

Disclaimer

These minutes reflect the actions taken by the Commission during its April 9 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 3, 2021

PINELANDS COMMISSION MEETING

MINUTES  
**April 9, 2021**

*The April 9, 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=uxqUMhLYy4o>*

Commissioners Participating in the Meeting

Alan W. Avery Jr., Daniel Christy, Shannon Higginbotham, Jerome H. Irick, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky 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

Jordan P. Howell, Gary Quinn and D'Arcy Rohan Green.

Call to Order

Chairman Prickett called the meeting to order at 9:33 a.m.

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

The Commission pledged allegiance to the Flag.

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

Minutes

Chairman Prickett presented the open and closed session minutes from the Commission's March 12, 2021 meeting. Commissioner Lloyd moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the March 12, 2021 Commission meeting were adopted by a vote of 8 to 0.

Commissioner Christy joined the meeting at 9:40 a.m.

#### Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval for stormwater management improvements within the Route 30 right-of-way in Winslow Township.

Commissioner Pikolycky made a motion Approving With Conditions an Application for Public Development (Application Number 2019-0142.001) (See Resolution # PC4-21-11). Commissioner Lohbauer seconded the motion.

Director Charles Horner said this application is for two stormwater modifications along the White Horse Pike.

Commissioner Lohbauer noted that retention basins are not proposed as part of this application but rather a series of underground pipes.

Chairman Prickett asked if the volume of surface water would stay the same.

Director Horner said the wetlands protection standards outlined in the Comprehensive Management Plan (CMP) do not permit an increase in rate or volume of discharge in the Pinelands Area.

Ernest Deman of the Regulatory Programs Office further explained where the surface water would discharge.

Chairman Prickett asked if any preventive measures were in place to capture petrol.

Director Horner said no preventative measures are proposed as part of this application. He noted the CMP requires certain actions when a surface area is deemed to be a high pollutant loading area.

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

#### Planning Matters

Chairman Prickett presented a resolution for a Barnegat Township Ordinance.

Commissioner Avery made a motion Issuing an Order to Certify Ordinance 2021-4, Amending Chapter 55 (Land Use) of the Code of Barnegat Township. Commissioner Jannarone seconded the motion.

Susan R. Grogan, Director of Planning, said the Executive Director's report was revised after the Policy and Implementation Committee meeting to indicate the broader impacts of the Ordinance. A map was displayed to show the Commercial Neighborhood zone both east (Pinelands National Reserve) and west (inside the Pinelands Area) of the Garden State Parkway. She said the township has added standards for Assisted Living facilities since the CMP defines them as a residential use. The township has established permitted densities, use of Pinelands Development Credits (PDCs) and bonus density. The Township's goal is to encourage and attract the development of hotels and motels within 1,000 feet of either side of the Parkway. She added that the ordinance is consistent with the CMP.

Commissioner Lloyd said originally he had concerns that the Ordinance was spot zoning and he said he raised the issue at the P&I Committee meeting. He thanked Director Grogan for the additional information that shows the Township's intent.

Commissioner Irick raised concerns that the CMP does not have limitations regarding height and density. He said he thinks the CMP should be revised to address both. He added that he will most likely abstain from the vote on the Barnegat ordinance.

Commissioner Lohbauer said the Commission received public comment related to concerns that new development would create flooding in the residential development in which they reside. Commissioner Lohbauer said it's premature for that comment considering there is no development application.

Commission staff members confirmed that at this time no development is be proposed and this is for an ordinance approval only. Additionally, all stormwater management rules would apply.

Commissioner Lloyd said he shared Commissioner Irick's concern, and he said the Commission should consider addressing the matter. Commissioner Lohbauer agreed, and Chairman Prickett suggested the issue could be discussed at a future P&I Committee meeting.

Chairman Prickett said staff should encourage water and energy conservation measures whenever possible because with the increase in density, there is an increased stress on our natural resources.

The Commission adopted the resolution by a vote of 8 to 0. Commissioner Irick abstained from the vote.

### Committee Reports

Chairman Prickett provided an update of the March 26, 2021 P&I Committee meeting:

The Committee adopted the minutes of the February 26, 2021 meeting.

The Committee reviewed Barnegat Township Ordinance 2021-4 but made no recommendation to the Commission, pending receipt of additional information from the Township on the applicability of the ordinance.

The Committee received a presentation on the proposed 2021 round of land acquisition using the Pinelands Conservation Fund. The new round focuses on grassland habitat and carbon sequestration. The Committee endorsed the schedule and the matrix to be used for evaluating project applications.

The Committee reviewed the latest updates to the draft CMP stormwater management amendments. These amendments will next be provided to the Governor's Office for review.

The Committee continued its discussion of application exemptions.

Commissioner Lohbauer said the Land Use, Climate Impacts and Sustainability (LUCIS) Committee met on March 17, 2021. Due to the lack of a quorum, the Committee could not adopt its minutes from the previous meeting.

Staff provided an update on the proposed new round of Pinelands Conservation Fund land acquisition.

Two speakers delivered presentations on forestry management issues.

Lastly, the Committee discussed the possibility of changing its name.

Commissioner Avery said staff is working on scheduling a pre-audit meeting with the State Auditor.

#### Executive Director's Report

ED Wittenberg confirmed that the Fiscal Year 2020 Audit will begin soon. She also said that she has spoken to the New Jersey Department of Environmental Protection (NJDEP) about the process to schedule a meeting with the Acting Commissioner. She also mentioned that she spoke with the NJDEP about Horizontal Directional Drilling (HDD). She said the NJDEP is in the very early stages of drafting rules, noting that the Department does not currently have any regulations regarding HDD. In talking to the Department, she learned that they requested guidance from the State Science Advisory Board. Lastly, she said the hiring memo to the Governor's Authorities Unit is almost complete.

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

- A Certificate of Filing was issued for the development of 55 single-family dwellings in Hamilton Township. The entire parcel is 436 acres but the development envelope will be about 60 acres; many acres will be deed-restricted because of the Commission's clustering rules.
- Staff will be participating in an upcoming trial regarding the establishment of a commercial development that occurred without application to the Commission or the Township. The violator cleared approximately six acres, which included some wetlands and wetland buffers in Galloway Township.
- Staff held a conference call with an applicant to discuss a prior subdivision approval dating back to the early 2000's. The New Jersey Municipal Land Use Law (MLUL) offers limited protection for zoning changes, after which projects must adhere to current zoning.
- At the beginning of March, staff sent a letter to Pemberton Township that outlines the application requirements regarding sewerage two existing schools. The schools are located in a Rural Development Area. In order for the sewer line to reach the school, it would traverse through the Agricultural Production Area. Sewer is only permitted in the Rural Development and Agricultural Production Areas if it is demonstrated that there is a public health problem.

Director Grogan provided an update on the following Planning matters:

- The Septic Pilot Program will soon be accepting applications for new technologies. Staff began the process by sending a notice to the Office of Administrative Law, that notice will be published in the New Jersey Register on May 3. The Pilot program can accept up to five new technologies.
- A recent press release from the Board of Public Utilities announced that it had received 410 applications for Round Two of its Community Solar Pilot Program. Approximately seven to 10 of those applications are in the Pinelands Area.
- Atlantic County recently submitted a copy of recorded deed restriction. The County was required to acquire and preserve a total of 356 acres as part of the Secondary Impacts agreement associated with the construction of Interchange 44 on the Garden State Parkway. The County only has 14 more acres to acquire.

Commissioner Avery asked if there were height requirements designated by the CMP. He also wanted affirmation from staff that each management area has an assigned or associated density.

Director Grogan said there is a 35-foot height limit in all Pinelands Management Areas, except Regional Growth Areas and Pinelands Towns. She also said that each management area has an assigned density.

Stacey Roth, Chief of Legal and Legislative Affairs, said Commissioners must file their Financial Disclosure Statements (FDS) by May 15, 2021.

Paul Leakan, Communications Officer, said he shared the final 40<sup>th</sup> Anniversary CMP post this morning, and it highlights the benefits of Pinelands preservation and regional planning. He said that since launching the anniversary celebration on January 14th, the Commission

has shared 125 CMP-related posts on 60 consecutive workdays, along with 463 photos and 26 videos. He said that based on the response from the public, the Commission's efforts have greatly heightened awareness of the history, purpose and successful implementation of the CMP, along with showcasing the work of the Commission and its staff.

Commissioner Jannarone left the Zoom meeting.

#### 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.

- Barnegat Township Ordinance 2021-6
- Eagleswood Township Ordinance 2021-01
- Manchester Township Ordinances 21-08 & 21-09

No questions were raised.

#### General Public Comment

Agnes Marsala of Chesterfield Township asked if Commissioners had determined why they were not informed about the Inadvertent Returns (IRs) in a timely manner. She said three more IRs recently occurred along the Southern Reliability Link (SRL) pipeline route outside of the Pinelands Area. She said the Commission should craft its own policies regarding HDD and not wait for the NJDEP.

Rhyan Grech of the Pinelands Preservation Alliance (PPA) provided information about recent IR's that occurred outside of the Pinelands during the week of March 15<sup>th</sup>. She said New Jersey State agencies have failed to protect the Pinelands, and the land, water and health of New Jersey residents. She said thus far there has been no accountability from New Jersey Natural Gas (NJNG) or its contractors. She asked Commissioners to urge the NJDEP to halt construction of the SRL pipeline and let the courts decide.

Chairman Prickett said he hopes the public is commenting about the SRL pipeline at other state agency meetings, not just Commission meetings. He said the members of the P&I Committee have been discussing issues raised by the public. He said protection of the water in the Pinelands remains a priority and any proposed HDD in the Pinelands will need to meet the water quality standards in the CMP.

Commissioner Christy said he doesn't agree with comments that the ED withheld information. He said it makes the ED sound negligent. He said the appropriate action was taken at the time of the IRs.

Patricia Caruso of Upper Freehold Township spoke about the endless hours she has spent fighting the SRL to protect the water and the environment in her community. She also asked Commissioners to reach out to NJDEP to halt construction and let the courts decide the outcome of the pipeline.

#### Other

Commissioner Lohbauer said he would like to have an expanded discussion at the P&I Committee about HDD in the Pinelands. He said he doesn't think the Commission needs to wait for NJDEP to draft rules.

Commissioner Lloyd said the Commission needs to make HDD a priority but acknowledged that the P&I Committee agendas are full with other important matters. He said HDD should definitely be discussed with the Acting NJDEP Commissioner. He said the Commission should not wait for the next application proposing HDD to create regulations.

Commissioner Avery said he agreed with Commissioner Lloyd that the topic of HDD should be on the agenda for when Commissioners meet with the Acting NJDEP Commissioner. He said the NJDEP has an interest in HDD as it is common practice used to install a multitude of utility lines. He said as the process unfolds, the Commission needs to hear from other stakeholders. He said the Executive Director's Recommendation Report for the SRL pipeline application took into account IRs and a process was in place should they occur.

Chairman Prickett said he would welcome other stakeholders as the HDD process unfolds. He said he is interested in minimizing any negative effects the construction method would have on Pinelands water and habitat.

Commissioner Irick said HDD is not the state of the art process that it is portrayed to be. He said there are many issues with the method. He suggested working quickly to come up with policies and procedures regarding HDD and, in the meantime, declaring a moratorium on all HDD in the Pinelands.

Ms. Roth said a moratorium is a significant action and would require further exploration, and the Commission would need to include potential parameters for instances where HDD may be necessary. Currently, the CMP allows for certain exempt activities to occur without application to the Commission, as outlined in the 4.1 section of the plan. Without rule making, the Commission cannot change those rules.

Chairman Prickett asked if applicants proposing exempt activities still have to adhere to the environmental standards of the CMP.

Ms. Roth said CMP environmental and land use standards still apply.

DAG Miles said she would have to do some research to determine if the Commission has the ability to impose a moratorium. Notice to the regulatory community, including potential applicants would need to be considered. She said she would need to know if this is something the Commission as a whole wants to pursue and what the potential parameters would be. She asked, for example, if the moratorium would include all trenching construction techniques or just HDD.

Commissioner Lloyd requested that staff inform Commissioners of future projects proposing HDD. He said the state has used moratoria in the past but said he feels the Commission should focus on expedited rule making.

Commissioner Lohbauer said that while the Commission works to change the rules, a moratorium should be put in place to allow Commissioners to take action on proposed exempt activities under 7:50-4.1(a) 5 & 6 that involve use of HDD, rather than letting staff review them.

Ms. Roth said there is a possibility that the Commission can do an emergency rule. She said notice must be provided to the public and the process occurs parallel with the actual rule making.

Director Grogan said emergency rule making is an option. However, certain steps and requirements must be met, including signoff from the Governor's office on a statement of imminent peril.

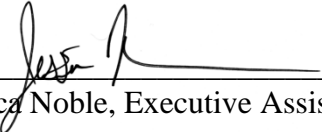
Chairman Prickett said the discussion on this matter would continue at the next Policy and Implementation Committee meeting on April 30. He asked if the Commission could be provided with legal advice regarding a moratorium on application of the exemptions in 7:50-4.1(a) 5 & 6 to projects proposing HDD.

DAG Miles said she would look into the Commission's authority to impose a temporary moratorium on linear development where HDD is proposed until the Commission undertakes formal rule making.

### Adjournment

Commissioner Avery moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 11:46 a.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: May 3, 2021