be discussing a resolution of support related to the Pinelands Municipal Council. The Council met on January 26<sup>th</sup> and adopted a resolution thanking the Governor for restoring Payment In Lieu of Taxes (PILOT) funding in FY 2022 and requesting that the funding be continued in future fiscal years.
- Shawn LaTourette, the Commissioner of the New Jersey Department of Environmental Protection (NJDEP), will be attending the March Commission meeting to provide information on the Department's current projects such as climate change, environmental justice initiatives and coordination efforts in working with the Commission.

- The State Planning Commission's Interagency Task Force will be meeting on February 14<sup>th</sup> to discuss the growing interest in warehouse development in New Jersey. The Pinelands Area has seen an uptick in the development of warehouse applications, and it could be related to the increase in application fee revenue.
- Commissioner Christy has been reappointed by Gloucester County for another three-year term.

Chair Matos said she will chair the P&I Committee and added that she will contact both new and existing Commissioners regarding their Committee interest. She added that she hopes to have this process complete before the March 25<sup>th</sup> Committee meetings.

Commissioner Irick suggested inviting legislative representatives from the seven Pinelands counties to tour Fenwick Manor so they can see the disrepair and understand why the Commission is requesting the special appropriation.

Chair Matos agreed with Commissioner Irick's suggestion and said we need to reach out to our advocates as we approach the budget process.

Chuck Horner, Director of Regulatory Programs, provided information on the following regulatory matters:

- Staff continues to review several applications for the installation of solar energy facilities on landfills. The landfills must be capped before the solar facilities can be installed. The application needs to meet the Comprehensive Management Plan's (CMP) standards for wetland protection, threatened and endangered species and water quality. Staff is currently reviewing a residential development project immediately adjacent to an uncapped landfill in the Borough of South Toms River.
- Some applications that appear straightforward can sometimes require research into the New Jersey Municipal Land Use Law (MLUL). Staff recently reviewed an application for a day care facility within an existing single-family dwelling that may not require an application to the Commission based on a provision in the MLUL.
- During the public comment portion of the meeting, the Commission may hear from some residents of Estell Manor City concerning a recreational vehicle use matter on a privately owned parcel. Staff members have been in contact with the property owner's attorney, and the owner is not permitting staff to site inspect the parcel. The Estell Manor solicitor does not believe that a violation has occurred.

Stacey Roth, the Commission's Chief of Legal and Legislative Affairs, said that Public Law 2021, c. 313 authorizes municipalities through the adoption of an ordinance, to designate all-terrain vehicles (ATVs) or dirt bikes as contraband and subject to forfeiture if it is determined that the ATV or dirt bike is being unlawfully operated on any public street, highway, or right-of way and is an immediate threat to the public health, safety, and welfare.

Acting ED Grogan asked if the municipalities are required to adopt the ordinance and if the new law applies only to roads and rights-of-way

Ms. Roth said the law does not require municipalities to adopt the ordinance, but should they choose to do so, they only have two remedies: forfeiture or destruction in accordance with state law. She said that the law appears to apply only to municipal roads and municipal rights-of-way, not to other municipally owned lands.

Commissioner Lohbauer asked if it would be possible for staff to draft a model ordinance for this law to share with the Pinelands Municipal Council.

Acting ED Grogan said staff will review the law in more detail to determine if the Commission's involvement with a model ordinance would be helpful or appropriate. She noted that staff is also reviewing a model ordinance that the Department of Community Affairs sent out to all municipalities regarding electric vehicle charging stations.

Paul Leakan, the Commission's Communications Officer, said that a new Climate Change webpage has been launched on the Commission's website. He then screen-shared the new webpage, while describing its purpose and importance.

Mr. Leakan also noted that the Commission hosted a webinar on the agency's new stormwater management rules on February 9th. More than 100 people livestreamed the webinar. He also provided an update on the project to install a rain garden at the Commission's headquarters, and he provided information about the Pinelands Short Course. Lastly, he said staff is working diligently on the 2021 Annual Report.

#### Discussion on the reconsideration of NJDEP's Applications

Chair Matos said the Commission received a request from the NJDEP for the reconsideration of two applications: the Bass River Forest Fire Tower Maintenance project and the Allen and Oswego Road Fire Mitigation and Habitat Restoration project. She said it is her understanding is that the staff recommended approval of both applications last year. She said both applications were considered at Commission meetings at which only eight members were in attendance, and neither application received all eight votes necessary for approval. She said that it was important that this morning's discussion focus on a potential reconsideration process, not the substance of either application.

Acting ED Grogan said a letter from Commissioner LaTourette, requesting reconsideration of NJDEP's two applications, was distributed to Commissioners on February 9<sup>th</sup>. She said at the time of consideration, some Commissioner raised questions about the applications. The Commission struggled with attendance, including obtaining and keeping a quorum during the time when both applications were on the agenda. The Commission was left in an unusual predicament. The CMP and the Pinelands Protection Act never anticipated only having eight members voting. The Commission staff recommended approval of the applications. Commissioners voted on the applications and there were neither eight votes in

favor nor against the proposals. She noted that the only recourse would be sending the applications to the Office of Administrative Law (OAL), and that is not appropriate in this instance. The NJDEP requested that the applications be heard again now that the Commission has nearly a full complement of Commissioners. She noted that any applicant has the right for its application to be heard by the full Commission especially when it is another state agency and where a health and safety concern exists. She said the Commission needs to decide if the applications should be acted on in their current form or some revised form and receive eight votes one way or another. The CMP does not lay out a process for instances such as this one.

Chair Matos said in the NJDEP letter the Department requested the Commission take action by February 25<sup>th</sup>. She requested when responding back to the Department that an explanation be included as to why that is not possible.

Commissioner Lohbauer said when the Commission acted on the NJDEP applications, a quorum of the Commission was present. He said that when an application is denied, the applicant can go to OAL or resubmit an application to the Commission that is materially different than the original. He suggested the NJDEP modify the applications to make them acceptable and resubmit them so the Commission can vote on them again.

Commissioner Lloyd said he did not believe two state agencies should have to go to OAL to settle a matter, although he does believe it could be settled in that manner. He asked if Robert's Rules of Order would allow the application to be heard at the March Commission meeting and could that be a potential reconsideration mechanism.

Ms. Roth said Robert's Rules states that someone who voted against the application has to raise the matter for reconsideration. She said eight Commissioners equals a quorum. However, for an action to occur, there must be either eight votes in favor of an application or eight votes against an application, and the NJDEP application had neither. She noted that what occurred with the NJDEP applications is very rare. She suggested the Commission could decide to limit reconsideration requests to applications that did not receive eight votes in favor or against.

Commissioner Lloyd said he recalls at the time staff requested the Commissioner take a vote on the applications rather than tabling them. He said the motion failed.

Ms. Roth said if the Commission fails to approve the Executive Director's Report, the matter goes to OAL. The applicant has asked the Commission to hold the applications before transferring to OAL. She said there is nothing in the CMP that explicitly states the process to reconsider.

Commissioner Irick said he abstained from voting on the NJDEP applications although he voted in favor of the prior application for clear cutting surrounding the Bass River Fire Tower. He said the applicant failed to provide responses to his questions related to the type of herbicide being proposed and how the invasive species in the wetlands would be treated.

He said the applicant should withdraw the applications, address the questions raised by Commissioners and resubmit the applications.

Acting ED Grogan asked Director Horner to describe the process and timeframe required for a public development application to be resubmitted and considered by the Commission.

Director Horner explained that the applicant would refile its application and pay the associated fee. Staff review would likely take about 60 days. He said once the application is deemed complete, the application would be scheduled for public comment at a monthly Commission meeting. He said depending on the comment received, the Commission could act on the application at the following month's meeting. He estimated the process could take four months.

Commissioner Irick said he believed that the Bass River Forest Fire Tower Maintenance project could be resolved with some clarification from the NJDEP.

Commissioner Lohbauer reminded everyone that he asked the NJDEP if they had discussed the fire break clearing with herpetologists who have been conducting snake studies in the vicinity of the proposed clearing for years. He said the Department said it had not discussed the proposal with them.

Commissioner Irick said he did not like having to review forestry applications on a piecemeal basis. He said he would prefer that the Department prepare and submit a comprehensive plan for forest fire mitigation.

Chair Matos said based on the comments, it seems that additional information needs to be submitted for the Allen and Oswego Road Fire Mitigation and Habitat Restoration project. She added that she believes the Bass River application could be heard at the March Commission meeting.

Chair Matos asked for a motion to reconsider NJDEP's application for the Bass River Forest Fire Tower Maintenance project at the March 11, 2022 Commission meeting.

Commissioner Pikolycky made a motion. Commissioner Avery seconded the motion.

Acting ED Grogan said that she and Director Horner met with NJDEP prior to their submission of the letter. She said the applications and OAL process were discussed at the meeting. She said she let the NJDEP know that the Commission would be discussing the applications at today's meeting and invited them to attend but they had a conflict.

Commissioner Irick requested that Acting ED Grogan ask the NJDEP if it planned to spray herbicide in wetlands.

Commissioner Lloyd said based on this motion it seems the Commission can move to reconsider any application at any time. He asked Ms. Roth for verification.

Ms. Roth said the CMP does not provide guidance in situations such as these; however, applicants have the right to ask for reconsideration. She said it depends if the changes being made to the application are minor adjustments or substantive changes whether an application should be reopened.

DAG Seminoff said his office has not had a chance to review the process issues related to the NJDEP's request to reconsider the two applications. He said it is fine to move forward with the motion today; however, it may be necessary to meet in executive session at the next Commission meeting before any consideration by the Board.

Commissioner Lohbauer said he thinks the appropriate course of action would be for the NJDEP to resubmit its applications. He said once a matter is decided, it's decided. He said the Commission should follow a clear process. He said this opens the door for any applicant with a failing application to come back before the Commission.

Commissioner Holroyd asked if the new Commissioners could participate in the vote.

Acting ED Grogan said however the Commission proceeds with the two applications, new Commission members would be eligible to participate in the vote.

Chair Matos requested that the vote be called.

Acting ED Grogan called the vote:

Commissioner Avery: yes	Commissioner Lohbauer: no
Commissioner Holroyd: yes	Commissioner McCurry: yes
Commissioner Irick: no	Commissioner Meade: yes
Commissioner Lettman: abstain	Commissioner Pikolycky: yes
Commissioner Lloyd: yes	Chair Matos: yes

The motion does not carry.

#### Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution recommending approval for a geothermal well at Batsto Mansion and road improvements at the Burrs Mill Road and Retreat Road intersection in Southampton Township.

Commissioner Lloyd made a motion Approving With Conditions Applications for Public Development (Application Numbers 1985-0160.014 & 2006-0305.004) (See Resolution # PC4-22-07). Commissioner Lohbauer seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0. Commissioner Holroyd abstained from the vote.

Chair Matos said the next resolution is for two Waiver of Strict Compliance applications, with each proposing the development of a single-family dwelling.



Commissioner Pikolycky made a motion Approving With Conditions Applications for Waivers of Strict Compliance (Application Numbers 1989-0461.003 & 1995-1379.001) (See Resolution # PC4-22-08). Commissioner Lloyd seconded the motion.

Director Horner said when an applicant cannot meet certain standards of the CMP, they can apply for a Waiver of Strict Compliance to develop. However, he said certain minimum standards must be met in order to qualify for a waiver. In the instances today, both applicants could not meet the required 300-foot buffer to wetlands.

The Commission adopted the resolution by a vote of 10 to 0.

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

Chair Matos read the list of applications up for comment. No comment was provided.

#### Ordinances Not Requiring Commission Action

Acting ED Grogan said staff reviewed the following master plan and ordinance amendments, and they do not raise any substantial issues with the CMP and therefore do not require any formal action by the Commission:

- Evesham Township's 2021 Amended Housing Element and Fair Share Plan
- Pemberton Township Ordinances 31-2021 and 38-2021

#### Presentation

John Bunnell, the Commission's Chief Scientist, gave a presentation on past Science Office research topics and the status of current research projects. He described the Endocrine Disruption Study and the Microorganism Study and noted they are coming to an end in 2022. He discussed two ongoing environmental monitoring projects that focus on routine measuring of forest and pond water levels and the annual sampling of a group of streams for water quality monitoring. He then described the multifaceted snake research program that includes studies of snake genetics, snake fungal disease, and in-depth studies of corn snake and kingsnakes. with a goal of establishing long-term monitoring of snake populations. Lastly, he described the two developing initiatives, which are a study of box turtles and research on the use of environmental DNA to detect rare snakes. (See presentation slides for additional details)

#### General Public Comment

Rhyan Grech from the Pinelands Preservation Alliance commended the Commission's Science office for the extensive and great research they are working on. She said the NJDEP did not gain approval for its applications, which were discussed extensively by the Commission at the time of consideration. She said the NJDEP should reapply to the

Commission. Lastly, she urged the Commission to continue its efforts to hire an Executive Director.

Julie Akers of Newtonville, NJ, said she appreciates the attention that the Commission and staff have afforded to Off-Road Vehicle (ORV)-related issues and for assisting in a motorized vehicle matter in Estell Manor. She added that the Commission may not have enforcement capabilities, but its involvement in matters is very meaningful. She said the local residents in Estell Manor should be commended for developing a petition and putting themselves on the front line. She thanked the Commission for hearing those residents.

Kathy Gerrick of Estell Manor said she emailed a petition opposing the establishment of the motor cross track in Estell Manor. She said numerous bikes are running from morning to night, and she can hear them inside her home. She is hopeful that the Pinelands Commission can assist residents with the issue.

Fred Akers of the Great Egg Harbor Watershed Association said the Pinelands Infrastructure Fund could use additional money, and the NJDEP has infrastructure money to provide. He said the Commission does a great job providing updates in the monthly management report. He said he would like to see a copy of the Pinelands Municipal Council's resolution supporting PILOT so the Great Egg Harbor River Council can draft a similar resolution. He said he is excited for the Pinelands Short Course, which he has registered for this year.

Jason Howell from the Pinelands Preservation Alliance said he understands the Commission's wish to work with applicants, especially the NJDEP. However, he said the Commission's role is to manage both local and national interests. He said the NJDEP needs to be held to a higher standard and needs to work with stakeholders. He added that he supports the residents of Estell Manor who want to maintain their quality of life, free of pollution and noise from unpermitted motorized vehicle parks.

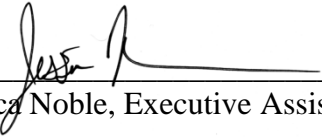
Jamie Philpot said the recent legislation regarding illegal ATV use is not going to be effective. She said the Commission needs to work with State Park Police and local municipalities for cooperative use of the forest. She said she is a member of the New Jersey Trail Riders association and the damage caused by ORV use is a hazard to horses and riders.

Paula Yudkowitz said she does not support the use of herbicide at the Bass River Fire Tower. She said that invasive species should have been considered by NJDEP when it proposed clearcutting around the tower. She said this is not good science or forest management.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Pikolycky seconded the motion. The Commission agreed to adjourn at 12:16 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: February 22, 2022