

Disclaimer

These minutes reflect the actions taken by the Commission during its September 10, 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 September 20, 2021

PINELANDS COMMISSION MEETING

MINUTES

**September 10, 2021**

*The September 10, 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=M8cfMxz7T50>*

Commissioners Participating in the Meeting

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

Commissioners Absent

Daniel Christy, Gary Quinn & D'Arcy Rohan Green.

Call to Order

Chairman Prickett called the meeting to order at 9:38 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. Eight Commissioners participated in the meeting.

Chairman Prickett dedicated the pledge to the tragic events that occurred on September 11, 2001. The Commission pledged allegiance to the Flag.

Minutes

Chairman Prickett read the following statement:

Before the Commission adopts the August 13th Commission Meeting minutes, I would like to make a statement and then explain how we should proceed in this unusual circumstance.

First, I would like to follow up with Commissioners on the letter you were forwarded by the Chair from the Governor, vetoing the establishment of the Executive Director (ED) Search Committee described in the August minutes. Since the beginning of this week the Chair and Vice Chairman have been discussing with the Governor's Authority Unit ways to resolve the procedural matters mentioned in the Governor's letter.

Yesterday, the Governor's Authority Unit invited the Chairman and Vice Chair who is also Chair of the Personnel and Budget Committee to meet next week with their new Director Noreen Giblin and talk about how we can move forward cooperatively in selecting the next Executive Director.

I am confident that we can work cooperatively on this matter and suggest that during the October Commission meeting we discuss any formal steps we might need to take.

From what I understand, a Governor's veto does not remove the description of the action, but nullifies the action conveyed in the minutes. To keep with past practice, the Commission should first adopt the minutes as they are and then amend the minutes to include a notation at the end of the discussion of the formation of an ED Search Committee, indicating the action had been vetoed.

Chairman Prickett presented the minutes from the Commission's August 13, 2021 meeting. Commissioner Lloyd moved the adoption of the minutes. Commissioner Higginbotham seconded the motion.

The minutes from the August 13, 2021 Commission meeting were adopted by a vote of 8 to 0.

Chairman Prickett asked for a motion to amend the August 13, 2021 Commission Meeting minutes to contain a notation at the end of the second paragraph on page PC2-51, indicating that the Governor had vetoed the formation of the ED Search Committee.

Commissioner Higginbotham made a motion to amend the August 13, 2021 minutes. Commissioner Pikolycky seconded the motion.

Commissioner Irick asked if the advertisement and search for an ED continue.

Chairman Prickett said the search continues and the job advertisement remains valid.

The motion carried by a vote of 8 to 0. The amended August 13, 2021 meeting minutes were adopted.

### Committee Reports

Chairman Prickett said the August 27<sup>th</sup> Policy & Implementation (P&I) Committee meeting was canceled. He noted that a few Commissioners attended a site visit that morning at Bass River State Forest with Acting Executive Director Grogan and Regulatory Programs Director Charles Horner. He said the purpose of the visit was to assess the area subject of the New Jersey Department of Environmental Protection's application to use herbicide to treat certain invasive species. He noted that the application was tabled at the August Commission meeting.

Commissioner Lohbauer said the August Climate Committee meeting was also canceled. He said the Committee will meet on September 15<sup>th</sup>.

Commissioner Avery provided an update on the August 24<sup>th</sup> Personnel & Budget Committee meeting:

The Committee adopted the minutes from the February 23, 2021, meeting.

The check registers, electronic disbursements and application fees covering January 2021 to June 2021 were reviewed. It was noted that the Fiscal Year (FY) 21 application fees were at 169% of the anticipated amount.

The Committee discussed the submission of an application to the Board of Public Utilities (BPU) for a local government energy audit of the Commission's offices. A motion was made that the full Commission consider it.

The Draft Fiscal Year 2022 Budget was presented and recommended for approval by the full Commission. The budget includes the energy audit as an initiative.

Committee members discussed the Executive Director Search Committee process and schedule.

There was no public comment and there was no closed session.

### Acting Executive Director's Report

Acting ED Grogan provided information on the following:

- The Audit Committee met to discuss the Fiscal Year 2019 audit report; there were no findings. A resolution to accept the FY 2019 Audit report may be on the Commission's October meeting agenda.

- Recruitment to fill six vacancies has begun. Staff is in the process of finalizing job postings and advertisements.
- Staff continue to work a hybrid schedule with three days a week in the office and the other two at home. This schedule will continue through October 18<sup>th</sup>, at which time the Governor has directed all state employees to be back in the office full time.
- The revised and reissued Request For Proposal (RFP) for the exterior painting of Fenwick Manor only generated one bid, and it was almost three times over the budget of \$95,000. Staff will be reaching out to Treasury to discuss the matter.
- On September 1<sup>st</sup>, staff held a remote public hearing for the proposed stormwater amendments. A number of oral comments were provided all in support of the amendments. There was one technical comment from the New Jersey Department of Transportation (NJDOT) that will be addressed in the response and adoption notice. To date, no written comments have been submitted.
- The P&I Committee will see a recommendation regarding the addition of four new technologies to the Alternate Design Septic Systems Pilot Program at its next meeting
- Commissioner Jordan Howell resigned after the August Commission meeting. Camden County is seeking a new appointment to the Commission.

Chairman Prickett requested that staff prepare a resolution for Commissioner Howell's service on the Commission.

Commissioner Avery commended staff for three consecutive years with no findings in the Audit. He added that the FY 2020 Audit should be complete this fall.

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

- Commission staff has been notified by both telephone and letter about the use of herbicide in certain road rights-of-way. Staff will be writing to Pinelands municipalities and counties to remind them that the use of herbicides is not permitted. The Commission has an existing Memorandum of Agreement (MOA) with New Jersey Transit and the NJDOT that permits the application and use of herbicide for public safety.
- The Commission received its first streamlining permit application for the Haines Boulevard Redevelopment Area in Waterford Township. An application to the Commission is not required; however, staff reviews approvals granted by the municipality. This alternate permitting program was approved many years ago through an ordinance certified by the Commission.

- A formal application has not been completed for a proposed one million square foot warehouse in Manchester Township but threatened and endangered (T&E) species information has been submitted to address potential plant and animal issues.
- The Commission received a call to alert staff that two timber rattlesnakes had been found at project site in Burlington County where staff previously asked the applicant to address T&E species.

Ms. Roth said the State's new cannabis rules were adopted in late August. She said the Act provided for a special adoption similar to an emergency adoption. She said the rules went into effect when they were filed with the Office of Administrative Law (OAL), will remain in effect for one year and will be adopted through the normal Administrative Procedures Act (APA) process. She said the rules are complicated. A summary of the rules can be found on the Cannabis Regulatory Commission (CRC) website. She said there remains a question of whether cultivation is considered an agricultural use.

Chairman Prickett asked if the rules specify where cultivation of cannabis can take place.

Ms. Roth said the rules permit both indoor and outdoor cultivation. The rules provide great detail on security rather than the method of cultivation.

Director Horner provided information on the Comprehensive Management Plan's (CMP) standards for what constitutes agriculture, what is exempt from review and what agriculture activity requires an application to the Commission

Commissioner Lohbauer asked who will determine if the growing of cannabis is considered agriculture for the Pinelands Commission and whether the Commission should expect that CMP amendments are necessary to address the CRC's rules.

Ms. Roth said if the Commission has concerns about the scope of a cannabis operation or if the operation is agriculture, the Commission may need to adopt amendments to the CMP. She said the State Agriculture Development Committee (SADC) did not make a determination on the issue prior to the CRC's rule adoption. She said the scope of the operations is the main concern. She said municipalities were required to submit ordinances opting in or out. She said questions and concerns remain about placing cannabis operations in specific management areas that permit agriculture.

Acting Executive Director Grogan said staff had reservations about the CRC rules prior to their adoption and remain concerned about how they should be applied in the Pinelands Area. The Commission received a variety of ordinances from Pinelands municipalities, many of which prohibited all cannabis uses. She said it is more than likely that the Commission will have to adopt amendments to the CMP to address the CRC rules. She said staff is researching the best approach, with an emergency rule adoption being an option. She said the topic will be listed on the agenda at an upcoming P&I committee meeting. She added that staff will coordinate with SADC and the Department of Agriculture and may

invite them to speak to the P&I Committee, as they have had concerns about scale and type of facilities on preserved farms.

Commissioner Avery asked for an estimation of how many Pinelands towns are permitting cannabis.

Acting Executive Director Grogan said about 10 or 12 towns have chosen to permit cannabis facilities but the majority of Pinelands towns have opted out entirely. She noted that staff met with a town that originally decided to opt out but changed its decisions based on the released rules. She said towns that originally opted out can change their determination. She said it's the municipalities who have opted in that cannot change their decision for five years.

Paul Leakan, the Commission's Communications Officer, said his office recently launched a comprehensive review of every page, link, and document on the Commission's website. They are searching for any inoperable links and documents and other information that need to be updated. He also provided an update on the status of the agency's social media sites and noted upcoming educational events, including the Pinelands-themed World Water Monitoring Challenge and in-class education programs being led by Joel Mott. Lastly, he noted that the Commission's staff prepared and issued the Pinelands Development Credit Bank's 2021 Annual Report in late August.

Acting Executive Director Grogan said the Bank's legislation requires that an annual report be completed by August 28<sup>th</sup> of each year. She said the report includes a lot of data, especially the past year due to the high number of transactions the bank processed. She said the report is frequently used by appraisers.

#### Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of two public development applications from the New Jersey Department of Environmental Protection (NJDEP). The first application is for a geothermal well at the Batsto Visitor's Center. The second application is for the reconstruction of a beach facility at Lake Absegami.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1985-0160.013 & 1990-0868.035) (See Resolution # PC4-21-21). Commissioner Higginbotham seconded the motion.

Commissioner Lohbauer said he hopes that more people will consider using geothermal wells in an effort to avoid the use of fossil fuels.

Commissioner Lloyd said if there is a way to increase opportunities for more geothermal wells, the Commission should explore it.

The Commission adopted the resolution by a vote of 8 to 0.

Chairman Prickett presented a resolution recommending approval of a pedestrian path, paving project and installation of a sidewalk in Egg Harbor City.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 2015-0087.003) (See Resolution # PC4-21-22). Commissioner Jannarone seconded the motion.

Director Horner said, as noted in the report, there has been an ongoing violation on the property since 1995 and it's unclear if NJ Transit or Egg Harbor City was responsible for the violation. He said the sidewalk and paved parking area is owned by NJ Transit and the right-of-way is owned by Egg Harbor City. Egg Harbor City received a grant to construct the pedestrian path and was eager to proceed with the application. He said the approach that is outlined in the public development report is the best outcome to resolve the longstanding violation. He said that, as part of this application, Egg Harbor City is addressing half of the stormwater volume and the remaining stormwater volume will be covered as part of either the City's or NJ Transit's next application.

The Commission adopted the resolution by a vote of 8 to 0.

Chairman Prickett introduced the next resolution. He said the applicant is proposing to use herbicide to control invasive species in the vicinity of the Bass River fire tower.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 1990-0868.033) (See Resolution # PC4-21-23). Commissioner Higginbotham seconded the motion.

Director Horner said that an amended public development report was provided to Commissioners. He said the NJDEP has amended its application to limit the use of herbicide to the following for Japanese Stiltgrass: pre-emergent and post-emergent herbicide applied a maximum of three times. Foliar herbicide will be applied a maximum of three times to Japanese Barberry.

Commissioner Lloyd asked if the application complies with the CMP's wetlands standards, T&E species standards and water quality standards.

Director Horner said a T&E survey was conducted as part of the original application to clear the 16-acres. Should Broom Crowberry be detected by the Forest Service, measures are in place to protect the population. He said there is nothing in the rules that prohibit the use of herbicides in wetlands or uplands as part of a forestry operation. He said water quality is difficult because forestry is the only type of activity in the Pinelands where herbicides are authorized.

Commissioner Lloyd said the information was helpful, however he would like to see the permit period decrease from 10 years to three years.

Commissioner Higginbotham agreed with limiting the timeframe to keep an eye on the progress.

Commissioner Lohbauer said he appreciated the efforts of the applicant and staff to answer the concerns raised by Commissioners. He said he is not satisfied that it complies with the water quality standards of the CMP because he feels that it is likely the development could degrade water quality. He added that the application does not comply with CMP forestry standards, specifically N.J.A.C 7:50-6.41(-)(3). He said at the August Commission meeting he mentioned that Asian Water Buffaloes eat invasive plant species and should be considered as an alternative to herbicide. He said the NJDEP did not explore this non-chemical means. He said he will be voting no on this application.

Commissioner Irick said he visited the site prior to and after the tree clearing and he is not happy with the results. He said it looks like the Forest Service cleared a wetland. He thinks the NJ Forest Service should offer to do some replanting. He added that a 10-year permit is too long of a time frame to monitor the results of the herbicide.

Commissioner Jannarone said she is uncomfortable with the 10-year permit. She said she would like to see a two- or three-year permit. She suggested revising the resolution, and she did recognize that the Forest Service needs to address the invasive plant species at the site.

Director Horner said staff has been administering the CMP's forestry standards in a consistent manner for decades and the NJDEP application is no different. He said he understands that the word "practical" is subjective as it applies to consideration of alternatives. He said the NJDEP application is consistent with how the rule has been administered in the past. He said the CMP should probably be amended to address herbicide use in a more comprehensive manner. He said he expects that the NJDEP would be amenable to adjusting the permit time frame. He closed by asking the Commissioners to take past practice regarding the review of forestry applications into consideration as deliberations continue.

Ms. Roth said the Commission is legally obligated to follow past practice of administering its regulations. Deviating from the usual course can result in litigation.

Chairman Prickett said he doesn't think it is fair to tie the NJDEP's hands, as they manage our forests. He said any homeowner can purchase herbicide and spray it on their property, and farmers are actively spraying their fields with large amounts of pesticides. He said the Commission needs to work with the NJDEP and look at forest management to determine if forests have typical Pinelands characteristics.

Commissioner Irick suggested tabling the application until Director Horner can speak with the NJDEP about shortening the permit period.

Director Horner said the application is consistent with the CMP. He said if the Commission feels strongly about the duration of the permit, he recommends changing it from 10 years to five years.

Acting Executive Director Grogan said the length of the permit (10 years) comes directly from the CMP. She suggested the Commission consider keeping the permit at 10 years with

a requirement for annual reports from DEP so the Commission will be able to monitor the progress.

Commissioner Lloyd said the Commission needs to interpret its rules based on the record provided with the intent of protecting the Pinelands. He said he would support the recommendation by Acting Executive Director Grogan. He added that he is not sure the application has enough votes to pass and that he would like to see more on how the application meets the water quality standards.

Commissioner Lohbauer said he still feels that the application does not meet CMP standards and he will be voting no.

Ms. Roth asked Director Horner if he had spoken to the NJDEP about holding the application another month.

Director Horner said he has had lengthy discussions with the NJDEP about the herbicide application and any further delay will not be productive.

Ms. Roth advised that the matter will go to the Office of Administrative Law (OAL) if the Commission fails to act or disagrees with the Executive Director's recommendation of an application.

Director Horner clarified that the NJDEP did not say no to holding the application but had reluctance to limit its herbicide application.

DAG Miles provided information about the OAL process

Commissioner Lohbauer reiterated why he does not support the application.

Commissioner Lloyd said he cannot vote yes on this application.

Commissioner Avery said he thinks the Commission should act on the application today, and the application will not get the eight votes its needs. He said from what he understands, the applicant is only proposing three applications of herbicide. He said then the NJDEP can proceed with an appeal or any other process available to them.

Acting Executive Director Grogan called the roll:

Commissioner Avery: yes

Commissioner Higginbotham: yes

Commissioner Irick: abstain because he has visited the site multiple times and there is no revegetation on the site following the clear cutting.

Commissioner Jannarone: yes, with hesitation.

Commissioner Lloyd: no

Commissioner Lohbauer: no

Commissioner Pikolycky: yes

Chairman Prickett: yes

Acting Executive Director Grogan said the motion does not carry, as there were only five votes in favor of the application.

Chairman Prickett presented the next resolution, a Waiver of Strict Compliance.

Commissioner Lloyd made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 1999-0082.001) (See Resolution # PC4-21-24). Commissioner Jannarone seconded the motion.

Director Horner said this is the fourth waiver on this property, as the previous waivers have expired. The applicant is proposing a single-family dwelling on an approximately 40-acre parcel in Jackson Township.

The Commission adopted the resolution by a vote of 8 to 0.

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

There were no items listed on the agenda for the public to comment on this month.

Ordinances Not Requiring Commission Action

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

- Barnegat Township Ordinance 2021-12
- Buena Vista Township Ordinance 101-2021
- Egg Harbor Township Ordinances 28-2021 and 31-2021
- Lakehurst Borough Ordinances 2021-04, 2021-06 and 2021-08
- Monroe Township Ordinance O:08-2021
- Monroe Township Planning Board Resolution 25-2021 and Ordinance O:12-2021
- Mullica Township Ordinance 9-2021
- Southampton Township Ordinance 2021-09
- Woodbine Borough Ordinance 596-2021

No questions were raised.

Other Resolutions

Chairman Prickett presented a resolution to adopt the Fiscal Year 2022 Budgets.

Commissioner Avery made a motion To Adopt the Pinelands Commission's Fiscal Year 2022 Budgets for the Operating Fund, Katie Trust Fund and the Pinelands Conservation Fund (See Resolution # PC4-21-25). Commissioner Higginbotham seconded the motion.

Jessica Lynch, the Commission's Business Manager, said the FY 22 Budgets consist of three separate budgets. She said the Operating Budget has increased 1% this fiscal year

from the last three years. She said the state appropriation has increased by \$150,000. The state supplemental fund has not increased although it would be helpful if the Commission's could secure an increase, because health benefits costs continue to rise and are expensive. She said that, based on forecasting, the expected application fees for this fiscal year have been budgeted at \$500,000, a 32% increase from last year's budgeted amount. She said the Katie Fund budget includes funds for the possible installation of a rain garden on the Commission property. She said the Pinelands Conservation Fund will support both existing and new initiatives. Lastly, staffing levels and salaries were reviewed.

Acting Executive Director Grogan presented a list of the many initiatives and special projects staff are working on. She provided a brief overview of what each office will focus on this fiscal year. She said staff will be preparing an application to the BPU for a no-cost energy audit and have allocated \$20,000 in the budget for implementation of recommendations should the Commission be chosen for the audit. There is also money in the budget for an electric vehicle charging station and the Commission will also be seeking grant funds to assist with the cost. (See attached presentation slides for additional details.)

The Commission adopted the resolution by a vote of 8 to 0.

#### Presentation

Gina Berg, a Commission Resource Planner, presented the Permanent Land Protection (PLP) data from July 1, 2020 through June 30, 2021. She said a total of 1,529 acres were protected through multiple programs in the Pinelands Area. She mentioned the notable projects and said 51% of the land in the Pinelands has been permanently preserved. She said the vast majority of that permanently preserved land is located in the conservation-oriented management areas. (See attached presentation slides for additional details.)

There was a brief discussion about the Section 502 target areas and the appropriated funds. Acting Executive Director Grogan said it will be beneficial to gain the support of the state legislature representative in Washington to assist with appropriation of the remaining funds. The Commission might also need to reevaluate the boundaries of the previously identified 502 target areas and consider establishment of new target areas.

#### General Public Comment

Rhyan Grech of the Pinelands Preservation Alliance (PPA) said she enjoyed the PLP presentation. She commended the Commissioners who voted for "what they thought was right" on the NJDEP herbicide application. She said the NJDEP has issued fines to New Jersey Natural Gas for both water and land violations stemming from the construction of the Southern Reliability Link (SRL) pipeline. She said she hopes the Commission learned something from the damage cause by the SRL pipeline and continues to pursue rule amendments for horizontal directional drilling.

Bill Zipse of the New Jersey Forest Service suggested that the Commission and the NJDEP meet to further discuss the herbicide application. He described the deployment of herbicides, including monitoring the response of a particular application.

Jason Howell of the Pinelands Preservation Alliance (PPA) said herbicide is applied frequently in the Pinelands, especially in lakes where homeowner associations and some towns are trying to decrease aquatic vegetation. He said the County has applied herbicide along Route 679 and Route 563.

Commissioner Irick suggested presenting former Commissioner Howell with a plaque.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Irick seconded the motion. The Commission agreed to adjourn at 12:25 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: September 20, 2021