

Disclaimer

These minutes reflect the actions taken by the Commission during its March 11, 2016 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 March 28, 2016.

PINELANDS COMMISSION MEETING
Richard J. Sullivan Center
Terrence D. Moore Conference Room
15 Springfield Road
New Lisbon, New Jersey

MINUTES

March 11, 2016

Commissioners Present

Candace Ashmun, Alan W. Avery Jr., Bob Barr, Bill Brown, Giuseppe Chila, Joe DiBello, Paul E. Galletta, Jane Jannarone, Ed Lloyd, Mark Lohbauer, Ed McGlinchey, Richard Prickett, Gary Quinn and D'Arcy Rohan Green. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Amy Herbold and Deputy Attorney General Sean Moriarty.

Commissioners Absent

Chairman Sean Earlen

Vice Chair Galletta called the meeting to order at 9:34 a.m.

DAG Sean Moriarty read the Open Public Meetings Act Statement.

Ms. Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 14 Commissioners present.)

The Commission and public in attendance pledged allegiance to the Flag.

Minutes

Vice Chair Galletta presented the minutes from the February 12, 2016 Commission meeting. Commissioner Ashmun moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes of the February 12, 2016 Commission meeting were adopted by a vote of 12 to 0, with Commissioner Jannarone abstaining. Commissioner DiBello arrived after the vote.

Committee Chairs' Reports

Commissioner McGlinchey said that an Agriculture Committee meeting will be scheduled soon.

Vice Chair Galletta provided an update on the February 26, 2016 Policy and Implementation Committee meeting. The Committee:

- Adopted the minutes of the January 29, 2016 meeting.
- Recommended Commission certification of Manchester Township Ordinance 15-009 and asked for additional information concerning the ownership and deed restriction of certain properties. Among the provisions of the ordinance are two small management area changes correcting mapping discrepancies.
- Received a presentation on potential enhancements to the Pinelands Development Credit Program.
- Received an update on the 2015 Round of the Pinelands Conservation Fund. Of the five projects, two projects have closed and three projects were granted extensions until June 30, 2016 to meet the conditions of the grants.
- Discussed how it could uphold provisions of the CMP while dealing with motorized vehicles on State lands being discussed at NJ DEP and the affordable housing issues now before the courts.

Executive Director's Reports

Ms. Wittenberg updated the Commission on the following:

- The Short Course will be held tomorrow at Stockton University.
- The Pinelands Municipal Council met this past Tuesday and swore in their new members. A representative from the Department of Transportation delivered a presentation on the Pine Barrens Byway.
- The Commission phone system is partially working; a new phone system will be installed in the next week.
- Staff continues to work on an affordable housing letter that will be sent to municipalities and will offer the Commission's staff assistance.

Mr. Larry Liggett updated the Commission on the following:

- Staff is currently beta testing an interpretive map that will eventually allow the public to look up parcel information from the Commission's website.

Mr. Chuck Horner provided an update on multiple regulatory matters, including the following:

- The Stafford Township Waiver application has been delayed and will be on the Commission's April meeting agenda.
- Southampton Township has submitted an application to the Commission for the reconstruction of its public works facility.
- The Commission received a call from the Fire Chief, who said that water controls at the Chatsworth Lake had malfunctioned. Commission staff advised the Fire Chief that routine maintenance does not require an application. Staff will send a letter out to Woodland, advising them that the repairs will not require an application to the Commission.

Vice Chair Galletta said the Chairman asked him to remind Commissioners that revised Committee assignments will be provided at the April Commission meeting.

Closed Session Resolution

Commissioner Lohbauer moved to retire into closed session. Commissioner McGlinchey seconded the motion. The Commission agreed to retire into closed session by a vote of 14 to 0, beginning at 9:48 a.m. in the library.

Office of Administrative Law

The Commission returned to open session at 10:01 a.m.

DAG Moriarty said he briefed the Commission on the Final Decision on the Peg Leg Webb matter.

Commissioner McGlinchey moved the adoption of a resolution Issuing a Final Decision Adopting the Initial Decision of the Office of Administrative Law issued in the matter captioned Peg Leg Webb, LLC v. New Jersey Pinelands Commission, OAL Dkt. No. EPC 15772-13; Pinelands Commission Application No. 1984-0454.003 (See Resolution # PC4-16-09). Commissioner Lohbauer seconded the motion.

The Commission adopted the resolution by a vote of 14 to 0.

Public Development Projects and Other Permit Matters

Vice Chair Galletta presented a resolution recommending the approval of three public development projects.

Commissioner Avery moved the adoption of a resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-0837.028, 1983-5837.059 & 1991-0820.103)(See Resolution # PC4-16-10). Commissioner McGlinchey seconded the motion.

Commissioner Ashmun said that the Cape May County Landfill is an exception to the Pinelands Comprehensive Management Plan (CMP). She said she wonders if the development proposed at the landfill over the years is appropriate for the site.

The Commission adopted the resolution by a vote of 14 to 0.

Municipal Ordinances

Commissioner Avery moved the adoption of a resolution Issuing an Order to Certify Ordinance 15-009, Amending Chapter 245 (Land Use and Development) of the Code of Manchester Township (See Resolution # PC4-16-11). Commissioner Barr seconded the motion.

Ms. Susan R. Grogan said Manchester Township recently adopted two zoning map changes that resulted in changes to Pinelands Management Area boundaries.

A map of the Beckerville section of Manchester Township was displayed. Ms. Grogan pointed out the boundary line to be adjusted. She said, in doing this, Beckerville Village will go back to the original boundary the Commission certified many years ago. She said the Pinelands Village will decrease by 20 acres. The land will be rezoned to the Preservation Area District.

A second map was displayed depicting a strip of land between the Town of Whiting and the municipal boundary with Berkeley Township. Ms. Grogan said that the change is not to facilitate additional development but would clean up the map and allow for the boundary to follow existing lot lines. Ms. Grogan said the Pinelands Town Management Area would increase by 30 acres.

The Commission adopted the resolution by a vote of 14 to 0.

Public Comment on Agenda Items and Pending Public Development Applications

Emile DeVito of the New Jersey Conservation Foundation said that, based on his research of off-road vehicle destruction at Wharton State Forest, only 30% of the forest remains untouched. He said a map is needed to determine where you can and can't go in Wharton.

Mike Hickey said he is a long-distance runner and runs at Wharton. He said a map for Wharton is necessary.

Jim Barnshaw said there should be full access by foot in Wharton State Forest and limited access by motor vehicle.

Rocky Spano of Jacobstown, NJ said he does not support road closures at Wharton. He said let the New Jersey Department of Environmental Protection (NJDEP) make the decision.

Jim Belsky of South Brunswick, NJ said he is an enduro rider and said the NJDEP should be the regulator of access in Wharton.

John Blandy said he was against the MAP and the NJDEP should make the decision.

Randy DePasquale of Marlton, NJ, urged the Commission to implement controlled access for off-road vehicles.

Tom Hedden with the East Coast Enduro Association Legislative Group urged the Commission to allow the NJDEP process to take place. He mentioned an upcoming stakeholder meeting the NJDEP currently has scheduled. He said the Commission should be involved as a stakeholder.

Emily Smith of Ocean View, NJ, said she is in favor of using USGS 2014 topographic maps to designate appropriate motor vehicle use at Wharton State Forest. She said she hiked the Batona trail and saw the destruction cause by ATV use.

Jack O'Connor of Point Pleasant, NJ, said he supports the NJDEP resolving the map issue. He said there needs to be more enforcement at Wharton.

Marilou March of Camden County suggested making the permits for Jamborees very expensive in an attempt to make sure the land is protected.

Paul O'Neil of Southampton, NJ, said there are old maps for purchase at Batsto Village and that he would like to see those roads stay open.

Tom Taylor of Public Service Gas & Electric said that there has been \$2.5 million of damage in their rights-of-way caused by illegal off-road vehicles. He urged the Commission and the NJDEP to work together and find a solution.

Bob Dailyda of Egg Harbor Township, NJ, said he hopes that the responsible people can continue to have access to Wharton. He said education and enforcement are key.

Joe Duble of Winslow, NJ said he wants to see Wharton's roads kept open. He said proper enforcement is necessary to keep from further destruction.

Perry Hodges of Lakehurst, NJ asked that the Commission allow the NJDEP to finish the process at Wharton. He said he is a member of the enduro community. He said the problems at Wharton are the illegal users and lack of enforcement.

Roy Howard of Trenton, NJ, said he is a member of the enduro community and he respects and loves the forest. He said the public does not want access to the forest restricted. He said there needs to be more enforcement.

Dave Crane of Medford Lakes, NJ, said he believes the NJDEP will come up with a plan to satisfy the public interest regarding the use of Wharton. He said the damage is caused by people who do not follow the rules. He said there needs to be more enforcement.

Albert Horner of Medford Lakes, NJ, said there needs to be a map delineating off-road vehicle access for all public lands in the Pinelands. He said the Commission should stop issuing permits for motorized vehicle events.

Andrew Demarco said he does not support limiting access to the public at Wharton State Forest.

Kevin Broderick of Chesterfield, NJ, said the Commission should be a stakeholder in NJDEP's current process. He thinks closing roads at Wharton is the wrong approach.

Chris Jage of the New Jersey Conservation Foundation said the Commission should have a role in NJDEP's process. He said that in order to enforce rules, there has to be "established rules." He said that he hopes that the approved roads are not in wetlands or wetland buffers.

Charles Hendrickson said he is opposed to the Commission getting involved in the process of the designation of roads at Wharton.

Jason Howell of the Pinelands Preservation Alliance blamed the NJDEP for the damage at Wharton. He said the Commission should designate routes that the Park Police could then enforce. He said the 2014 USGS topographic maps should be used when creating a map and the public should not be permitted on roads that traverse wetlands.

Georgina Shanley of Ocean City, NJ, asked the Commission to stop the destruction caused by motorized vehicles at Wharton.

Steve Senerehia suggested installing duck cameras at Wharton to capture the license plates of vehicles causing destruction.

Paula Yudkowitz said the Commission should get involved in preventing more damage from off-road vehicles at Wharton.

Ryan Rebozo of the Pinelands Preservation Alliance said he made several attempts to review application # 2015-0016.001 for the widening of Indian Cabin Road in Mullica Township, but he did not have the opportunity. He said he hopes the Commission takes into consideration the four known threatened and endangered species in the area. He said the Commission has the authority to designate roads at Wharton and a responsibility to protect wetlands.

Jen Dixon, a member of Open Trails, said the roads people are commenting on are mapped roads. She said quads are a problem at Wharton but New Jersey has a "no chase" policy. She said the roads at Wharton are not being maintained. She thinks both the NJDEP and the Commission should work together to come up with a solution at Wharton.

John Druding of Tabernacle, NJ, said the Commission should defer to the NJDEP until they reveal their new plan. He said the 2014 USGS topographic map is the wrong map to use at Wharton.

Marilyn Miller said she is not optimistic that the NJDEP will be able to enforce rules at Wharton.

Marianne Clemente of Barnegat, NJ said it is the Commission's responsibility to take measures to protect Wharton.

Bill Wolfe of Bordentown, NJ, said it is the responsibility of the Commission to address the off-road vehicle problem at Wharton. He said you cannot have an enforcement program without a map.

Theresa Lettman of the Pinelands Preservations Alliance asked about the outcome of the Peg Leg Webb matter. She said she hoped the Commission supported the Forest Area designation.

Margo Pellegrino of Medford Lakes, NJ, said she is not an employee of the Pinelands Preservation Alliance. She said USGS has a wonderful water quality data base. She said there is an upcoming Jeep Jamboree scheduled at Wharton and questioned the damage potential of 200 Jeeps. She said the Parks and Forest budget is not large enough to include road maintenance at Wharton.

Ordinances Not Requiring Commission Action

Vice Chair Galletta asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Hamilton Township Ordinance 1804-2015

No members of the Commission had questions.

MOA Policy Advisory Committee Discussion

Commissioner Ashmun said the MOA Committee met with the public, staff and Committee members to examine the procedure for reviewing an intergovernmental memorandum of agreement. She said the Committee agreed to revise the Commission's existing guidance document when considering an intergovernmental memorandum of agreement. She briefly discussed the revisions:

- The P&I Committee will have a role in the decision
- The Chairman of the Commission will be involved early in the process
- The full Commission will decide if the MOA should be pursued
- A schedule will be established by the Commission

Commissioner Ashmun said the Committee also decided to refer the substantive issues to the P&I Committee including whether the CMP should be revised to define public purpose and equivalent protection or require of an alternatives analysis.

Ms. Grogan displayed a few slides emphasizing the procedural changes the Committee agreed upon (see attached slides for additional information). She said the previous guidance document was written in 2008. She said the revised guidance document calls for the full Commission to authorize staff to either proceed or not proceed with the intergovernmental agreement (Step 7). The process also calls for the Commission to establish a schedule for the consideration of the agreement (Step 7). Lastly, the document explicitly states that the agency involved may need to provide an escrow to the Commission.

Ms. Grogan asked Commissioners to endorse the changes to the guidance document as just described.

Link to the *revised* document:

<http://www.state.nj.us/pinelands/appli/moas/2016%20final%20MOA%20process.pdf>

Commissioner Lohbauer thanked Commissioner Ashmun for chairing the Committee and thanked the Committee members, including: Municipal Representatives Mayor Chuck Chiarello and Tiffany CuvIELLO, County Representative Ernest Kuhlwein and Public Representatives Fred Akers, Great Egg Harbor Wastershed Association and Arnold Fishman, Esq.

Commissioner Avery said he supports the changes, however he wants the Commission to understand that when it is time for the Commission to vote on whether to proceed with the MOA, there may not be enough information to make a decision at that point because the real work has yet to be done.

The Commissioners present were in support of the revised guidance document.

Wharton State Forest Discussion

Commissioner McGlinchey requested that staff make a recommendation to the Commission regarding the Wharton Access Plan at the April Commission meeting.

Ms. Wittenberg said she was contacted by the NJDEP to attend the March 22 meeting at Batsto that the public mentioned today. She said since the last P&I meeting she has had a meeting with NJDEP to inform them of the Commissioner's interest in this matter.

Commissioner Ashmun noted that in this instance, the Commission should not be a stakeholder but rather a regulator. She said the CMP designates areas where motorized vehicles are permitted and the NJDEP is required to note those areas.

Commissioner Lohbauer expressed an interest in attending the March 22nd NJDEP meeting, as did Commissioner McGlinchey.

Ms. Wittenberg said she would inquire if Commissioners were permitted to attend.

Commissioner Lohbauer said that the Commissioner heard varying comments today about the situation at Wharton. He said he looks forward to the upcoming tour of Wharton to see the damage. He requested a weekend tour for Commissioners who could not attend during the week. He said that although the Commission does not have enforcement capabilities, it is important for the Commission to have a role and determine the policy on the Wharton issue.

Commissioner Lloyd said he was upset to hear about the destruction at Wharton State Forest. He said the CMP permits the Commission to designate areas to be protected. He said there needs to be a map so there is something to enforce. He said he recommended using the 2014 USGS maps but is not attached to a particular map. He suggested designating roads where people can go within the Forest.

Commissioner Prickett said it is essential for public to have access to the Forest but at the same time it cannot be destroyed. He said he would like to see a policy to protect certain areas. He said he is interested in hearing from staff about the role the Commission can have in this matter.

Commissioner Chila said there should be a commitment from the NJDEP about the maintenance of roads and enforcement. He said there should be a map for Wharton.

Commissioner Rohan Green said in the future she would like to discuss the restoration of damaged wetlands.

Commissioner Ashmun asked it was possible for the Science office to map areas where the public should not go.

Ms. Wittenberg said yes and that staff has already been discussing that possibility.

Commissioners and staff continued to discuss a variety of topics related to Wharton State Forest and off road vehicle damage such as: maps, road maintenance and fiscal responsibility, enforcement and fines, duck cameras, protection of wetlands and ecology of the forest.

Public Comment on Any Matter Relevant to the Commission's Statutory Responsibilities

Corey Bishop of Egg Harbor City, NJ, said she was disheartened after a recent tour of the damage at Wharton. She said the public needs access but there must be enforceable rules to stop the damage causes by off-road vehicles.

Marianne Clemente of Barnegat, NJ, she said that Commissioner Chila should listen to his seasoned colleagues. She said she was disappointed that some of the off-road advocates left the meeting before the Commissioner engaged in the discussion on the issue. She questioned why the Executive Director still has the ability to make a decision on a major project.

Bill Wolfe of Bordentown, NJ, said the Commission should use the criteria within the CMP to adopt guidelines for access at Wharton. He said there needs to be road closures and barriers at Wharton.

Chris Jage of the New Jersey Conservation Foundation said the NJDEP spent two years field mapping Wharton. He said there needs to be a designation of roads at Wharton.

Michael Tamm of Mt. Holly, NJ, said he is against the three minute limit on public comment. He said the Executive Director should sit next to the Chairman. He said Commissioners should read the CMP.

Georgina Shanley of Ocean City, NJ, said on March 18th the Board of Public Utilities will be voting on the New Jersey Natural Gas Pipeline. She said she was pleased with the work the MOA Committee did to update the guidance document.

Jeff Victor of the Pinelands Preservation Alliance read from the CMP about the Commission recommending the NJDEP consult with the Commission about the development of a land management plan.

Jeff Myers of Indian Mills, NJ supports raising fines for illegal off-road activity at Wharton. He said there needs to be more enforcement and roads need more maintenance.

Joe Duble said no one disagrees that the sensitive areas should not be protected. He supports increasing fines for illegal off-road activity at Wharton.

Bob Dailyda said that when the Commissioners tour Wharton, he hopes that they will have the opportunity to see both the damaged areas and the pristine areas.

Jacklyn Rhoads of the Pinelands suggested looking at the possibility of altering a 2009 law regarding off-road vehicles. She said motorized vehicles should not be permitted in or near ponds and wetlands.

Jason Howell of the Pinelands Preservation Alliance said the known sensitive areas need to be physically protected at Wharton.

Jen Dixon of Open Trails, NJ spoke about a variety of issues related to motorized access at Wharton State Forest.

Nathalie Neiss of Upper Township, NJ suggested using drones to manage the off-road vehicle use at Wharton. She commended the Commission for adopting new MOA guidelines.

Charles Hendrickson of Jackson, NJ, said the fines for destruction of wetlands should be increased to deter the violators.

Adjournment

Commissioner Galletta inquired about the next Policy and Implementation Committee meeting.

Ms. Grogan said it will be on Thursday, March 24th at 9:30 a.m.

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 12:59 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: March 24, 2016