

Disclaimer

These minutes reflect the actions taken by the Commission during its August 13, 2021 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 August 23, 2021

PINELANDS COMMISSION MEETING

MINUTES  
**August 13, 2021**

*The August 13, 2021 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=-dkmg2nbNnc>*

Commissioners Participating in the Meeting

Alan W. Avery Jr., Daniel Christy, Shannon Higginbotham, Jordan P. Howell, Jerome H. Irick, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky, Gary Quinn, D'Arcy Rohan Green and Chairman Richard Prickett. Also participating were Acting Executive Director Susan R. Grogan and Deputy Attorney General (DAG) Kristina Miles and Governor's Authorities Unit representative Rudy Rodas.

Commissioners Absent

Jane Jannarone

Call to Order

Chairman Prickett called the meeting to order at 9:33 a.m.

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

Acting Executive Director Grogan called the roll and announced the presence of a quorum.

The Commission pledged allegiance to the Flag.

PC2-48

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Remembering the Former Executive Director

passed away on June 24, 2021. He then read a resolution recognizing her accomplishments during her tenure as Executive Director of the Pinelands Commission.

Commissioner Avery moved the resolution Honoring and Recognizing Nancy Wittenberg for Her Achievements as the Executive Director of the New Jersey Pinelands Commission (See Resolution # PC4-21-18). Commissioner Lohbauer seconded the motion.

The Commission adopted the resolution by a vote of 11 to 0.

A number of Commissioners expressed their admiration of Ms. Wittenberg's dedication at the Commission over the last decade, which included expansion of the public education programs and construction of the interpretive center. Ms. Wittenberg spent much of her career in the public sector. Commissioners also expressed deep condolences to Ms. Wittenberg's family.

Chairman Prickett said Ms. Wittenberg will be remembered for her tenacity, her ability to assist applicants and for her intelligence.

Minutes

Chairman Prickett presented the minutes from the Commission's June 11, 2021 meeting. Commissioner Pikolycky moved the adoption of the minutes. Commissioner Higginbotham seconded the motion.

The minutes from the June 11, 2021 Commission meeting were adopted by a vote of 11 to 0.

Election of Vice Chairman

Chairman Prickett said Commissioner Alan Avery has been nominated for Vice Chairman. There were no other nominations for Vice Chairman.

Commissioner Lohbauer moved the nomination of Alan Avery as Vice Chairman. Commissioner Pikolycky seconded the motion. All were in favor.

Vice Chairman Avery thanked Commissioners for their continued support.

Committee Reports

Chairman Prickett provided an update of the July 30, 2021 Policy & Implementation Committee meeting:

The Committee adopted the minutes of its May 28, 2021 meeting.

The Committee reviewed a final draft of the comments to be submitted to the Legislature on several forest stewardship bills.

The Committee discussed the goals drafted by staff for the Greenwood Forest Stewardship Plan.

The Committee received an update on the Commission's Electric Transmission Right-of-Way Maintenance Pilot Program.

The Committee received a presentation from the New Jersey Department of Environmental Protection (NJDEP) on the Department's draft rules related to Horizontal Directional Drilling (HDD). The Committee then continued its discussion of the CMP's utility distribution line application exemptions.

Commissioner Lohbauer provided an update of the July 14, 2021 Climate Committee meeting.

The Committee adopted the minutes of its May 19, 2021 meeting.

The Committee was joined by the New Jersey Forest Service, which delivered a presentation on Forest Carbon & Climate Information.

He noted the Committee will not meet in August. He said staff is working on an analysis of the energy consumption at the Commission's office in an effort to reduce its carbon footprint.

Chairman Prickett read an excerpt from the 1979 Pinelands Protection Act (13:18A-5. (g)) regarding the Commission's responsibility to appoint an Executive Director. He said he would like the Personnel & Budget Committee to make a recommendation on how to search for an Executive Director using a fair and transparent process to identify a qualified individual to lead the Commission. He added that today he is asking all Commissioners for feedback about the process.

Commissioner Lohbauer said he would be recusing from the discussion because he is interested in applying for the Executive Director position. (Commissioner Lohbauer was moved to a waiting room in Zoom.)

Commissioner Avery said to date there have been four Executive Directors, and all have been appointed by the Commission. He said two extensive searches have occurred in the past for the replacement of Executive Directors. He noted that he chaired one of the search committees. He said that in his August 9, 2021 memo to Commissioners, he outlined the various processes used in the past, including the previous job description and recruitment schedule. He suggested that Commissioner Lloyd be a member of the Committee rather than an alternate based on Commissioner Lohbauer's recusal. He said the Commission has a responsibility by statute to hire and appoint an Executive Director. He said the process will be fair, open and transparent.

Commissioner Lloyd said he thinks the Commission should move forward with forming a search committee. He noted that with the help of Commissioner Irick, he suggested some

changes to the job description to ensure that the best candidate is reached. He said he would like to see the job advertised and distributed extensively.

Commissioner Lloyd made an oral motion that the Commission form and appoint a search committee as outlined in Commissioner Avery's August 9, 2021 memo and to move forward with advertising the job posting for Executive Director, including any other duties the Committee needs to perform to ensure a transparent and far-reaching search. Commissioner Higginbotham seconded the motion.

Stacey Roth, the Commission's Chief of Legal and Legislative Affairs, confirmed for the Chairman that the Commission has the authority to make oral motions.

Rudy Rodas from the Governor Authorities Unit said his office would like to have some input in the search process for an Executive Director and he added that his office had not seen the memo from Commissioner Avery.

Chairman Prickett apologized for not sharing the memo and said the Governor's office will be kept apprised of the search committee's work.

Commissioner Lloyd said he amends his oral motion to include providing information related to the search committee to the Governor's Authorities Unit. Commissioner Higginbotham agreed with the amendment to the motion.

Commissioner Pikolycky suggested that someone from the Governor's office be part of the search committee or someone from the NJDEP.

Commissioner Rohan Green said the Commission needs to maintain its independence during this process.

Commissioner Pikolycky agreed.

Commissioner Lloyd said no one from the Governor's office should serve on the search committee. He said it's the Commission's responsibility to appoint an Executive Director. He said per Commissioner Avery's memo, Terry Moore should be invited to serve on the search committee as a public member.

Mr. Rodas said he would like to see the discussion put on hold until the next Commission meeting. He noted the item is not listed on the agenda.

Chairman Prickett said the Governor's Authorities Unit was made aware that the Personnel & Budget Committee Chair was going to take the lead on the search committee efforts.

Commissioner Avery said the memo that was shared with Commissioners was a summation of how the Commission conducted the past searches for an Executive Director. The memo also recommended inviting former Executive Director Terry Moore to join as a public member of the committee. He added that he agrees with Commissioner Lloyd in moving forward with making a decision on the formation of the search committee today.

Commissioner Howell, Commissioner Quinn, Commissioner Rohan Green, Commissioner Higginbotham, Commissioner Christy and Commissioner Irick all agreed that it was imperative to move forward with the search for a new Executive Director.

The oral motion passed by a vote of nine affirmative votes, one recusal (Commissioner Lohbauer) and one abstention (Commissioner Pikolycky).

**[Secretary's Note: The Governor vetoed the above motion on September 3, 2021.]**

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Commissioner Avery said the Personnel & Budget Committee meeting originally scheduled for July was rescheduled to August 24<sup>th</sup>. He said the Fiscal Year 2019 and Fiscal Year 2020 Audits continue to progress.

#### Acting Executive Director's Report

Acting ED Grogan provided information on the following:

- The Governor's office notified the Commission that it has approved the Commission's request to hire new staff to fill vacant positions. The Governor's office also approved two pending promotions and salary adjustments dating back to July of 2020.
- A revised Request for Proposal (RFP) has been posted to the Commission's website for painting Fenwick Manor. Bids are due by September 8<sup>th</sup>. The Commission will award the contract by resolution.
- Staff will return to the office full time on September 7<sup>th</sup>. Public meetings and hearings must remain virtual until further guidance is issued by the Governor's office.
- Around the time Nancy Wittenberg began at the Commission, she was involved in moving the administrative functions of the Pinelands Development Credit Bank from the Department of Banking & Insurance to the Commission. It was not an easy task, but she was successful in making it happen. The Bank remains active and busy, and the price of Pinelands Development Credits (PDCs) continues to increase. A representative from the City of Nashville requested a meeting to discuss the PDC Bank program in the City's effort to explore Transfer of Development Rights (TDR) to better direct development to save a historic portion of Nashville.

Chairman Prickett noted that the Bank board has not held a meeting for quite a while.

Acting ED Grogan said it would be a challenge for the Bank board to hold a meeting because there are several vacancies and no Chairman has been designated.

Commissioner Howell said in his role as university researcher he is working on a peer-reviewed paper on the PDC program that should be completed later this year. He said he met with Acting ED Grogan and Brad Lanute and they provided important data. He added that the paper will be available publicly once it is completed.

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

- Staff are reviewing two landfill capping applications located in Pemberton Township and Woodbine Borough. Both applications propose to install solar facilities once the landfills are appropriately capped.
- A pre-application meeting was held on August 3, 2021 to discuss a proposal for approximately 11 miles of underground electric transmission cable located in Egg Harbor Township for off-shore wind turbines.
- A Certificate of Filing was issued for a 215,000 square foot cannabis cultivation warehouse in Winslow Township.

Chairman Prickett said he would like to have a discussion about electric transmission lines as they relate to off-shore wind at an upcoming P&I Committee.

Ms. Roth said the Governor recently signed a statute regarding off-shore wind and connection to the grid, which removes permitting authority from municipalities and gives it to the Board of Public Utilities (BPU). She suggested inviting someone from the BPU to participate in the discussion.

Commissioner Lohbauer asked if the underground electric transmission line application is proposing Horizontal Directional Drilling (HDD).

Director Horner said the applicant noted that they would be doing open trenching to install the electric lines. He cautioned that this was only a pre-application meeting and more details would be available later.

Ms. Roth said in April the Governor signed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, which established the Cannabis Regulatory Commission (CRC). The CRC is requiring municipalities to opt in or out of permitting/siting recreational cannabis facilities within their communities by August 21, 2021. If a municipality misses the deadline, there is a default provision that automatically permits the siting of the facilities for five years. It is tough for municipalities to make these decisions when the CRC has yet to promulgate regulations. She said the Act establishes six classes of licenses: Cultivation License, Manufacturer License, Wholesaler License, Distributor License, Retailer License and Carrier License.

She said it is still unclear if growing cannabis is considered an agricultural use. She said there are many questions that remain unanswered due to the potential regulations, land use questions and the deadline for towns to adopt ordinances. She added that the Commission is limited to what is permitted in the Comprehensive Management Plan (CMP) but amendments to the CMP may be necessary to address the environmental impacts of cannabis-growing operations.

Acting ED Grogan suggested the Commission wait on discussing the matter until the CRC issues its proposed regulations. She said she hopes those rules will define what constitutes agriculture. She said many Pinelands municipalities are adopting ordinances due to the deadline, but the Commission's approval of the ordinances should wait until the CRC issues its regulations.

Commissioner Lloyd asked if Pinelands towns are aware of the deadline to adopt ordinances related to cannabis.

ED Grogan said yes, and the towns are actively adopting ordinances. She said about 35 of the 53 municipalities in the Pinelands have adopted a blanket prohibition against all classes of cannabis. Some towns are permitting certain facilities in specific zoning areas. There is a wide variety of approaches and, as of right now, there are only two municipalities that staff haven't heard from.

Paul Leakan, the Commission's Communications Officer, said the Commission recently organized and carried out two important education and outreach events. He said the fifth annual Pinelands Summer Short Course was held on July 15th, and it featured guided ecology walks, tours of historic buildings, a guided canoe trip and demonstrations of the Commission's ground penetrating radar equipment. He said the two locations, Whitesbog and Wells Mills County Park, were perfect venues and thanked the Commission's partners, Stockton University, the Whitesbog Preservation Trust and the Ocean County Department of Parks and Recreation.

He also noted that the Commission held its first-ever virtual Pinelands Orientation for Newly Elected Officials on July 27th. The event featured four presentations, which were recorded and are available for viewing on the Commission's YouTube Channel at any time. He sent the links to the presentations to nearly 1,500 recipients, and the combined video of the presentations has been viewed 165 times thus far.

Lastly, Mr. Leakan noted that the Commission is currently organizing the annual Pinelands-themed World Water Monitoring Challenge, which will be held at Batsto Lake on October 22<sup>nd</sup>.

Commissioner Howell signed off of the meeting at 11:00 a.m.

#### Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of a public development application for a potable water treatment infiltration system at a Motor Vehicle Center in Winslow Township.

Ms. Roth said staff created separate resolutions for each public development application.

Commissioner Lloyd made a motion Approving With Conditions Application for Public Development (Application Number 1985-0434.004)(See Resolution # PC4-21-19). Commissioner Lohbauer seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0.

Chairman introduced the next resolution. He said the applicant is proposing to use herbicide to control invasive species in a particular portion of Bass River State Forest.



Commissioner Avery made a motion Approving With Conditions Application for Public Development (Application Number 1990-0868.033). Commissioner Pikolycky seconded the motion.

Director Horner took a moment to explain the CMP regulations regarding herbicides. He said the CMP clearly states that the use of herbicides is not permitted in public or utility Rights-of-Ways (ROW). He said if an applicant is proposing to use herbicide, staff would review the application to ensure that is consistent with the wetlands, water quality and endangered species standards of the CMP. He noted there are very few applications for herbicide use in the Pinelands. He noted there is one exception in the rules related to the use of herbicides. He said the forestry rules permit the use of herbicides if certain conditions can be met.

Director Horner said 16 acres of forest were cleared to improve the visibility of the Bass River Forest fire tower several years ago. He said today the New Jersey Forest Service is interested in applying herbicide to spot treat an invasive plant species that has colonized in the vicinity (see attached slide).

Director Horner reviewed the conditions that must be met in order to use herbicides in the Pinelands (see attached slide).

Commissioner Lohbauer said he didn't recall ever approving an application to use herbicides to control invasive species. He was interested in what type of herbicide the forest service is planning to use. He said Roundup and Milestone are very potent and he is concerned about the long-lasting effects of these herbicides. He added that ten years is a long time to be applying the herbicide.

Director Horner said Branwen Ellis, Environmental Specialist, will review the several herbicides that the Forest Service could use. He noted that the Forest Service has reserved the right to use any herbicide that is authorized for forestry use.

Ms. Ellis said the Forest Service plans to use glyphosate-based herbicides to control the invasive species so the native and plantation species can grow. They plan to use the herbicide on as-needed and limited basis once the trees are successfully growing.

Commissioner Lohbauer said he doesn't agree with the use of glyphosate-based products on public lands because of its toxicity. He asked if the Forest Service considered manually removing the Japanese stiltgrass.

Ms. Ellis said the Forest Service did consider manual removal but the risk of spreading the seeds of the stiltgrass was too high and not effective.

Commissioner Lloyd said he shares Commissioner Lohbauer's concerns. He said he would like to see the Commission determine which herbicides the Forest Service use. He said he has reservations about approving a 10-year herbicide plan, because science is evolving

every day and there may be a better way to control the invasive species. He said the Forest Service created this problem by cutting the trees and he asked if the application can be put on hold. Lastly, he said he would like to see the Forest Service demonstrate that it can meet the water quality standards of the plan.

Commissioner Higginbotham said from her experience with invasive species the need to act quickly is very important.

Commissioner Irick raised concerns about the effects of the herbicide on the honey bee population and also raised concerns about the 10-year application of herbicides at the site. He asked if staff examined the site after the tree clearing occurred.

Director Horner said staff have not been to the site since the clearing but have viewed photographs. He added that the 10-year provision was added to the report for two reasons: it's typical of a forestry application and public development application approvals do not expire. He said staff can ask the Forest Service if it is amenable to a one- or two-year approach. He noted that the goal of the Forest Service is to get the invasive species under control so the saplings have a chance to grow.

Chairman Prickett asked Director Horner if he thought the Forest Service would accept waiting one month to act of the application.

Director Horner said Ms. Ellis has been in touch with the Forest Service and they have given consent to waiting to act on the application if necessary.

Commissioner Rohan Green suggested a site visit to Bass River State Forest.

Director Horner said if there is an interest to visit the site, it can be arranged. He added that the forest is public land.

DAG Miles cautioned the Commissioners not to conduct their own research on the application as there is already a record.

Ms. Roth suggested that the original motion for the application be withdrawn.

Commissioner Pikolycky made a motion to withdraw his motion for Application Number 1990-0868.033.

Commissioner Lloyd made a motion to table Application Number 1990-0868.033 to the September Commission meeting. Commissioner Lohbauer seconded the motion. The motion carried by a vote of 10 to 0.

Chairman Prickett suggested that the P&I Committee look further into the use of herbicides in the Pinelands.

Commissioner Avery said he would not make it the highest priority.

Commissioner Quinn left the meeting at 11:45 a.m.

Other Resolutions

Chairman Prickett presented a resolution to permit certain Commissioners and staff members the ability to sign Commission issued checks.

Commissioner Avery made a motion Authorizing Certain Members of the Pinelands Commission and Staff to Sign Checks (See Resolution # PC4-21-19). Commissioner Lohbauer seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0.

Commissioner Christy left the meeting at 11:47 a.m.

Ordinances Not Requiring Commission Action

Chairman Prickett read the list of ordinances not requiring Commission action.

- Egg Harbor Township Ordinance 25-2021
- Manchester Township Ordinance 21-19
- Monroe Township Ordinances O:09-2021, O:10-2021 & O:11-2021
- Mullica Township Ordinance 7-2021
- Ocean Township Ordinances 2021-3 & 2021-4
- Weymouth Township Ordinance 579-2021

No questions were raised.

Public Comment on Public Development Applications and Items where the record is open

Chairman Prickett read the list of Public Development Applications.

Bill Zipse of the New Jersey Forest Service said he is both a forester and a licensed pesticide applicator. He said Branwen Ellis of the Commission's staff did a good job of representing the application. He said the Forest Service does not plan to spray for 10 years. He said the plan is to deploy limited amounts of herbicide and wait to see the reaction. He said there was a similar application in Greenbank in Wharton State Forest in 2014. He offered condolences on the passing of Nancy Wittenberg.

Ms. Ellis provided the application number for the Greenbank plantation application (1992-0102.006). (Note: The public development report was subsequently provided to all Commissioners.)

Jason Howell of the Pinelands Preservation Alliance provided comment on Application No. 2007-0318.001 (Oswego Road Firebreak). He said by widening this road, which is a substantial change from the current size, it will enable vehicles to drive faster, including off-road vehicles (ORVs).

General Public Comment

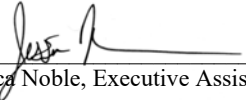
Rhyan Grech of the Pinelands Preservation Alliance (PPA) expressed condolences on the passing of Nancy Wittenberg. She commended the Public Programs staff on the Summer Short Course and the Pinelands Orientation. She said the recent IPCC climate report directly linked human activity to climate change. She encouraged the Commission to enact protections to address climate change. She also expressed support for the search committee. She raised concerns about the recent legislation that allows wind infrastructure projects to bypass municipal approval.

Jason Howell of the Pinelands Preservation Alliance (PPA) said the spreading of asphalt milling in the Pinelands is becoming a problem. The NJDEP Commissioner is undertaking a new stakeholder process for a map at Wharton State Forest. He said it is important to define what recreational uses are permitted, as opposed to focusing only on what is prohibited.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Avery seconded the motion. The Commission agreed to adjourn at 12:15 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: August 23, 2021