

Disclaimer

These minutes reflect the actions taken by the Commission during its January 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 January 31, 2022.

PINELANDS COMMISSION MEETING

MINUTES
January 14, 2022

The January 14, 2022 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=o0wPaiBMTFc>

Commissioners Participating in the Meeting

Alan W. Avery Jr., Shannon Higginbotham, Jerome H. Irick, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Jonathan Meade, Davon McCurry, William Pikolycky 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 Rudy Rodas.

Commissioners Absent

Daniel Christy, Jane Jannarone & Gary Quinn.

Call to Order

Chair Matos called the meeting to order at 9:36 a.m.

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

DAG Seminoff administered the Oath of Office to the following three new gubernatorial appointees: Theresa Lettman, Laura Matos and Davon McCurry.

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

The Commission pledged allegiance to the Flag.

Minutes

Chair Matos presented the minutes from the Commission's December 10, 2021 meeting. Commissioner Lloyd moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The minutes from the December 10, 2021 Commission meeting were adopted by a vote of 8 to 0. Commissioner Lettman and Commissioner McCurry abstained from the vote.

Committee Reports

There were no Committee meetings to report on.

Acting Executive Director's Report

Acting ED Grogan provided information on the following matters:

- To curb the recent surge in COVID-19 cases, the staff is currently back to a hybrid remote workplan that consists of two days in the office and three days working from home. This schedule will remain in effect through the end of January.
- A meet-and-greet will be scheduled for the new Commissioners, and it will include a tour of the Commission office and a brief orientation about the variety of matters that are currently before the Commission, including an overview of the application process.
- The final stages of the recruitment process are taking place to fill the six or so vacancies, which include checking applicants' references.
- At the end of 2021, staff updated the Climate Committee and full Commission of its application to the NJ Board of Public Utilities (BPU) for a local government energy audit. The Commission's application has been selected and consultants working on behalf of BPU will be visiting the Commission's office to gather further information to complete the findings report, which will include specific recommendations and improvements.
- Fenwick Manor, which is part of the Commission's offices, remains in need of repair and painting. Staff Archaeologist Tony McNichol is working on a grant application to receive a comprehensive historic structure report for Fenwick Manor. The grant will be submitted to the New Jersey Historic Trust. Staff is also working with the Governor's Authorities Unit to request a special appropriation in the Fiscal Year 2023 budget for repairs to Fenwick Manor.

- The stormwater rules, which were adopted by the Commission in December 2021, will be published in the New Jersey Register on January 18, 2022. The next step for the Commission is to notify all Pinelands municipalities and prepare draft model ordinances that the towns will need to adopt over the next year. In February, staff will showcase the new stormwater rules as part of the Commission's webinar series.
- Staff has recently made great strides with the amendments related to groundwater withdrawal and water supply commonly referred to as our Kirkwood-Cohansey rules. We have reached an agreement with the U.S. Geological Survey (USGS) to assist in implementing the new rules. The USGS will provide a technical review for applications for new wells. This agreement will allow the rules to move forward. The next step is to share a draft with the Policy and Implementation Committee and then the full Commission.
- The Pinelands Development Credit Bank processed a large severance of Pinelands Development Credits (PDCs) that resulted in the permanent deed restriction of 1,128 acres in the Special Agricultural Production Area in Bass River Township and the issuance of 129 development rights (or 32.25 PDCs). The PDCs are listed for sale on the sellers' list. The price of a quarter credit is currently in the \$20,000-\$25,000 range.

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

- The Commission recently issued a Certificate of Filing, and, subsequently, a letter indicating the municipal permits can take effect, for a 3,500-square-foot medical marijuana dispensary in Hamilton Township. Staff has been receiving many inquiries about cannabis facilities in the past few months.
- Staff is working on several landfill closure applications associated with the development of solar energy facilities. They are located in Woodbine Borough, Pemberton Township, Berkeley Township and Southampton Township. He noted that these applications present a challenge for staff because threatened and endangered (T&E) species must be protected and so must the groundwater quality. The landfill in Southampton Township (Big Hill) is capped and did not raise any T&E concerns. Staff will be issuing a Certificate of Filing for the development of a 26-acre solar facility on top of that capped landfill.

Staff confirmed for Commissioner Irick that the solar panels would be installed on a ballast foundation since the cap at Big Hill landfill cannot be penetrated.

Stacey Roth, the Commission's Chief of Legal and Legislative Affairs, said she also serves as the Commission's Ethics Liaison Officer (ELO). She encouraged the new Commissioners to contact her if they have any questions. She advised that she reviews legislation as it relates to Pinelands matters and Pinelands municipalities.

Paul Leakan, the Commission's Communications Officer, noted that registration is now open for the 33rd annual Pinelands Short Course, which will be held at Stockton University's main campus on March 12th. He said the event will feature 31 presentations, including 15 new programs.

Mr. Leakan also noted that Acting Executive Director Grogan has signed an agreement to work with the Rutgers Cooperative Extension on a project to install a rain garden at the Commission's headquarters. He said Rutgers will provide more details about the project in the coming weeks.

Commissioner Lohbauer asked if there will be a virtual option for the Short Course. Mr. Leakan said he will ask Stockton University about that possibility.

Public Development Projects and Other Permit Matters

Chair Matos introduced the first resolution, an application submitted by Hamilton Township and Atlantic County for the replacement of two existing water control slide gates.

Commissioner Lloyd made a motion Approving With Conditions an Application for Public Development and Certificate of Appropriateness (Application Number 1990-0421.013) (See Resolution # PC4-22-01). Commissioner Lohbauer seconded the motion.

Director Horner said staff determined that an application was necessary for the water control gates due to their size (19.5 feet in width). The County is planning to repair the main dam at Lake Lenape and the control gates will regulate the lower lake level during rehabilitation. A Certificate of Appropriateness is necessary to document the historic significance of the existing powerhouse before the modification occurs.

The Commission adopted the resolution by a vote of 9 to 0. Commissioner Meade abstained from the vote.

Chair Matos said the next resolution is for a public park in Egg Harbor City.

Commissioner Higginbotham made a motion Approving With Conditions an Application for Public Development (Application Number 2010-0008.006) (See Resolution # PC4-22-02). Commissioner Lohbauer seconded the motion.

Director Horner said the park will be located on a 6,000 square foot lot at the intersection of Philadelphia Avenue and the White Horse Pike. He noted that the park was constructed prior to the completion of an application. He said the action today will resolve the matter. He said the park will include some benches and a few walkways.

Commissioner Lohbauer asked why the city didn't apply to the Commission for the park.

Director Horner said it was probably an oversight. He said some things are not always conveyed between elected officials and a public works department.

The Commission adopted the resolution by a vote of 10 to 0.

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

Chair Matos read the list of applications up for comment.

Rhyan Grech of the Pinelands Preservation Alliance welcomed the new Commissioners. She provided comments as to why the Commission should not grant the request for an extension of time to the South Jersey Transportation Authority (SJTA). She said the Commission may enter into a Memorandum of Agreement (MOA) with another agency to permit development not consistent with the Comprehensive Management Plan (CMP) so long as there is an equivalent level of protection of the resources of the Pinelands. She said the 2019 amendment to the 2004 SJTA MOA permitted the removal of the Grassland Conservation Management Area (GCMA). She said SJTA is requesting an extension of time for the following: creation of the new GCMA, recordation of a deed restriction and completion of a frosted elfin butterfly project. She said the 2019 Amendment MOA does not allow for these extensions.

Ordinances Not Requiring Commission Action

Acting ED Grogan said all Pinelands municipalities are required to submit any adopted land use ordinances to the Commission for review. She said very few rise to the level of needing formal Commission action. She said there aren't any on today's agenda but there will be in the coming months.

She read the list of ordinances listed on today's agenda that do not require action.

- Barnegat Township 2021 Master Plan Reexamination Report
- Barnegat Township Ordinance 2021-23
- Hamilton Township Ordinance 1973-2021
- Vineland City Ordinance 2021-71

She explained that each month a memo is provided to Commissioners summarizing each ordinance that does not require Commission action.

Other Resolutions

Chair Matos said next on the agenda is a presentation regarding SJTA and an existing MOA.

Acting ED Grogan said Ms. Roth and Stephen M. Mazur, Chief Engineer for SJTA, will be providing the details and obligations of the agreement and the accomplishments thus far, including why it is necessary to request the extension.

Ms. Roth described how SJTA was formed and the role Atlantic City Airport played in the creation of the original 2004 MOA. The Airport wanted to carry out activities that were not consistent with the Pinelands CMP. She provided a summary of how and when the Pinelands Commission can enter into MOAs. She explained the details of the 2004 MOA (see attached presentation slides) including the development projects that were completed at the airport. An offset measure of the 2004 MOA was the creation of the original Grassland Conservation Management Area (GCMA) for threatened and endangered (T&E) bird species: the upland sandpiper and the grasshopper sparrow. Soon after the 2004 MOA was in place, the Federal Aviation Administration (FAA) issued a circular letter prohibiting the establishment of T&E habitat at airports. She said it wasn't until years later that discussions began about removing the GCMA after the FAA raised concerns with SJTA regarding bird strikes to both commercial and military airplanes. On April 12, 2019, the Commission authorized the first amendment to the MOA, which is referred to as the AMOA. The AMOA allowed for elimination of the GCMA on the Airport property. Ms. Roth reviewed the obligations set forth in the AMOA. The SJTA must provide funding to the Commission for land acquisition, with a concentration on grassland bird habitat, if possible. SJTA was also required to acquire a site larger than 62 acres for a new GCMA because the upland sandpiper requires a large swath of land with no structures within a certain distance.

Ms. Roth said finding a site that met the requirements for the new GCMA was a challenge and the COVID-19 pandemic provided additional challenges for SJTA. Both the Executive Director and the Commission previously authorized extensions to the acquisition deadlines. She said in December 2020, Atlantic County acquired land for the new GCMA. She reviewed the provisions of the AMOA for the frosted elfin butterfly that colonized on the airport property and the enhancement project, which requires the planting of wild indigo.

Lastly, Ms. Roth said that should the terms of the AMOA become suspended due to failed payment, a delay in acquiring a new GCMA or a delay in the creation of the frosted elfin butterfly habitat, SJTA can still proceed with development projects by applying to the Commission through the normal public development process, so long as all T&E standards can be met. She added that SJTA cannot move forward with the development projects specified in the MOAs if it cannot meet certain deadlines in the agreement.

Commissioner Lloyd asked if there were any pending applications before the Commission by SJTA.

Ms. Roth said an application for four new wind cones at the Atlantic City Airport was on the agenda for public comment during the November Commission meeting.

Commissioner Lloyd asked if there is any development that is now suspended because of failure to meet the deadlines outlined in the MOA.

Ms. Roth said mowing of the GCMA cannot occur and the development of a hotel/conference center is also suspended. She explained how SJTA can come back into compliance when the AMOA becomes suspended due to missed deadlines.

Mr. Mazur said SJTA has made four payments to Commission totaling \$2 million. He said SJTA was also tasked with acquiring an appropriately sized cleared parcel in Atlantic County for the development of the new GCMA. SJTA partnered with Atlantic County, which used open space funds to purchase the old Royal Casino horse farm along the Atlantic City Expressway. He said the property has not yet been deed restricted because the County has requested that SJTA first receive all its permits and approvals for the development of the GCMA. SJTA has been actively developing its plans for the new GCMA after meeting with the P&I Committee in April 2021. He said the pandemic has slowed progress but SJTA has continued to make advancements, which he detailed. He said the FAA approved the Airport Layout Plan for the Atlantic City Airport, and the plan included certain conservation elements. Mr. Mazur described the setback with the wild indigo crop, which was key for the frosted elfin butterfly habitat enhancement project. He noted SJTA's ingenuity of finding and growing the crops elsewhere, so they would be available to plant on the airport property.

Mr. Mazur closed by reiterating the next steps: obtaining Commission approval and permits from the New Jersey Department of Environmental Protection (NJDEP) for the development of the new GCMA, filing the Deed of Conservation Restriction (DCR) when the time comes, and additional planting of wild indigo this coming summer at the enhancement site on airport property. Mr. Mazur said not all development at the airport is affected by the suspension of the AMOA and clarified that the wind cone project is not part of the AMOA.

Commissioner Lohbauer asked what types of development will occur to create the new GCMA.

Mr. Mazur said there are a few pockets of trees that need to be removed or the birds will not nest. He said wildlife fencing will be installed to prevent predators from gaining access to the property. He said the advisory committee has selected a variety of grass species that will be planted on the property.

Commissioner Lohbauer asked for an estimation of time as to when the Deed of Conservation Restriction (DCR) will be recorded.

Ms. Roth said staff is in the process of reviewing the application for the new GCMA and once that is approved, staff will work with Atlantic County on the development of specific DCR language. The county does not want to move forward with a DCR prior to understanding the stipulations related to the maintenance of the new GCMA.

Ms. Roth further clarified that the mowing at the existing GCMA cannot occur until SJTA is back in compliance with the stipulations of the AMOA.

Commissioner Lloyd asked if the mowing needs occur, when would that need to happen based on FAA guidelines.

Mr. Mazur said he believes the date is April 1.

Commissioner Lloyd raised concerns with the extensions being pushed too far into the future.

Ms. Roth advised that they can be adjusted as the Commission feels necessary.

A discussion took place regarding the amount of time the new GCMA will take to create. Mr. Mazur said the monitoring and maintenance of the site will continue in perpetuity. He said reporting is required to the Commission and invasive species will need to eventually be treated at the site. Ms. Roth added that is very hard to predict how long the process to create the new GCMA will take and it's hard to compare the original enhancement GCMA project at the airport to the creation of the new GCMA on the former horse farm.

Commissioner Lohbauer said this Commission has an obligation to the public and the CMP and he would like to see the extension of time for the creation of the new GCMA be shortened.

Chair Matos requested a motion for the actual resolution since the presentation was finished.

Commissioner Lohbauer made a motion Authorizing an Extension of the Time Period by Which the South Jersey Transportation Authority Must Complete Obligations Pertaining to the New Grassland Conservation and Management Area and Frosted Elfin Butterfly Enhancement Project as Required by the April 16, 2019 First Amendment to the February 26, 2004 Memorandum of Agreement Between the New Jersey Pinelands Commission and the South Jersey Transportation Authority (See Resolution # PC4-22-03). Commissioner Avery seconded the motion.

Commissioner Lloyd made a motion to amend the resolution to shorten the extension of the deadline for the creation of the new GCMA from April 16, 2026 to April 16, 2024. Commissioner Lohbauer seconded the motion.

Nine Commissioners voted in favor of the motion to amend the resolution and Commissioner Lettman voted no. The motion to amend the resolution passed.

Commissioner Lettman asked if the amount of time to enhance the habitat for the frosted elfin butterfly was realistic.

Ms. Roth said based on the quantity of the plantings and preparations SJTA described, the time frame is realistic.

Commissioner Avery asked if the horse farm purchased by Atlantic County with open space funds has been placed on the Recreational and Open Space Inventory (ROSI).

Ms. Roth confirmed that the property is listed on the ROSI.

Commissioner Avery said the DCR will provide an extra level of protection.

Ms. Roth said that is correct since the Commission's DCR is more limiting as to what can be done on the parcel.

Commissioner McCurry asked if Mr. Mazur had a response to the change in deadline for the creation of the new GCMA.

Mr. Mazur said he had no objection.

Chair Matos called the vote on the amended resolution.

The Commission adopted the resolution by a vote of 10 to 0.

Chair Matos introduced the last resolution, to Accept the Fiscal Year 2020 Audit Report.

Commissioner Pikolycky made a motion To Accept the Fiscal Year 2020 Audit Report (See Resolution # PC4-22-04). Commissioner Avery seconded the motion.

Commissioner Avery noted that once again there were no findings in the audit report. He thanked Brian Logan and Mike Mansdoerfer, who serve as the public members of the Audit Committee.

The Commission adopted the resolution by a vote of 10 to 0.

General Public Comment

Carleton Montgomery of the Pinelands Preservation Alliance congratulated the newest members of the Commission, especially Theresa Lettman, whom he said has worked so hard over the years to protect the Pinelands. He said no one is more deserving. He added that the Commission has a lot of work to do related to water supply protections, climate change and land stewardship.

Other

Commissioner Pikolycky requested that staff provide guidance on the recently signed legislation regarding all-terrain vehicles and how it relates to Pinelands municipalities.

Commissioner Lohbauer said the next Climate Committee meeting will be held on February 25th and the Committee will discuss climate-related amendments to the CMP. He encouraged the public to provide their input.

Acting ED Grogan clarified that the Climate Committee will be discussing a resolution that will include climate-related goals and objectives. Staff is not currently working on CMP amendments to present to the Committee.

Acting ED Grogan added that the Commission has three Committees: the CMP Policy & Implementation Committee, the Personnel & Budget Committee and the Climate Committee. All three Committees have scheduled meeting dates for 2022. She said the Chair will be reaching out to new Commissioners in order to determine who has an interest in serving on one of these committees.

Commissioner Avery welcomed the new Chair and Commissioners. He said outgoing Chairman Rick Prickett was a dedicated member of this Commission and he will be missed.

Commissioner McCurry and Chair Matos thanked the Senate and Governor for the opportunity to serve as a member of the Pinelands Commission.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Pikolycky seconded the motion. The Commission agreed to adjourn at 11:47 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: January 31, 2022