

Disclaimer

These minutes reflect the actions taken by the Commission during its January 12, 2024 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, 2024.

PINELANDS COMMISSION MEETING

MINUTES
January 12, 2024

All participants were either in-person or present via Zoom conference and the meeting was livestreamed through YouTube: <https://www.youtube.com/watch?v=DsuQOYL3n68>

Commissioners Participating in the Meeting

Nicholas Asselta, Alan W. Avery Jr., John Holroyd, Jerome H. Irick, Mark Lohbauer, Mark Mauriello, Jonathan Meade, William Pikolycky, Jessica Rittler Sanchez, Douglas Wallner and Chair Laura E. Matos. Also participating were Executive Director Susan R. Grogan, Deputy Attorney General (DAG) Jay Stypinski and Governor's Authorities Unit representative Samuel Kovach-Orr.

Commissioners Absent

Dan Christy and Theresa Lettman.

Call to Order

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

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

DAG Stypinski administered the oath of office to Jessica Rittler Sanchez, who was appointed by the Governor to serve on the Commission.

Commissioner Rittler Sanchez said she is honored to be part of the Commission and hopes that her background can be valuable in helping to sustain the resources of the Pinelands for future generations.

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

The Commission pledged allegiance to the Flag.

Minutes

Chair Matos presented the minutes from the Commission's December 8, 2023 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The minutes from the December 8, 2023 Commission meeting were adopted by a vote of 10 to 0. Commissioner Rittler Sanchez abstained from the vote.

Executive Director's Report

ED Grogan provided information on the following matters:

- The next steps in the process for the rehabilitation and renovation of Fenwick Manor can begin once the Governor signs the appropriation bill for the release of the capital fund grant money to the New Jersey Historic Trust. A resolution to accept the grant and authorize the grant agreement with the New Jersey Historic Trust will most likely be considered at the February Commission meeting.
- John Cecil from the New Jersey Department of Environmental Protection (NJDEP) will present an overview of the Wharton State Forest Visiting Vehicle Use Map at the March Commission meeting. On January 24th, the NJDEP will host an open house at which the draft Visiting Vehicle Use Map will be made public and embark on a 45-day public comment period.

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

- The Commission recently issued a Certificate of Filing for the change of use application of the former Bass River Township Elementary School to an overnight boarding school. The Township will need to issue a use variance for the change of use. The school is located in the Pinelands Village of New Gretna.
- Commission staff members are scheduled to meet with municipal officials from the Town of Hammonton to discuss the use of herbicide in Hammonton Lake, in addition to hearing more about the town's goals for the lake. An endangered plant species has been found in

the lake. Staff is trying to determine the effects of the herbicide on the specific endangered plant species and the best way to proceed.

- Staff has met with an applicant regarding a proposal for a warehouse in Manchester Township. The proposal would include the possible relocation of an existing improved road to address the Threatened and Endangered (T&E) species issue and accommodate the construction of the warehouse. Staff is keeping the township informed on the matter.

Commissioner Avery asked how the applicant for the boarding school will address its wastewater.

Director Horner said the existing school is serviced by a septic system. He said the school predates the 1981 effective date of the Comprehensive Management Plan (CMP) that requires groundwater to meet the 2 parts per million nitrate/nitrogen standard. He said if the proposed use reduces the level of nitrate/nitrogen, a new septic system will not be required, because in actuality the use is improving the groundwater quality. The applicant has received a letter from the county health department verifying that a new septic system is not required.

Gina Berg, Director of Land Use Programs, provided an update on the following land use matters:

- The January 26th Policy and Implementation Committee meeting will include a presentation by Thomas Hedden with The East Coast Enduro Association and a presentation by staff summarizing 2023 conformance activities.
- The next Climate Committee meeting is scheduled for February 14th and will include a presentation on the Pinelands Management Area boundary evaluation.
- The State Agriculture Development Committee will be holding information sessions on its new formula to value lands that are being considered for potential farmland preservation easements. Bill A4729 was signed into law on January 8, 2024. The new formula is modeled on the Pinelands formula implemented in 2001, and it considers the following: environmental quality, site specific factors, scenic corridors, onsite septic suitability and agricultural viability, in addition to traditional appraisals.

Director Berg noted that the Land Use programs office has been involved in several interagency workgroups, as noted in the December 2023 Management Report.

- A number of Pinelands offices have coordinated efforts to ensure preparedness for any application that may require review using the new water management (Kirkwood-Cohansey) rules that went into effect in early December.
- An annual report of work completed on projects funded through the Long-Term Monitoring agreement was submitted to the National Park Service (NPS). Staff will be

developing a work plan for the next federal fiscal year and reaching out to NPS regarding the need for either a new five-year cooperative agreement or a one-year task agreement.

Stacey Roth, Chief, Legal and Legislative Affairs, said the new legislature was sworn in on Tuesday, January 9, 2024. She said any bills that were not passed will need to be reintroduced during this legislative session. She said Commission staff provided comments to the sponsors of A4/S4251 earlier this month, and the comments were then shared with Commissioners.

She advised that the bills seek to change the process by which a municipality's affordable housing obligation is determined in New Jersey. Staff provided comment on those portions of the bill concerning the obligations of regional planning entities, including the Pinelands Commission. Staff also suggested revisions to the bill to better align the previously required 20% set-aside with the Commission's review processes and management areas. Ms. Roth stated that neither the original bill nor the changes suggested by staff require the Commission to take any action or assume any new responsibilities. In fact, the Pinelands Protection Act was amended in 1989, following the adoption of the Fair Housing Act, and it prohibits the Commission from considering the number of affordable housing units proposed as part of its review of applications and municipal master plans and ordinances.

Ms. Roth also noted that Stafford Township continues to work on its stormwater management plan, causing a slight delay on the Memorandum of Agreement (MOA) for its Forecastle Basin trail accessibility project.

Commissioner Mauriello said he hopes the Commission did not miss an opportunity to promote affordable housing and incentivize cluster development in the Pinelands Area.

ED Grogan said the staff's comments were focused on ensuring that if the Bill were to be adopted, it could work in the Pinelands. She said a number of different offices have reached out to Commission staff for input or advice. Some of those conversations must remain confidential at this time. She said she would keep the Commissioners apprised should there be a bigger role proposed for the Commission related to affordable housing.

Paul Leakan, Communications Officer, noted that the Commission shared 1,360 photos and 103 videos on the agency's Instagram site and 678 tweets on X (formerly Twitter) in 2023. He noted that registration for the 35th Annual Pinelands Short Course is open. The event will be held on March 9th at Stockton University. Commissioners can attend the Short Course at no cost.

Planning Matters

Chair Matos introduced a resolution that would authorize the Commission to enter into an MOA with Pemberton Township.

Commissioner Lohbauer made a motion Authorizing the Execution of a Memorandum of Agreement between the Pinelands Commission and Pemberton Township Regarding Accessibility Improvements to Pemberton Lake Trail (See Resolution # PC4-24-01). Commissioner Pikolycky seconded the motion.

Ms. Roth said staff has been working with Pemberton Township and the Pinelands Preservation Alliance on a deviation MOA and alternate permitting MOA to permit improvements to portions of the Pemberton Lake Trail in order to provide a more accessible trail for individuals with mobility challenges. She reviewed the proposed site improvements, which include grading and surfacing of existing trails. She said some of the improvements will occur in wetlands and wetland buffers, and that is why the deviation MOA is necessary. She said the CMP would only permit such development in wetlands if it has the least environmental impact possible. In the case of trails in wetlands and buffers, that would equate to the use of boardwalks. In this instance, the boardwalks were cost-prohibitive.

Ms. Roth said MOAs must include measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands as would be provided through a strict application of CMP standards. She reviewed the list of offsets required by the MOA, including a rain garden near the Magnolia Road entrance to Pemberton Lake.

Ms. Roth said a public hearing was held on December 13, 2023 and two individuals spoke in favor of the MOA. Lastly, she noted the remaining application requirements that must be completed prior to construction.

Pemberton Lake Trail MOA presentation:

<https://www.nj.gov/pinelands/home/presentations/Pemberton%20Lake%20Trail%20MOA%20-%20PC%20Meeting%20-%20January%2012%202024.pdf>

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

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

Jason Howell of the Pinelands Preservation Alliance commented on Application # 2003-0530.011 (installation of an artificial turf field at the Cedar Creek High School) and asked the Commission to strongly consider this application. He said artificial turf has been linked to brain cancer and there is no safe disposal of the turf after use.

Ordinances Not Requiring Commission Action

Chief Planner Brad Lanute said during the past month staff reviewed nine ordinances that raised no substantial issue. He said they included some of which were related to the Commission's most recent stormwater amendments and the Department of Community affairs model ordinance for electric vehicle charging infrastructure. He said Manchester Township's ordinance is adding Mixed Use Development to a previously approved townhouse development in the Regional Growth Area. Lastly, he said Pemberton Township has expanded the size of its Bobolink Redevelopment Area through an amended Redevelopment Plan, which previously raised no substantial issue with the CMP.

Presentation: Update on the New Jersey Board of Public Utilities (BPU) Straw Proposal for the Dual-Use Solar Pilot Program

Ms. Roth said BPU staff spoke with the Climate Committee last summer about its vision for the Dual-Use Solar program, also known as agrivoltaics. During the straw proposal, BPU is establishing rules for the Dual-Use Solar Energy Pilot Program. She said the Solar Act of 2021 created the Successor Solar Incentive Program (SuSI) followed by two parallel programs: Administratively Determined Incentive (ADI), which are less than 5 mega watt facilities and Competitive Solar Incentive (CSI), which are greater than 5 mega watt facilities. She said when you apply for the Dual Use Solar program, you have to categorize yourself as either an ADI or CSI. Under the CSI, an applicant would need to show that there is access to the grid and have a letter stating permission to access the grid.

Dual-Use Solar can only occur on unreserved farms. Additionally, a plot of land adjacent to the solar array must be used as a control and maintained as an agricultural or horticulture use. The benefits of agrivoltaics will result in renewable energy while agriculture activities remain and farmland will not be lost to solar fields. The BPU has partnered with the Rutgers Agrivoltaics Program (RAP) to develop and implement the Pilot Program, and they will be involved in the pre-application, application and assessment process. Rutgers currently is experimenting with agrivoltaics at three of its own farms.

Ms. Roth reviewed the solar array sizes, capacity caps and energy targets of the pilot program. She noted that in order to participate, the system could not produce more than 10 megawatts of energy. She said the pilot program will run 36 months from the time rules are adopted. She added that the Commission is not a stakeholder and will be working cooperatively with the BPU as another state agency.

The Dual-Use Solar Pilot Program Act (A5434) P.L. 2021, c. 263. prohibits siting agrivoltaics on preserved farms, in wetlands, the forest area and on certain soils of the Pinelands Area. She said the bill prohibits siting on land located in the Pinelands Preservation Area, which is not to be confused with the Preservation Area District (one of the Commission's nine Management Areas). It's important for Pinelands farmers to be part of the pilot program as long as the siting is consistent with the CMP. A waiver process is available and it's the same waiver process that is currently being used for CSI and ADI. An MOA with the BPU may be necessary to allow for siting of Dual-Use Solar projects in the Pinelands Area as part of the pilot program.

Lastly, Ms. Roth reviewed the schedule of the pilot program, incentives, funding and pre-qualification criteria. She said the pilot program is intended to offer specific data and information supporting a permanent Dual-Use Solar Program in the future; therefore, RAP and the BPU are interested in a wide range of Dual-Use Solar applicants.

Commissioner Rittler Sanchez asked how involved the Department of Agriculture was in developing the Dual-Use Solar Pilot Program.

Ms. Roth said the Department of Agriculture provided soil data and information on agriculture development areas and will be involved in the waiver process.

Commissioner Irick raised concerns about Atlantic County's grid not being up to date. He added that the BPU reported Michigan blueberry farmers had great success with agrivoltaics. He said he is concerned that because blueberries are grown in wetlands that the majority of farmers in Atlantic County will be excluded both now and in the future. He said he hopes the waiver process can provide an opportunity for blueberry farmers to participate in the pilot program.

Commissioner Lohbauer agreed with Commissioner Irick's assessment of the wetlands creating an obstacle for farmers, especially cranberry farmers. He asked if an acreage figure had been determined for a 10-megawatt array with a control.

Ms. Roth said the acreage to accommodate a 10-megawatt array had not been determined.

Commissioner Asselta said Atlantic City Electric never embraced solar technologies. He said each project would need to be submitted and the grid would have to be built out on case-by-case basis. He said it's very expensive to construct a distribution line, approximately \$1 million dollars a mile. He said although the pilot program is noteworthy and ambitious, he believes the concentration should remain on solar on landfills.

Link to the Dual Use Solar Presentation:

<https://www.nj.gov/pinelands/home/presentations/BPU%20-%20Dual%20Use%20Solar%20-%20PC%20Meeting%201-4-24.pdf>

General Public Comment

Carleton Montgomery of the Pinelands Preservation Alliance congratulated Commissioner Rittler Sanchez on her appointment. He thanked the Commission for approving the Pemberton Lake Trail MOA and invited the Commissioners to visit once the project is complete.

Fred Akers of the Great Egg Harbor Watershed Association congratulated Commissioner Rittler Sanchez on her appointment. He said many years ago Commissioner Rittler Sanchez documented the morphology of Adams Branch in Atlantic County, and that ultimately led to Hamilton Mall redoing its stormwater basins. He said Upper Township adopted a new ordinance related to illegal dumping, raising the maximum fee to \$10,000 and providing a \$1,000 reward to for information leading to a suspect. He added that Hamilton Township is in the process of adopting a similar ordinance but is unsure how the reward will be handled.

Stephen Elliott of the Pinelands Preservation Alliance read the following into the record:

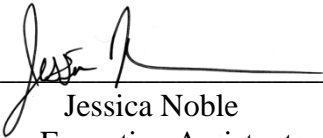
“On behalf of the Partnerships for New Jersey Plant Conservation, Pinelands Preservation Alliance, New Jersey Conservation Foundation, and several other conservation organizations in the state, we would like to thank Executive Director Susan Grogan and the other Pinelands Commission staff members who met with us on November 28, 2023 to discuss the threatened and endangered plant species list in the Pinelands. As many of you know, conservation priorities for plants and animals continually evolve over time. Some species that were once common are becoming rare and threatened. Some species that were formerly threatened are becoming endangered. And some species that were once considered threatened or endangered have actually

been shown to be secure and no longer in need of official protection. For those reasons, we met with the Commission staff to advocate for, first, an updated list of T&E plants, and, second, for a process that the Commission could adopt in order to periodically review and update its list as the biological evidence may direct. We recognize that there are several complexities inherent in this situation, and, perhaps no perfect solution, but we believe the Pinelands Commission is dedicated to having a sound scientific basis for its rules, policies, and protocols. So we look forward to seeing the Commission take up this topic and work toward a sensible and science-based approach to it, and we freely offer any assistance we may be able to provide.”

Adjournment

Commissioner Irick moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 10:45 a.m.

Certified as true and correct:



Jessica Noble
Executive Assistant

Date: January 23, 2024