

Disclaimer

These minutes reflect the actions taken by the Commission during its October 8, 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 October 18, 2021.

PINELANDS COMMISSION MEETING

MINUTES

**October 8, 2021**

*The October 8, 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=A6iX1HIN7pU>*

Commissioners Participating in the Meeting

Vice Chairman Alan W. Avery Jr., Shannon Higginbotham, Jerome H. Irick, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky, Gary Quinn (left the meeting at 9:48 a.m.) 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 and D'Arcy Rohan Green.

Call to Order

Chairman Prickett called the meeting to order at 9:32 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. Nine Commissioners participated in the meeting.

The Commission pledged allegiance to the Flag.

Update: Executive Director Search Committee and deadline for applications

At this time, Commissioner Lohbauer and Acting Executive Director Grogan recused themselves from the discussion. They were placed in a Zoom waiting room.

Commissioner Prickett said using the authority the Chairman has been provided in the Commission's By-laws under II. Officers, Section 2 c & d, he is announcing that he will reform the Executive Director (ED) Search Committee as described in Commissioner Avery's memo dated August 8, 2021.

The Committee's general goals include developing criteria to select candidates to be interviewed, evaluation of their resumes, standardizing interview questions, creating an interview schedule for mid-November into December and discussing the process of referring more than one candidate to the Commission for its careful consideration.

Chairman Prickett said he plans to reappoint the members that originally formed the Search Committee and will confer with them before he announces his appointments and describes the specific goals that he expects the Committee to achieve.

The Governor's Authorities Unit (GAU) representative's role will exclusively be to observe Committee meetings. They will receive the same schedules and packets Committee members receive and provide other material the GAU office would like the Committee to consider.

The specific duties and roles of the ED Search Committee will be documented in a Memorandum.

Commissioner Avery made an oral motion to extend the application period for the position of Executive Director from September 24, 2021 until October 20, 2021 as requested by the Governor's Authorities Unit. Commissioner Lloyd seconded the motion.

Stacey Roth, the Commission's Chief of Legal and Legislative Affairs, called the roll.

Commissioner Avery: Yes.  
Commissioner Jannarone: Yes.  
Commissioner Irick: Yes  
Commissioner Lloyd: Yes  
Commissioner Higginbotham: Yes.  
Commissioner Pikolycky: Yes.  
Chairman Prickett: Yes.  
Commissioner Quinn: Yes.

The motion passed with 8 votes.

Commissioner Lohbauer and Acting Executive Director Grogan rejoined the meeting.

Chairman Prickett said he would like to thank Commissioners Avery and Lloyd for their willingness to participate in this process.

He said at the September 10<sup>th</sup> Commission meeting, the Commission was informed that the GAU had invited the Chairman and Vice Chair to meet with their new Director, Noreen Giblin, to talk about how the Commission and the GAU can move forward cooperatively in selecting the next Executive Director.

Chairman Prickett said that he and Vice Chairman Avery, Commissioner Lloyd, Director Giblin and Rudy Rodas participated in a productive conference call on September 22<sup>nd</sup> to discuss best hiring practices, reforming the ED Search Committee and the difficulty in establishing a quorum due to Commissioner vacancies and other reasons. Commissioners also mentioned that all ED job applications that had been received were secured in the Human Resources Office and had not been reviewed.

He noted that September 24<sup>th</sup> was the Commission's deadline for receiving ED job applications.

Chairman Prickett said on September 27<sup>th</sup>, he provided the GAU with his memo announcing the reformation of the ED Search Committee and the list of documents addressing procedural concerns mentioned in the Governor's letter. These documents were included in the October Commission meeting packet.

He said also on September 27<sup>th</sup> that he received a call from the GAU requesting a two-week application extension to October 13<sup>th</sup>, so their office could encourage qualified candidates to apply. He said he consulted with Vice Chairman Avery and decided that he would ask the Commission to support the extension.

Chairman Prickett said on September 30<sup>th</sup> the GAU asked him to extend the application deadline an additional week (to October 20<sup>th</sup>), which the Commission agreed to extend today. The Chairman expressed support for the additional extension and agreed to ask the Commission members for their approval.

Chairman Prickett said on October 4<sup>th</sup> he requested the GAU to confirm the salary range for the next ED, which they did on October 6<sup>th</sup>. Lastly, he said a lot of progress has been made since the last Commission meeting, working with the GAU in searching for the next Executive Director.

#### Honoring Commissioner Jordan Howell

Chairman Prickett introduced a resolution highlighting Commissioner Howell's time on the Commission.

Commissioner Lohbauer made a motion Expressing the Commission's Appreciation to Jordan P. Howell for his Service as a Member of the Commission from January 18, 2018 to

August 13, 2021 (See Resolution # PC4-21-26). Commissioner Avery seconded the motion.

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

Chairman Prickett read the resolution into the record.

Commissioner Quinn left the meeting at 9:48 a.m.

Paul Leakan, the Commission's Communications Officer, said he delivered a frame to Commissioner Howell with three photographs taken in the Pinelands Area of Camden County to show the Commission's appreciation for Commissioner Howell's service.

A few Commissioners took a moment to express their thanks to Commissioner Howell.

### Minutes

Chairman Prickett presented the minutes from the Commission's September 10, 2021 meeting. Commissioner Pikolycky moved the adoption of the minutes. Commissioner Jannarone seconded the motion.

The minutes from the September 10, 2021 Commission meeting were adopted by a vote of 8 to 0.

### Committee Reports

Chairman Prickett provided a summary of the September 24, 2021 Policy & Implementation (P&I) Committee meeting:

The Committee adopted the minutes of its July 30, 2021 meeting.

The Committee received an update on the Pinelands Conservation Fund Land Acquisition grants. The Committee decided not to proceed with funding due to a lack of proposals. The Committee will accept new proposals next year.

The Committee received a presentation from Commission staff regarding the success of the Commission's Electric Transmission Right-of-Way Maintenance Pilot Program and recommendations for amending the Pinelands Comprehensive Management Plan (CMP) to permanently incorporate the Right-of-Way Plan.

The Committee discussed the New Jersey Cannabis Regulatory Commission's newly adopted rules and their relationship to the CMP.

Commissioner Lohbauer provided an overview of the September 15, 2021 Climate Committee meeting:

The Committee adopted the minutes of its July 14, 2021 meeting.

The Committee received an update on the application to the Board of Public Utilities regarding an energy audit of the Commission's offices.

The Committee received an update on the New Jersey Department of Environmental Protection's PACT (Protecting Against Climate Threats) and REAL (Resilient Environments and Landscapes) rulemaking.

The Committee discussed two reports, one issued by the International Panel on Climate Change and the other by ReThinkX. The Committee also discussed Michael Gerrard's book.

Vice Chairman Avery said the Personnel and Budget Committee has not met but he noted that he has been speaking with the Acting Executive Director about the high quote received for painting Fenwick Manor.

#### Acting Executive Director's Report

Acting ED Grogan provided information on the following:

- The Commission purchased a copy of Michael Gerrard's book, "The Legal Pathways to Deep Decarbonization in the United States," to help identify specific climate recommendations to amend the CMP.
- Staff has contacted Treasury to request guidance after the second attempt of a Request for Proposal (RFP) process failed to produce viable quotes to paint Fenwick Manor. The GAU is helping with the coordination of a meeting with Treasury to discuss a solution to this longstanding issue. A roofing contractor has been contacted to make sure the flashing surrounding the chimney in Fenwick Manor is intact to eliminate any further damage to the interior of the building.
- Staff continue to work in the office three-days a week. The Human Resources office is conducting various surveys of staff regarding vaccination status to provide to the Governor's office.
- The Pinelands Municipal Council met on September 28<sup>th</sup>. State Senator Vince Polistina attended the meeting to discuss and assist with the reinstatement of PILOT (Payment in Lieu of Taxes) funding.
- Commission staff have been invited by Dave Rosenblatt, the State's Chief Resiliency Officer at the New Jersey Department of Environmental Protection (NJDEP), to join the Interagency Council on Climate Change. The Council requested the designation of a Commission staff member to attend monthly meetings. Ed Wengrowski has been chosen as the designee. This will be a great opportunity to hear first-hand about the climate change policies being considered by other agencies.

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

- The Pemberton Township Administrator has requested the Commission's guidance regarding an Off-Road Vehicle (ORV) issue that is occurring in the Presidential Lakes section of town. He said the ORV use is occurring on a deed restricted parcel that was part of a Waiver of Strict compliance application for a residential project in the late 1980s.
- A municipal approval was received months ago for a communications tower in Woodland Township and remains the subject of a Commission public hearing. It's still unclear if the application for the communication tower is an accessory use to the Chatsworth EMS and Fire company or if the communication tower is for general usage. A second municipal approval is currently under review.
- Staff is investigating a report from the public about an ORV matter in Estell Manor.

Paul Leakan, the Commission's Communications Officer, said the staff has decided to postpone the annual World Water Monitoring Challenge, which was scheduled for October 22nd at Batsto Lake. He noted that there is a nationwide shortage of bus drivers, and it is causing significant issues for school districts that are struggling to find enough drivers to transport students to and from school and take them to and from field trips, such as the World Water Monitoring Challenge. He said we hope the situation will improve so that the World Water Monitoring Challenge event can be held next spring.

He also noted that the Commission will host two webinars this month. He said the first one will be on the cranberry harvest. He said the second webinar will be presented by Woodford Cedar Run Wildlife Refuge and will focus on local, misunderstood creatures and their various attributes.

Lastly, he noted that his office is busy planning next year's springtime Short Course, running virtual meetings, responding to public and media inquiries, and creating the 2022 Pinelands National Reserve wall calendar, which will be issued in early December.

#### Public Development Projects and Other Permit Matters

Chairman Prickett introduced the next resolution. He said the applicant, the New Jersey Department of Environmental Protection (NJDEP), is proposing to use herbicides 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 # PC4-21-27). Commissioner Jannarone seconded the motion.

Director Horner said the application did not receive the necessary votes for approval at the September Commission meeting. The NJDEP requested an extension of time to submit additional application related information. On October 1<sup>st</sup>, staff issued a Re-Amended Public Development Report, which was provided to the Commission along with a memo explaining the changes to the report. He said the NJDEP has provided additional information about "spot treatment" of herbicides and practical alternatives. He said several

conditions have been added to the Report that include:

- Annual reporting on the effectiveness of the herbicide to facilitate regeneration
- A limit on the permit from 10 years to five years, with a possible 9-month extension
- The herbicide used must be expressly labeled for forestry

Commissioner Lohbauer said he appreciated the amendments made by NJDEP. He noted that although they have addressed the concerns raised by other Commissioners, they had not addressed his concerns. He said he does not support the application because he does not believe NJDEP has demonstrated that the use of non-chemical means is not practical. He said he believes the invasive species can be addressed with mechanical means (i.e. a weed whacker) and a treatment of a pre-emergent herbicides only. He stated this combined action over 3-4 years should be successful. He said he understands that glyphosate is on the State-approved list for forestry activities, but he does not support its use. He concluded by saying that sometimes, regulations need to catch up with science.

Commissioner Lloyd said he appreciated the progress made on the application. He was pleased that the permit has been reduced to five years in duration, that a requirement for annual reporting has been added and that the number of herbicide treatments has been reduced to three applications. He said that the goal has to be to minimize impacts to the Pinelands. He said the NJDEP should take note of what the utility companies in the Pinelands Area have accomplished in terms of vegetative management in their rights-of-way without the use of herbicides. He said the application does not have enough votes to pass. He said he will be abstaining from the vote today.

Chairman Prickett said the Commission staff and Commissioners do not manage the forests, it's the NJDEP's job to care for them. He said the Commission can choose to amend the CMP – which is a long process – or encourage applicants to exceed the normal CMP requirements. He said the NJDEP has tried to accommodate the Commission's request to modify this application. He said the application meets CMP standards and implored Commissioners to vote yes for this application. He added that herbicide is readily available at any hardware store and is used by farmers and landscapers every day.

Commissioner Avery asked Director Horner if he had discussed with NJDEP the practicality of controlling the invasive species using the techniques suggested by Commissioner Lohbauer, namely, using a weed whacker in combination with a pre-emergent herbicides on the seeds of stiltgrass.

Director Horner said he did not specifically discuss that option. He said over the years, the Commission has reviewed and approved dozens of forestry applications involving the use of herbicides. He noted that the CMP does not specify that the use of herbicides must be minimized. Rather, if non-chemical means are not practical, the applicant is permitted to use herbicides. The staff believes the applicant in this case has met that test. The comments and suggested changes to this application go beyond the regulatory requirements of the CMP. Applications should be judged against the regulations contained in the CMP and established standards of review.

Director Horner introduced Bill Zipse and Courtney Compton from the New Jersey Forest service.

Mr. Zipse said the proposal recommends treating the Japanese stiltgrass with a pre-emergent in the spring. However, barberry is more difficult to treat and resprouts prolifically. He said stiltgrass is an annual that goes to seed and at that point, the seeds may need to be treated. He said the application includes many potential methods of treatment; however, that doesn't mean that the Forest Service will use all of them. They simply need to have options available to them. The Forest Service only uses the minimum necessary to achieve its objectives. Their goal is to use herbicides as little as possible.

Mr. Zipse said the Forest Service uses clearing saws to combat invasive species and a spot treatment will be used on barberry. He asked Commissioners to keep in mind that the utilities are trying to keep the rights-of-way clear of trees and the Forest Service is trying to do the opposite. They are trying to control invasive species in order to get the pine trees to grow. He added that the Forest Service will be monitoring the situation for a response.

Commissioner Lohbauer suggested his own approach to treating the stiltgrass, including mowing. He asked whether use of a pre-emergent could be successful for stiltgrass. He asked whether the plants that reappear after such treatment could simply be cut. He suggested that NJDEP only mow in August, then try the pre-emergent again the following Spring.

Mr. Zipse said he isn't opposed to trying things but mowing has an impact. He also noted that the herbicides were not chosen at random, and they will be used at a minimum. He said the Forest Service has been successful at eradicating stiltgrass at Greenbank and he asked that the professional staff be given some latitude.

Commissioner Avery asked Mr. Zipse whether the Forest Service could perform other actions to eradicate some of the invasive species, if the use of herbicide was removed from the application.

Mr. Zipse said the use of herbicide was removed from the original tree clearing application and that is why there are invasive species present now. He noted some of the names of the herbicides listed in the proposal and reasons why they were selected. He said glyphosate was chosen to combat barberry because it is nonmotile in soil and the active lifespan of being toxic to plants is short. He reiterated that they would treat with a pre-emergent and monitor the situation. He said the timing of deployment of an herbicide is critical for success. He added that his team uses phenology to determine when and when not to apply herbicides.

Commissioner Lohbauer said he would be willing to vote yes on an application that proposed only pre-emergent herbicide. He said if it doesn't work, the applicant can come back to the Commission in two years and submit a new application to use additional herbicides.



Mr. Zipse said that time is a critical factor. The invasive species need to be caught and controlled early so that trees can grow. The Forest Service is not expecting to eliminate all of the invasives, just enough so that the trees will grow tall enough to out-compete the invasive species.

Commissioner Lloyd asked whether the approach suggested by Commissioner Lohbauer was practical.

Acting Executive Director Grogan asked the Commission to remember that it takes a long time for a public development application to go through the Commission's process should the pre-emergent not work. She said the requirement for annual reports was intended to provide the Commission with the opportunity to see what is and isn't working. She added that she would hate for the invasive species problem to become worse.

Mr. Zipse said he is a forester and does not feel comfortable making a management-level decision to change the application to the extent Chairman Lohbauer asked. He said he is asking the Commission for some latitude and trust to treat the invasive species as specified in the proposal. He added that he does not want to see the footprint of the invasive species get bigger. NJDEP needs to have all options available so that it can appropriately respond each year.

Commissioner Lohbauer said he would support the application if it were limited to the use of pre-emergents, even without the two-year time limit he previously suggested. If the use of other herbicides remains part of the application, he will not vote for it.

Commissioner Higginbotham said there is a high success rate with pre-emergents; however, the plants do still come up. She cautioned that waiting another year to treat the area means the invasive species will continue to multiply, be harder to treat and require more herbicide. She said the Commission should give NJDEP the ability to use herbicides now so that in the long-term there will be less usage.

Commissioner Jannarone said she does not support holding up the application because that will make matters worse. She said the Forest Service has the expertise and it should be able to do its job.

Chairman Prickett said it takes cooperation for progress to occur. He said the CMP requires the Commission to work and cooperate with the GAU, the NJDEP and Pinelands municipalities. He thanked Mr. Zipse for his insight. He said he trusts that the New Jersey Forest Service is going to do exactly what the proposal states.

Acting Executive Director Grogan called the roll:

Commissioner Avery: Yes

Commissioner Higginbotham: Yes.

Commissioner Irick: Yes.

Commissioner Jannarone: Yes.  
Commissioner Lloyd: Abstain.  
Commissioner Lohbauer: No.  
Commissioner Pikolycky: Yes  
Chairman Prickett: Yes

The motion failed to pass.

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

Public comment was not provided.

Ordinances Not Requiring Commission Action

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

- Medford Township Ordinances 2020-22 and 2021-10

No questions were raised.

Commissioner Jannarone left the meeting at 11:02 a.m.

Other Resolutions

Due to lack of quorum, the Commission could not vote to accept the Fiscal Year 2019 Audit Report. Acting Executive Director Grogan said the resolution can wait to be acted on at a future Commission meeting.

General Public Comment

Rhyan Grech of the Pinelands Preservation Alliance (PPA) informed the Commission that a 30-day comment period for a settlement agreement between the NJDEP and New Jersey Natural Gas closes on October 22<sup>nd</sup>.

Fred Akers of the Great Egg Harbor Watershed Association said he wanted to acknowledge the Commission's responsiveness to the members of the public. He added that he appreciates the Commission's efforts to control damage from ORV use.

Other

Commissioner Irick said he would like to see the P&I Committee draft a list of priorities regarding CMP amendments.

Commissioner Lloyd agreed and suggested a six month and a 12-month plan. Chairman Prickett indicated that a discussion of CMP amendment priorities would be scheduled for an upcoming P&I Committee meeting.

Commissioner Avery thanked the NJDEP for answering questions today and said he is sorry the resolution did not pass. He said that rules need to be applied consistently and with predictability and that does not seem to be the case anymore. He wished the Forest Service well in its goal of returning the forest to its native character. He said sometimes you have to trust the professionals in other agencies who are the experts in their field.

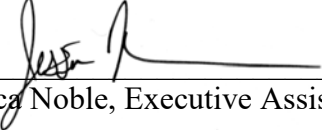
Commissioner Lohbauer said he was trying to carry out his duties as a Commissioner today.

Chairman Prickett said the Commission is struggling to have a quorum at meetings. He said he hopes the Senate can confirm appointments through its process.

### Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Higginbotham seconded the motion. The Commission agreed to adjourn at 11:20 a.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: October 18, 2021