

Disclaimer

These minutes reflect the actions taken by the Commission during its August 9, 2013 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 19, 2013.

PINELANDS COMMISSION MEETING<sup>1</sup>

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

MINUTES

**August 9, 2013**

Commissioners Present

Candace Ashmun, Bill Brown, Joe DiBello, Sean Earlen, Paul Galletta, John Haas, Ed Lloyd, Ed McGlinchey, Richard Prickett, D'Arcy Rohan Green, Fran Witt and Chairman Mark Lohbauer. Also present were Executive Director Nancy Wittenberg and Governor's Authorities Unit Liaison Kerstin Sundstrom and Deputy Attorney General (DAG) Kristen Heinzerling.

Commissioners Absent

Robert Jackson, Gary Quinn and Leslie Ficcaglia.

Chairman Lohbauer called the meeting to order at 9:35 a.m.

DAG Heinzerling read the Open Public Meetings Act Statement.

Ms. Nancy Wittenberg called the roll and announced the presence of a quorum.

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

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<sup>1</sup> Please note that all attachments are maintained with the original minutes, but are not attached to copies. For information about attachments, please contact the office.

### Minutes

Chairman Lohbauer presented the July 12, 2013 Commission meeting minutes (open and closed session). Commissioner Witt moved the adoption of the minutes. Commissioner Rohan Green seconded the motion.

The minutes of the July 12, 2013 Commission meeting were adopted by a vote of 12 to 0.

### Committee Chairs' Reports

#### Plan Review Committee

Commissioner Ashmun updated the Commission on the July 12, 2013 Plan Review Committee meeting:

The Committee approved the May 10, 2013 meeting minutes.

- Staff provided an update regarding the progress of the Plan Review report and first-round rule proposal.
- Staff provided an update regarding meetings held with interested parties (builders, the agricultural community, landowners, environmental community and municipalities) to discuss the proposal to enhance the use of Pinelands Development Credits (PDC).
- The Committee discussed ways in which the vegetation protections in the CMP may be strengthened.
- The Committee heard public comments on recreational vehicle use and native and rare plant protections.
- The August 9, 2013 (TODAY'S) meeting of the Plan Review Committee has been canceled.

#### Personnel & Budget Committee

Commissioner Haas said the meeting scheduled for July 30, 2013 was canceled due to lack of agenda items.

#### Policy & Implementation Committee

Chairman Lohbauer updated the Commission on action from the July 26, 2013 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the June 28, 2013 Committee meeting.

The Committee received a presentation from Board of Public Utilities' staff regarding South Jersey Gas' proposed project to run a gas pipeline to the B.L. England electrical generating plant.

The Committee received comment from 26 members of the public.

#### Executive Director's Reports

Ms. Wittenberg updated the Commission on the following:

- She advised Commissioners that the FY 2012 Audit Report and the Annual Report on Alternate Design Treatment Systems Pilot Program were distributed this morning. At the September Commission meeting, a resolution to adopt the FY 2012 Audit report will be on the agenda, and Ed Wengrowski will present findings from the septic report.
- She also said that a revised copy of the Long-Term Economic Monitoring report has been distributed, the 2<sup>nd</sup> Quarter Management report has been posted on the Commission's website and a copy of a petition opposing the South Jersey Gas pipeline has been circulated.
- The Commission has been randomly selected by EPA for an audit to ensure we are in compliance with our grants
- The Commission has also been contacted by UNESCO for a 10 year review of the Commission's Biosphere designation. Staff is currently working on the in-depth survey, which must be submitted by October 30, 2013.
- Staff met with representatives from Monmouth University to discuss the potential for internships, research partnerships and other collaborations.
- She also asked Commissioners if they would like to move the Policy & Implementation Committee to Wednesday, August 28, rather than the Friday before the Labor Day weekend.

Commissioners agreed to move the Policy and Implementation Committee meeting to Wednesday, August 28.

Mr. Larry Liggett updated the Commission on the following:

- Staff recently met with Hammonton officials to discuss the Pinelands Development Credit Program. A rezoning for the Town will be discussed at an upcoming P&I meeting. The rezoning will have an effect on the town's airport.
- Staff met with the Hamilton Township Landfill consultant to discuss closure options. The landfill is located in the Regional Growth Area. Hamilton Township would like to redevelop the parcel.
- Staff will be attending a site study meeting with the New Jersey Department of Environmental Protection (DEP), the State Soil Conservation Committee and New Jersey Builders Association to inspect both functioning and failing basins.
- The Pinelands Preservation Alliance and NJ Future have both received grants and will be conducting studies related to water supply in the Pinelands.
- The Long-Term Economic Monitoring Report was presented to the Pinelands Municipal Council. A former Commission employee was in attendance at the meeting and challenged the agricultural assessment data in the report. After

further research, staff found that there are two sources of agricultural data, one being from the Department of Agriculture and the other from the Department of Taxation. There is great disparity in the data. Staff will research the data to determine what will be used in future reports.

Mr. Chuck Horner updated the Commission on the following:

- Staff met with Stafford Township officials to discuss the development of stormwater basins on Route 72 to address flooding issues stemming from Ocean Acres.
- Staff met with Maurice River Township officials to discuss three possible sites for an off-road vehicle park.

Ms. Susan R. Grogan noted that South Toms River, the only uncertified town in the Pinelands Area, has adopted the appropriate documentation for their certification application. A public hearing in South Toms River has been scheduled for the evening of August 28.

#### Public Development Projects and Other Permit Matters

Commissioner Galletta moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-1833.067 & 1995-1289.004) (See Resolution # PC4-13-27). Commissioner Witt seconded the motion.

*Application No. 1981-1833.067- Richard Stockton College of New Jersey*

Some Commissioners raised concerns about past violations at the College and were curious of the status.

Mr. Horner said staff met with Stockton representatives on-site and determined which violations required applications. Applications have been filed and are under review.

Ms. Roth added that staff would be meeting with Stockton maintenance employees in the near future to go over the Comprehensive Management Plan exemptions and non-exemptions.

The Commission adopted the resolution by a vote of 12 to 0.

*Commissioner Galletta recused himself and left the room.*

Commissioner McGlinchey moved the adoption of a Resolution Approving With Conditions an Application for a Public Development (Application Number 1986-0479.005) (See Resolution # PC4-13-28). Commissioner Haas seconded the motion.

Commissioner Prickett said this is a unique project and it seems like a positive use for the wastewater. He asked if staff would be monitoring the effectiveness and the surrounding forest that might be affected.

Mr. Horner responded that a condition of the Public Development report requires monthly reporting on the infiltration. He added that no direct monitoring is in place for the vegetation. However, staff will be observing the impacts.

The Commission adopted the resolution by a vote of 11 to 0, with Commissioner Galletta abstaining.

*Commissioner Galletta returned to the meeting.*

#### Resolutions Relating to Municipal Ordinances

Commissioner Haas moved the adoption of a Resolution Issuing an Order to Certify the December 2011 Amendments to the Master Plan of Manchester Township and Ordinances 11-025 and 12-015, Amending Chapter 245 (Land Use and Development) of the Code of Manchester Township. (See Resolution # PC4-13-29). Commissioner Witt seconded the motion.

Ms. Grogan said this Ordinance is Manchester's required response to the CMP's clustering amendments. She explained that Manchester has made two changes to the clustering standards:

- Minimum lot size has been adjusted to match Manchester's existing lot size.
- Modifications have been made to the bonus density.

The second aspect of the ordinance deals with the density transfer program, which adjusts the receiving and sending areas more appropriately.

While Manchester Township was making revisions to its receiving areas, a residential cluster development application was submitted to the Commission. Threatened and endangered species work was undertaken. Ms. Grogan showed a map displaying where 45 proposed units would be built. The surrounding land, approximately 100 acres would be permanently protected.

Subsequently, Ocean County had an interest in purchasing and preserving the entire property. Regardless of the acquisition, the Commission has an obligation to take action on Manchester's ordinances.

Ms. Grogan explained how the development envelope for the residential cluster development was chosen. She said that threatened and endangered species were of concern and Ms. Jean Montgomerie would provide more information on the studies that were undertaken as part of the development application.

Ms. Grogan said another issue arose with the boundary of the new receiving area due to mapping discrepancies involving the Preservation/Forest are line.

Chairman Lohbauer asked staff to provide more information on the threatened and endangered species study done for the development project.

Mr. Horner said that the protocol staff utilizes for snake studies uses the best science available to detect snakes. He also noted that the regulations state the critical habitat for the species must be protected; finding one snake on a parcel does not mean the parcel is critical habitat.

Ms. Montgomerie said the applicant did a full survey of the proposed development area, which consisted of the spring, partial summer and fall of 2009 and 2010. She said the applicant found critical habitat outside the proposed development area. The protocols were reviewed and accepted by staff.

Chairman Lohbauer asked if Ms. Montgomerie thought the criticism from Herpetological Associates against the developers threatened and endangered survey methodology was credible.

Ms. Montgomerie said she was surprised by the criticism because the person from Herpetological Associates helped the Commission develop that same methodology in 2002.

Mr. Liggett and Mr. Paul Tyshchenko explained the boundary line mapping discrepancy on this application.

Mr. Tyshchenko said in 1979 the Pinelands Protection Act called for the boundary of the Preservation Area and the Protection Area to follow along the "northern ridge line of the Cedar Creek Drainage Basin." Even with advances in technology, delineating the location of a natural feature like a ridge line can be a very cumbersome task, especially given southern New Jersey's topography. There is no reason to believe that subsequent re-interpretations of the location of the northern ridge line are conclusively more accurate than the one certified by the Commission in the early 1980's. Since the Commission, Manchester Township, and property-owners have relied upon that certified line for decades, it is only equitable to continue to rely upon it until it can be conclusively improved. Mr. Tyshchenko also gave a brief overview of LIDAR( light detection and ranging), which measures distances by illuminating targets with light, and its recent use in interpreting the location of the northern ridge line of the Cedar Creek Drainage Basin. (*See presentation slides.*)

Ms. Grogan added that the line the Commission certified must be the line the Commission uses for regulatory and zoning decisions.

Commissioner Prickett asked about imposing a buffer as to where the development could occur.

Ms. Grogan said at the time a subdivision application is under review by the Township and Commission staff, a discussion can be had with the developer to appropriately adjust the footprint of the development so as not to encroach on the boundary line.

The Commission adopted the resolution by a vote of 10 to 1, with Commissioner Prickett voting no and Commissioner Rohan Green abstaining.

Public Comment on Agenda Items and Pending Public Development Applications

*Theresa Lettman, Pinelands Preservation Alliance*, commented on the Manchester ordinance discussion. She said she does not agree with the threatened and endangered species conclusion made by the applicant's consultant. She read an email about a snake siting in Roosevelt City. (*See attached*)

*Bob Taylor, Manchester Township*, said he lives on the edge of the development area discussed today. He said he does not believe the threatened and endangered species survey was properly done.

*Peter Ferwerda, Warren Grove*, commented on the boundary line discussion associated with the Manchester Township Ordinance. He said the lines should be determined with the best technology available.

*Mark Demitroff, Richland Village*, said LIDAR data is very important as the resolution can be viewed in inches rather than feet. He asked the Commissioners to not make a decision unless they really understand the issues. The Commission has one chance to influence where development should go.

*Marianne Clemente, Barnegat Township*, said another developer, Walters, conducted snake surveys and received approval to develop in Barnegat's conservation zone. She encouraged the Commissioners not to make that mistake again.

Other Resolutions

Commissioner Prickett moved the Resolution To Approve the Pinelands Commission's 2012 Annual Report (See Resolution #PC4-13-30). Commissioner Lloyd seconded the motion.

Commissioner Ashmun requested that next year the report include some maps.

The Commission adopted the resolution by a vote of 12 to 0.

Ordinances Not Requiring Commission Action

Chairman Lohbauer asked if any Commissioner had questions regarding the list of ordinances not requiring Commission action:

- Galloway Township Ordinances 1872-2013 & 1873-2013
- Jackson Township Ordinance 14-13
- Winslow Township Ordinances 0-2013-020 & 0-2013-21

No members of the Commission had questions.

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

Chairman Lohbauer requested that members of the public who wished to comment on the South Jersey Gas pipeline application focus their comments on issues under the purview of the CMP. He said it would be helpful to the Commissioners to hear those comments.

*Mark Demitroff*, asked about the status of his questions raised at the June Commission meeting. He requested that the Commission define for him smart growth and redevelopment.

*Michael Sheridan, Magnolia, NJ*, said the pipeline violates the CMP because this type of infrastructure is not permitted in the Forest Area unless it is intended to serve the needs of the Pinelands primarily. *(See submitted handout, including the names and comments of on-line petitioners against the proposed pipeline)*

*Margo Pellegrino, Medford Lakes, NJ*, said there is no need for the pipeline. She said the pipelines are not infallible. She said the pipeline is in the wrong place.

*Kevin Heatley, Restoration Ecologist, Pennsylvania resident*, said all pipelines and wells leak. He said there is no contingency plan when these wells are decommissioned. He said the Pinelands are downstream from areas where the gas industry has transformed the terrain. He urged Commissioners to look at the cumulative impacts of the pipeline. He said the precedent set now will help keep future pipelines out of the Pinelands. *(See written testimony)*.

*Bob Allen*, requested the Commissioners do their due diligence and said he is in opposition of the Commission adjusting the CMP to allow for the construction of the pipeline. He passed out a handout discussing Potential Impact Radius (PIR) *(See attached)*. He said the pipeline is not safe and provided data on this in his handout. He said he does not agree with this pipeline and approving it would be gross negligence.

*Blanche Krubner, Jackson NJ*, asked the Commissioners why are they are on the Commission, are they here as preservationists and stewards? She reminded the Commissioners they have the power to vote no. She asked the Commissioners to not think of New Jersey as a corridor but as a place where they are each living. She said she is against the pipeline and hopes the Commissioners vote no on the MOA.

*Diane Marie, Upper Township*, said the oil and gas industries do not care about the environment, people or animals. She asked the Commission to do the right thing and not approve this pipeline. She provided recent new articles and website links (see handout) about fracking and recent gas pipeline spills.

*Douglas Dickinson, Egg Harbor City Councilman*, expressed concern about threatened and endangered species along the pipeline route. He said water is the basis of all life and we cannot let anything compromise our precious aquifers.

*Georgina Shanley, Ocean City*, asked what offset could be equivalent to the potential dangers and damage of the proposed pipeline. She asked the Commissioners not to even consider an MOA for the pipeline.

*David Pringle, N.J. Environmental Federation*, said this pipeline is a clear violation of the CMP and asked Commissioners to vote no. He said there is no good reason to approve this MOA. He said the pipeline does not conform to the CMP. He said a precedent should be set now, so more projects like this do not continue. He said it is important we don't cut more of the contiguous forest of the Pinelands. He said an equivalent offset cannot be crafted and to do nothing would be ok.

*Ron Hutchinson, Stockton Professor*, explained the negative effects of burning the gas and his overall opposition to the pipeline.

*Connie Higgins, Long Beach Island*, advised Commissioners they have the control to say no to the pipeline and to think about the generations ahead.

*Peter Ferwerda* asked what is the benefit of the pipeline to the Pinelands National Reserve. If there isn't one, then the answer to this pipeline should be no.

*Emily Reuman, Food & Water Watch*, said fossil fuel infrastructure is a move in the wrong direction.

*John Karvel, Minnesota*, said technology is present for renewables so why would we pay to repower an old plant.

*Tom Mehedy, Genesis Farms*, asked Commissioners to stand up and say no to this pipeline.

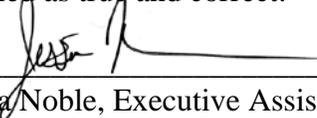
*Lee Rosenson, New Jersey Audubon Society & Pinelands Preservation Alliance* said he hopes the Commission will not try to get around its own rules and he encouraged Commissioners to say no to the MOA.

*Sharon Finlayson, N.J. Environmental Federation*, said the Commissioners should remember the power they have and the important precedent this decision will have on the future.

### Adjournment

Commissioner Witt moved to adjourn the meeting. Commissioner Galletta seconded the motion. The Commission agreed to adjourn at 12:52 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: \_\_\_August 16, 2013\_