

Disclaimer

These minutes reflect the actions taken by the Commission during its October 14, 2022 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 24, 2022.

PINELANDS COMMISSION MEETING

MINUTES

October 14, 2022

*All participants were either in-person or present via Zoom conference and the meeting was livestreamed through YouTube: [https://www.youtube.com/watch?v=5imy6uB\\_3ig](https://www.youtube.com/watch?v=5imy6uB_3ig)*

Commissioners Participating in the Meeting

Alan W. Avery Jr., John Holroyd, Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Davon McCurry, William Pikolycky, Gary Quinn, Douglas Wallner and Chair Laura E. Matos. Also participating were Acting Executive Director Susan R. Grogan, Deputy Attorney General (DAG) Nicolas Seminoff and Governor's Authorities Unit representative Janice Venables.

Commissioners Absent

Dan Christy, Jane Jannarone and Jonathan Meade.

Call to Order

Chair Matos called the meeting to order at 9:32 a.m.

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

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

The Commission pledged allegiance to the Flag.

### Minutes

Chair Matos presented the minutes from the Commission's September 9, 2022 meeting. Commissioner Irick moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The minutes from the September 9, 2022 Commission meeting were adopted by a vote of 9 to 0. Commissioner McCurry and Commissioner Lettman abstained from the vote.

### Committee Reports

Chair Matos provided a summary of the September 30, 2022 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the August 26, 2022, meeting. The Committee received a brief update on Comprehensive Management Plan (CMP) amendments related to the Electric Transmission Line Right-of-Way Maintenance Pilot Program. The amendments will include prescriptions for mowing, vegetation debris removal, motor vehicle use, and other appropriate maintenance activities based on soil type in the rights-of-way. The Committee did not have to take any formal action on the matter.

The Committee discussed a recent trend where municipalities are consulting the Commission on appropriate rezoning strategies to permit warehouse development in Regional Growth Area residential zoning districts. Acting ED Grogan provided a comprehensive overview of the PDC program, including the purpose for its creation in the original CMP and the ways in which it has been adapted in the decades since. She gave hypothetical examples to demonstrate how the municipal flexibility provisions of the CMP could allow a municipality to essentially transfer PDC requirements from residential uses to nonresidential uses. She also discussed whether warehouse growth in the Pinelands triggers other consequences that the Commission should monitor. The Committee was generally supportive of extending mandatory PDC requirements to nonresidential development.

Commissioner Lohbauer provided a summary of the September 30, 2022 Climate Committee meeting:

The Committee received an update on the Governor's new Office of Climate Action and the Green Economy initiative. The Committee received a presentation on the state's No Net Loss Compensatory Reforestation Act.

The Committee discussed climate-related Pinelands CMP amendments, which will be prioritized at the Committee's November meeting.

### Acting Executive Director's Report

Acting ED Grogan provided information on the following matters:

- The Commission was awarded a grant from the New Jersey Historic Trust for the preparation of a Preservation Plan for Fenwick Manor. On today's agenda is a resolution to accept that grant and contract with a consultant who will prepare the plan. A structural analysis will be performed as part of the work for the preservation plan.
- On November 18<sup>th</sup>, the Commission will host its second archaeology symposium. Fifty-three people have already registered.
- The 60-day public comment period for the Kirkwood-Cohansey rules is underway. A public hearing was held on October 12<sup>th</sup>. Due to a minor error in the notice, another hearing has been scheduled for November 2<sup>nd</sup>. Representatives from the mining industry have raised concerns with the proposed rules because they do not consider that their water use is non-consumptive.
- A second petition from Bill Wolfe has been submitted to the Commission, the Highlands Council and the New Jersey Department of Environmental Protection (NJDEP). Mr. Wolfe would like to see the CMP amended to require monitoring and compliance with the Environmental Protection Agency's final aluminum criteria for regulated activities that disturb soils, generate stormwater, and/or result in point and non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities. It must first be determined if the petition request is complete.
- The October 28<sup>th</sup> P&I Committee meeting has been canceled.

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

- Tabernacle Township is moving forward with a subdivision application for its new municipal building on Carranza Road. Applicants are required to map wetlands. A neighboring property owner is not allowing the Township access on their property.
- Berkeley Township's applications for soil capping of its landfill and development of a solar energy facility remain inconsistent with CMP threatened and endangered (T&E) species protection standards. Staff has advised how the application can be revised to maintain consistency.
- The Commission is working with an applicant who is proposing to add a deli, custard stand and food pantry to an existing bar and restaurant in Manchester Township. The lot is 1.9 acres in size and served by an existing septic system and does meet the CMP's septic dilution standard nor the State's drinking water standard. The application is scheduled for a public hearing. Staff advised that the matter can be resolved by converting the existing septic to an alternate design septic system or connecting to sanitary sewer.

Stacey Roth, Chief of Legal & Legislative Affairs, said an email containing information related to annual ethics training and cannabis training will be shared later this month.

Paul Leakan, Communications Officer, provided information on the following:

- World Water Monitoring Day will take place on October 21, 2022 at Batsto Lake. Over 100 students will participate.
- Staff is working on the 2023 Pinelands National Reserve wall calendar.
- The Commission held its first-ever Moth night on October 6<sup>th</sup> (photos from the event are attached).

#### Resolution for James J. Florio

Chair Matos introduced a resolution to name the Commission's library after former Governor and Pinelands Commission Chairman James J. Florio.

Commissioner Lohbauer made a motion Approving With Conditions an Amended Application for Public Development (Application Number 2007-0318.001) (See Resolution # PC4-24-38). Commissioner Lloyd seconded the motion.

Chair Matos read the resolution into the record.

Commissioner Lloyd said Governor Florio was a friend and mentor. He said we all benefit from Governor Florio's accomplishments.

Commissioner Lohbauer said he got to know the former Governor while he was working at the Regional Plan Association and often talked with him about the Pinelands.

Commissioner McCurry said he was able to go to the memorial services and said Governor Florio was a remarkable person.

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

Acting ED Grogan encouraged everyone to visit the James J. Florio Pinelands Library after the meeting. A permanent sign will be ordered.

#### Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution for the New Jersey Department of Environmental Protection (NJDEP), New Jersey Forest Service application for 1,304 acres of forestry and approximately 13 miles of forest firebreak in Bass River Township and Little Egg Harbor Township.

Commissioner Avery made a motion Approving With Conditions an Amended Application for Public Development (Application Number 2007-0318.001) (See Resolution # PC4-22-39). Commissioner Pikolycky seconded the motion.

Director Horner displayed a map of where the proposed forestry activities and fire break will occur (see attached). He said the application was before the Commission in late 2021 and did not receive the necessary eight votes in favor or against the application. The application has been amended and it was agreed that the application will not be sent to the Office of Administrative Law until December 15, 2022.

Director Horner provided details related to the changes in the application. He said the use of herbicide along the 13-mile firebreak has been eliminated and the width of the firebreak has also been reduced by five feet on each side of the road. The use of herbicide has been eliminated on a 255-acre portion of pine-shrub forest that is proposed to be thinned. He added that limited herbicide will be used on 1,041 acres of pine-dominated forest where non-chemical means is not practical.

Director Horner briefly reviewed the T&E conditions outlined in the report. He said T&E surveys must occur before any forestry activities begin. He said forestry can only occur when snakes are active. He said there are several known Pine Barrens treefrog breeding sites in the vicinity of the proposed activities, as well as T&E plants species, all of which require a 100-foot buffer. There are three existing snake study areas along Oswego Road. Staff consulted with the NJDEP and with the scientists conducting the studies and visited the area to fully understand the matter. He said a condition has been included in the report to require that the fuelbreak not be established in these areas until the NJDEP proposes and the Acting Executive Director approves measures for enhanced protection of these areas. Protection of the study areas must be accomplished in a way that does not create access for recreational vehicles.

Commissioner Wallner said he was supportive of the fuelbreak, and the conditions outlined in the report seemed reasonable. He said he would have liked to see a no-action alternative addressed and further clarity on why the 1,300 acres of forestry is necessary. He said it would have been helpful to know the consequences of extreme wildfire in this area, particularly whether there are communities at risk.

Director Horner said the fuelbreak and forestry activities are permitted uses under the CMP. He said NJDEP has advised that the fuelbreak and forestry activities are necessary to protect property and people. Commission staff relied on the expertise of the NJDEP and the NJ Forest Fire Service, which indicated that the forest thinning was necessary to reduce the potential for canopy spreading fires.

Commissioner Lohbauer said he appreciated the modifications that were made by the NJDEP to its application; however, he still has concerns. He said he understands that the application is consistent with the CMP but questions whether the CMP is up to date in terms of forestry, wildfire prevention measures and climate change. He said it is the Commission's duty to preserve the forest and its carbon sequestration power. He said

substantial thinning is proposed and he doesn't believe it will be effective to prevent a wildfire. He added that cutting and removing wood from a forest is not consistent with the Governor's Executive Orders related to climate threats. He said it remains unclear how the T&E species will be protected, and Commissioners should have more involvement in approving NJDEP's plan to provide additional protection to the snake study areas, not the Acting Executive Director alone.

Commissioner Lloyd said the scope of the project is vast and, according to his calculations, will result in the felling of over a million trees. He said this proposal is not perfect but is much better than the previous application. He commended Commission staff and the Forest Service for their efforts on the amended application.

Commissioner Irick said he had been prepared to vote in favor of the application, but other Commissioners raised valid points at today's meeting. He said the application proposes substantial clearing. He said he would like to see the application tabled. In addition, the Commission should amend the CMP to include updated forestry standards.

Acting ED Grogan called the vote:

Avery: Yes

Holroyd: Yes

Irick: Yes

Lettman: No

Lloyd: Yes

Lohbauer: No

McCurry: Yes

Pikolycky: Yes

Quinn: Yes

Wallner: Abstained (He said he did not have enough information.)

Matos: Yes

The resolution was adopted by a vote of 8 to 2, with Commissioner Lettman and Commissioner Lohbauer voting no. Commissioner Wallner abstained from the vote.

Chair Matos said the Climate Committee will be reviewing forestry practices as it looks to amend the CMP.

Chair Matos introduced a resolution to approve the following four projects: an addition to the Atlantic County Vocational Technical School in Hamilton Township, construction of a synthetic turf field at the Buena Regional High School, construction of an 11-acre overland drip irrigation system in Hammonton and clearing and soil disturbance at the former Pemberton Township landfill.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1981-2437.018, 1984-1157.008, 1988-0706.024 & 2021-0112.003) (See Resolution # PC4-22-40). Commissioner Irick seconded the motion.

Director Horner said the first application is for a three-story classroom addition in Hamilton Township's Regional Growth Area. The school is serviced by sanitary sewer. A total of 2.8 acres of forest must be cleared in order to properly and safely construct the addition. To ensure the safety of students, a one-acre section of the campus will remain as a grass area rather than be revegetated with trees.

Director Horner said the second application is for a synthetic turf field with an underground stormwater management system.

He said the third application is for an expansion of Hammonton's wastewater disposal system. He said the proposal is for an 11-acre, above-ground drip irrigation system that is collected and then treated at a plant and pumped to a facility where it is disposed of above ground, below ground and to several ponds. He said public comment was received from a neighboring property owner who has filed litigation against Hammonton, claiming that wastewater is running onto their property. The Commission staff asked Hammonton to respond to the claim. Hammonton has advised that it was a onetime incident and has been resolved.

Director Horner said the fourth application is to permit site activities to determine the limits of the former Pemberton Landfill. He said there are T&E species at the site. Any future application for a soil cap of the landfill and solar facility would need to be consistent with the Commission's T&E standards.

Commissioner Lettman requested clarification regarding the acreage for the Hammonton application and how far the drip irrigation will be from wetlands.

Director Horner said the acreage will cover an area where the Town had once proposed recreation fields and underground drip irrigation. The Town is no longer pursuing development of the recreation fields.

Ernest Deman, a Supervising Environmental Specialist with the Commission, said the closest wetlands are approximately 1,000 feet away.

Commissioner Lohbauer said he read though the public comment pertaining to Hammonton's application and wanted to be sure that Commissioners could vote on the application considering the pending litigation.

Ms. Roth said she reviewed the matter, and the Commission is not a party to the litigation. She said the Commission is not prohibited from proceeding with acting on the application today.

The resolution was adopted by a vote of 10 to 0. Commissioner McCurry abstained from the vote.

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

No public comment was provided.

### Ordinances Not Requiring Commission Action

Chair Matos read the list of Ordinances:

- Chesilhurst Borough Ordinance 2017-3
- Egg Harbor City Ordinance 15-2021
- Jackson Township's 2021 Amended Housing Element and Fair Share Plan
- Lakehurst Borough Ordinance 07-08
- Ocean Township Ordinances 2013-8, 2015-19, 2017-2, 2018-19, 2019-7, 2020-17, 2021-18 & 2022-12
- Pemberton Township Ordinances 9-2022 & 14-2022

Acting ED Grogan said the list from Ocean Township is lengthy because the Township had not been submitting certain ordinances and redevelopment plans. Staff was reviewing a Coastal Area Facility Review Act (CAFRA) permit in the Pinelands National Reserve and realized a discrepancy in zoning, and that led to the submission of several older ordinances the Commission had not reviewed.

### Other Resolutions

Chair Matos introduced a resolution to accept a grant from the New Jersey Historic Trust.

Commissioner Holroyd made a motion To Accept a Preserve New Jersey Historic Preservation Fund Grant from the New Jersey Historic Trust and Authorize the Acting Executive Director to Enter into a Contract for Development of a Preservation Plan for Historic Fenwick Manor. (See Resolution # PC4-22-41). Commissioner Irick seconded the motion.

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

### Presentations

Gina Berg, Resource Planner, provided highlights of the fiscal year 2022 Permanent Land Protection data. She said 2,007 acres were permanently preserved in the Pinelands Area from July 1, 2021 through June 30, 2022. She said the Pinelands Development Credit (PDC) severance process brought the largest gain to permanently protected lands. She provided the amount of acreage in each Pinelands Management Area that has been preserved. She said 51% of the Pinelands Area is now preserved. (See attached presentation slides for additional information.)

Acting ED Grogan delivered a presentation detailing how the PDC program works, data from the annual PDC Bank Report and recent trends related to the PDC program.

She said in 2011 the Commission entered into an agreement with the Department of Banking and Insurance (DOBI) to assume the responsibilities of the PDC Bank. At that time, the Executive Director of the PDC Bank retired and there was no staff and no funding. Since that time, Commission staff has been providing daily support for all Bank inquiries and functions. Staff issues an annual PDC Bank report each August.

She said PDCs are allocated when the Pinelands Commission issues a Letter of Interpretation. She provided an overview of how many PDC have been allocated since the program's inception. She said if a landowner wants to sell their credits, they must first sever them from the property, which involves placing a deed restriction on the parcel. The Bank has seen a significant increase in severance activity during the last three years. She noted that sales transactions continue to be the most common function of the Bank. PDC sales prices have increased substantially and have not been this high since 2008. Acting ED Grogan reviewed redemptions by numbers and reasons for the redemption by application type. She said for the first time the Annual Report captures data on the type of housing PDCs are redeemed for.

Acting ED Grogan provided information related to the historic supply and demand of PDCs and how the program has been adapted over time. She reviewed how many PDCs are currently for sale and the number of active projects that require the purchase and redemption of PDCs. Lastly, she shared recommendations made by former Commissioner Jordan Howell regarding the PDC Program. She also noted that legislation has been drafted to formally move the Bank from DOBI to the Commission. (See attached slides for additional details.)

Commissioner Irick said he would like to see more rule making occur.

Acting ED Grogan said the FY 23 work plan listed and prioritized rules on which the staff are currently working. She said Marci Green and Stacey Roth are currently working on the 1<sup>st</sup> group of rules that include Electric Transmission Right-of-Way Maintenance and protection of the Black Run watershed. She said the rule making process is a huge endeavor and lack of staff makes it difficult.

### General Public Comment

Bill Wolfe called in to provide comment on NJDEP's forestry and fuelbreak application (Application Number 2007-0318.001) but before doing so he requested clarification on the following: acreage in which forestry activities will occur, staff's wildfire expertise, the current regulations which do not address climate change or carbon sequestration and Commissioner Wallner's earlier comments on the application. Mr. Wolfe said thinning does not mitigate a forest fire. He said the Commission's action of approving the project was irresponsible, and the plan is destructive. He provided additional reasons as to why he objects to NJDEP's forestry plan. He also said he submitted an Open Public Records Act (OPRA) request for documents related to meetings held between the Commission staff and the NJDEP staff in August. He said there were no responsive documents. He said the Governor should veto the minutes to stop this project.

Georgina Shanley of Citizens United for Renewable Energy said she does not support NJDEP's forestry application and referred to it as "massacre of the Pinelands." She said the clearing will cause habitat fragmentation and a means for off-road vehicle destruction to continue. She said the Commission should be reviewing this application based on the science and protection of the ecosystem rather than the potential for wildfire risk.

Commissioner Irick said he believes that meeting notes or minutes should be taken and made available to the public when Commission staff holds a meeting with another agency.

Commissioner Lohbauer agreed.

Chair Matos said staff provided numerous and sufficient updates on the status of meetings held with the NJ Forest Fire Service regarding the progress of this specific application during multiple public meetings.

Adjournment

Commissioner Pikolycky moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 11:56 a.m.

Certified as true and correct:

  
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Date: October 24, 2022