

Disclaimer

These minutes reflect the actions taken by the Commission during its May 14, 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 May 26, 2021

PINELANDS COMMISSION MEETING

MINUTES
May 14, 2021

The May 14, 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=Afcol6RFICc>

Commissioners Participating in the Meeting

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

Commissioners Absent

Daniel Christy, Jordan P. Howell, Jane Jannarone and D'Arcy Rohan Green.

Call to Order

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

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

Executive Director Wittenberg called the roll and announced the presence of a quorum.

The Commission pledged allegiance to the Flag.

Minutes

Chairman Prickett presented the minutes from the Commission's April 9, 2021 meeting. Commissioner Lloyd moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the April 9, 2021 Commission meeting were adopted by a vote of 8 to 0.

Committee Reports

Chairman Prickett provided an update of the April 30, 2021 Policy & Implementation Committee meeting:

The Committee adopted the minutes of its March 26, 2021 meeting.

The Committee received a presentation by representatives of the South Jersey Transportation Authority (SJTA) regarding its recently acquired grassland conservation and management area in Hamilton Township. The site was acquired to satisfy SJTA's obligations under its amended MOA with the Commission. The Committee reviewed four alternatives for creating the required amount of habitat, focusing on the amount of tree removal that would be necessary. The Committee agreed that Alternative #4 would best provide for the required acreage to accommodate the birds while minimizing environmental impacts and mitigation costs. The Committee asked SJTA to confirm that Alternative #4 will also provide more carbon sequestration than other alternatives.

The Committee reviewed and approved the updated deed language for properties acquired through the upcoming round of acquisitions through the Pinelands Conservation Fund. A press release and invitations will be released in late May.

The Committee met in closed session to receive advice from DAG Miles regarding the Commission's authority to impose a moratorium on horizontal directional drilling (HDD) for linear projects.

In open session, the Committee agreed on a three track approach to address concerns with the impacts of HDD: repeal of the exemptions in 7:50-4.1(a)5 and 6; new standards to govern the use of HDD; and consultation with the Governor's office on the necessary CMP amendments.

Commissioner Lohbauer provided an update on the April 21, 2021 Climate Committee meeting.

The Committee discussed and decided to change its name from the Land Use, Climate Impacts and Sustainability Committee to the Pinelands Climate Committee.

Staff provided an update on five forestry stewardship bills that are pending before the Legislature. Commissioner Lohbauer said he has to recuse from any further discussion of the forestry bills because of his affiliation with the New Jersey Highlands Coalition, which took a formal position on the bills.

Staff delivered a presentation on solar energy facilities. The Committee started to discuss possible changes to the solar rules. Commissioner Lohbauer said that discussion will continue at the Climate Committee's next meeting on May 19th.

Commissioner Avery said the audit for Fiscal Year 2019 and 2020 has begun. Staff is currently providing financial information to the state audit team.

Executive Director's Report

ED Wittenberg said that staff and Commissioners are scheduled to meet with the New Jersey Department of Environmental Protection (NJDEP) new Commissioner, Shawn LaTourette. She noted it will be a good opportunity to discuss the Off-Road Vehicle issue.

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

- Staff continues to assist both the Waterford Township Engineer and the applicant proposing a change of use at the Atco Dragway.
- Staff participated in two different meetings this past month regarding sanitary sewer extension to two existing schools in Pemberton Township.
- During the past few months, staff has mentioned issues related to older subdivision approvals in areas where zoning changes have occurred. Staff continues to assist towns who are under the impression that the subdivision approval remains valid indefinitely and not subject to current zoning
- Regulatory Programs and Planning staff continue to meet with applicants interested in developing solar facilities on landfills. The Commission's regulations require that if the landfill stopped accepting waster prior to the 1981 date outlined in the Comprehensive Management Plan, the landfill does not have to be capped. If the landfill continued to accept waste after the 1981 effective date, the landfill is required to be capped or an alternative measure must be undertaken to ensure that groundwater quality standards are met. Staff is currently working with Pemberton Township, Manchester Township and Berkeley Township to determine the necessary measures.
- Staff held a pre-application conference on April 27th with an applicant interested in constructing 1.5 million square feet of office warehouse space on a 250 acre parcel in Manchester Township. The property is currently zoned residential. The applicant was advised that a zoning change is necessary and it must be initiated by the township. The parcel was a former resource extraction operation.

Director Horner said in certain instances applicants are required to impose a deed restriction on their parcel. He said certain activities are still permitted within the deed-restricted portion, however sometimes activities may inadvertently be included as unpermitted activities in the deed. He said the NJDEP is the grantee of the deed since the Commission cannot hold property rights.

Stacey Roth, Chief of Legal and Legislative Affairs said when the Legislature enacted the Pinelands Protection Act, the Commission was not given the authority to own property, and

therefore the Commission cannot be the grantee on a conservation restriction. She explained that many years ago an arrangement with the NJDEP was created which specified the Department as the grantee and the Commission as a third party beneficiary with enforcement rights. She said situations arise that require a modification to a deed and although rare, deeds are sometimes even lifted. She said any modification must follow a specific process with NJDEP Green Acres and because of the New Jersey Conservation Restriction and Historic Preservation Restriction Act requires sign off from the NJDEP Commissioner.

Commissioners further discussed landfills and the dates associated with capping requirements in the Comprehensive Management Plan (CMP).

Commissioner Lloyd asked if the Commission has good landfill data.

Director Grogan said the Commission has information from the Rapid Landfill Assessment and added that an applicant is required to provide evidence as to when a landfill stopped accepting waste.

Commissioner Irick suggested that the Commission consider requiring applicants to use the ballasted mounting system for solar projects on landfills to eliminate drilling into the ground.

Director Horner said past applicants have proposed this installation technique.

Commissioner Lohbauer suggested continuing the conversation at the next Climate Committee meeting.

Director Grogan provided an update on the following Planning matters:

- The Commission is accepting applications for new technologies to participate in the Alternate Design Septic Pilot Program. Invitations have been mailed and a notice was filed in the New Jersey Register. The program can accept up to five new technologies.
- A new round of land acquisition grants totaling \$1 million from the Pinelands Conservation Fund will be available to county and municipal partners, including non-governmental organizations. This round of grant money will prioritize existing grassland bird habitat, including climate change factors. The NJDEP recently announced its new round of Green Acres funds.
- The Pinelands Development Credit Bank processed a large severance (a separation of Pinelands Development Credits, or PDCs, from a property for a permanent deed restriction). The 480-acre parcel is located in a Special Agricultural Production Area in Bass River Township and had 67 rights. The PDCs from that property will be used for a project in a Regional Growth Area in Ocean County.

Stacey Roth thanked Commissioners for filing their Financial Disclosure Statements in a timely manner. She said the April Management Report includes a synopsis of the Appellate Division's decision involving the New Jersey Natural Gas Company's Southern Reliability

Link (SRL) Project. She said the Appellate Division recently issued a decision in favor of the NJDEP regarding a property rights matter with Phoenix Pinelands, a mining operation in the Pinelands Area.

Paul Leakan, Communications Officer, said the first-ever virtual Pinelands Short Course panel discussion was held on April 24th. He said over 100 people livestreamed the event, and the recording is available on the Commission's YouTube channel. The Pinelands Summer Short Course is scheduled for July 15th and additional details will be announced soon. He said the Commission's Instagram account just celebrated its first birthday. Since the site was launched one year ago, staff has shared 1,301 photos and 72 videos in 547 posts, while gaining 1,500 followers. He noted that staff took the vast majority of those photos and videos during lunch hours, before work, after work or on weekends. Lastly, he said a new Pine Barrens Byway brochure will be printed soon, and it will include a QR code that is linked to the Byway's StoryMap/trip planner.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval for the demolition of an industrial building in the Town of Hammonton and the construction of a large New Jersey National Guard building at the Joint Base.

Commissioner Lloyd made a motion Approving With Conditions Applications for Public Development (Application Numbers 1986-0944.007 & 2006-0160.003) (See Resolution # PC4-21-13). Commissioner Lohbauer seconded the motion.

Chairman Prickett asked if Hammonton has a Historic Commission and, if so, whether it would be reviewing the application.

Director Horner said he was unsure if Hammonton has a Historic Commission but the application was reviewed by Commission staff for cultural significance. He said if the development is in a known historic district, the CMP outlines certain requirements.

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

Chairman Prickett read the list of Public Development Applications. No one provided comment on the applications.

Ordinances Not Requiring Commission Action

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

- Egg Harbor Township Ordinance 11-2021
- Weymouth Township Ordinance 573-2021
- Hamilton Township Ordinance 1945-2021

No questions were raised.

General Public Comment

Rhyan Grech of the Pinelands Preservation Alliance (PPA) said that Ocean County and Burlington County Commissioners recently passed resolutions opposing the rate increase that New Jersey Natural Gas (NJNG) has requested from the Board of Public Utilities (BPU). She said the cost of the (SRL) pipeline increased significantly over time due to the 13 confirmed Inadvertent Returns. She said she hoped the Commission would pursue a reprimand against NJNG for the damage in the Pinelands. She said the NJDEP is considering a penalty or fine for NJNG. She said PPA is hosting a virtual forum on June 2nd that will focus on damage caused by Off-Road Vehicle use. She said the event will be livestreamed on PPA's YouTube channel and the keynote speaker is George Wuerthner, author of Thrillcraft.

Other

Commissioner Lohbauer said maybe the Commission should consider doing its own review of the SRL pipeline project to determine if the applicant conducted itself in a responsible manner and if there was anything the Commission could have done differently.

Commissioner Lohbauer asked about the progress of filling staff vacancies, especially with the upcoming retirement of a Planning Office staff member.

ED Wittenberg said the hiring memo is about 80% complete.

Commissioners agreed that this was an urgent matter and requested that the positions be advertised and interviews be conducted to fill the six vacant positions.

Ms. Roth confirmed that the Commission's By-laws allow the Executive Director to hire in accordance with the personnel policies of the Commission.

Chairman Prickett asked that he be kept updated on the hiring progress.

Commissioner Avery said the Commission has asked a lot of the Planning Office in the past six months and he would like to see positions in that office filled first.

Closed Session

Commissioner Lloyd made a motion to enter into Closed Session. Commissioner Higginbotham seconded the motion. All were in favor.

Ms. Roth advised that in Closed Session the Commissioner would receive advice related to the Open Public Meeting Act, Open Public Records and Conflicts of Interest.

The Commission retired into Closed Session at 10: 52 a.am.

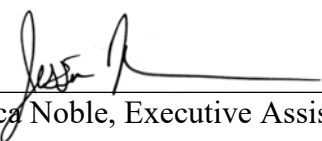
Return to Open Session

The Commission returned to open session at 11:34 a.m. Ms. Roth provided a summary of the discussion.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Avery seconded the motion. The Commission agreed to adjourn at 11:35 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: May 21, 2021