

Disclaimer

These minutes reflect the actions taken by the Commission during its February 13, 2009 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 March 3, 2009.

PINELANDS COMMISSION MEETING  
Richard J. Sullivan Center  
Terrence D. Moore Conference Room  
15 Springfield Road  
New Lisbon, New Jersey

Minutes

**February 13, 2009**

Commissioners Present

Candace Ashmun, William Brown, Leslie M. Ficcaglia, Paul E. Galletta, John A. Haas, Robert Jackson, Daniel M. Kennedy, Stephen Lee, III, Edward Lloyd, Robert McIntosh, Francis A. Witt and Vice-Chairman, Norman F. Tomasello. Also present were Executive Director John C. Stokes and Deputy Attorney General Valerie Haynes.

Commissioners Absent

Guy Campbell

Vice-Chairman Tomasello called the meeting to order at 9:35 a.m.

Deputy Attorney General Haynes read the Open Public Meetings Act Statement.

Mr. Stokes called the roll.

The Commission and public in attendance pledged allegiance to the Flag.

Minutes

Vice-Chairman Tomasello presented the January 16, 2009, Part II Commission meeting minutes. Commissioner Witt moved the adoption of the minutes. Commissioner Jackson seconded the motion.

The Commission adopted the minutes by a vote of 12 to 0.

Committee Chairs' and Executive Director's Reports

Personnel and Budget Committee Meeting

Commissioner Ficcaglia reported that the Committee met on February 5, 2009 and adopted the minutes from the January 8, 2009 meeting.

The Committee reviewed the details of the December 2008 financial statements.

The Committee was provided an update on Business Services. Ms. Connor reviewed the employee Handbook along with the Pinelands Personnel Management System. The Employees Activities Committee was also discussed.

The Committee reviewed the check register and electronic funds transfer (EFT) disbursements for January 2009.

Employee actions during January 2009 were reviewed. It was noted that one candidate applied for the internal posting.

The Committee was provided an update on Fenwick Manor renovations. Ms. Connor informed the Committee that a pipe froze and burst in the barn causing damage. It is expected that it will be covered under the insurance policy. Also, a check was received from the insurance company regarding the bathtub and radiators that were stolen last year.

The Committee received an update on application fees for January.

Permanent Land Protection Committee Meeting

Commissioner Ashmun reported that the Permanent Land Protection Committee met on January 30, 2009 and adopted the minutes from the December 1, 2008 Committee meeting.

The Committee voted to approve extensions for seven second-round projects under the Pinelands Conservation Fund.

The Committee reviewed ten applications for the third-round of funding under the Pinelands Conservation Fund. Four projects were allocated funds. Funding for two additional projects, located outside the pre-approved acquisition areas, was also recommended. Those recommendations are on the Commission's agenda for consideration today.

Public and Governmental Programs Committee Meeting

Commissioner Lee reported that the Public and Governmental Programs Committee met on January 26, 2009 and continued its discussion on the draft County/Municipal Public Development Streamlining MOA.

Commission staff reviewed the general framework of the draft MOA and explained the specifics of the MOA with the Committee. The MOA establishes a process for municipalities and counties to pursue a streamlined approval for certain development activities. Committee members suggested revisions and clarifications to the MOA. If the MOA is approved by the Commission, Committee members suggested that the Commission be subsequently informed of any issues raised by individual MOA applications so that the Commission could review, and if necessary, revise the MOA. Commission staff indicated that the staff would review the Committee's comments and prepare a revised draft MOA for the Committee's next meeting scheduled for February 24, 2009.

#### CMP Policy and Implementation Committee Meeting

Vice-Chairman Tomasello reported that the CMP Policy and Implementation Committee met on January 30, 2009 and adopted the minutes of the January 5, 2009 meeting.

The Committee received maps and materials for the February 18, 2009 Special P&I Meeting for the EIA Project.

The Committee discussed the following draft rules: Electric Transmission Rights-of-Way Plan, Forestry, and Wetlands Restoration.

#### Executive Director's Report

Mr. Stokes reported on the following items:

The Commission has two resolutions on its agenda recommending Pinelands Conservation Fund monies be awarded to two projects. Both of the projects are under contract so it is appropriate for the Commission to consider them in open session. However, staff will be briefing the Commission in closed session on other decisions that the Permanent Land Protection Committee (PLP) made that can not be divulged publicly because negotiations are still underway. Mr. Stokes asked whether the Commission would prefer to hold the two resolutions until after staff provides it with an update in closed session.

Commissioner Ashmun suggested that the resolutions be held until after the closed session since there are some explanations that will have to be made with regard to the projects.

Mr. Stokes continued with his report.

Mr. Stokes along with several staff attended the Pinelands Preservation Alliance's (PPA) Science Policy Forum. The forum involved input from a number of organizations, including the Pinelands Commission's Science office who participated on one of the panels. The topics covered Fire in the Pinelands, Landscape Ecology, Water Quality, and Water Supply. The forum was very informative and the speakers were very good. Mr. Stokes congratulated PPA on its efforts.

A pipe broke in the Commission's barn in the finished part that housed the Commission's Science Office, including the Science lab. This created a fair amount of damage which will delay the renovation project on the second floor. While staff hopes to get some reimbursement from the insurance company, it is a little unsure exactly how this will play out at this point because the Commission has renters insurance now due to the fact that the property and buildings are owned by the State. It seems that the break was the cause of a construction defect when the first floor of the barn was refurbished. This is being investigated as well.

Commissioner Lee asked if the pipe froze or if it failed.

Mr. Stokes replied that the pipe froze.

Mr. Stokes continued with his report.

The Short Course will be held on March 7<sup>th</sup>. There are over 500 registrations thus far. This is the largest attendance in its history.

Relative to the Management Area Map changes that staff has been discussing with the CMP Policy and Implementation Committee (P&I) for the last 5 or 6 months, Mr. Stokes and Mr. Liggett attended the Pinelands Municipal Council meeting on January 29 to give them another update on the changes. Arrangements were made for Mr. Liggett to meet individually with some of the town representatives that were present. Mr. Liggett and his staff are continuing to meet with municipalities and counties to gather information. The meetings held thus far have provided useful information. This matter is in the very early stages of the Commission's consideration but this doesn't seem to have registered at least with some officials in Atlantic County. Staff will continue to try and reach out to them as this matter moves ahead.

Commissioner Lee referred to the outreach that Mr. Liggett and Mr. Leakan have done and said that he believes is unprecedented and has yielded a lot of results because the product that is now before the Commission is much better than it was when it began as a draft. The chance for the municipalities to interact with Commission staff has proven to be very helpful. He said he believes the way to address the current concerns is by continuing to do just what staff is doing, having as many one-on-one meetings as possible and keeping the towns engaged. He said in terms of understanding the map, it might be easier for everyone to understand if it could be shown on an aerial as the base. Current land use would then be obvious and could be used to better orient those using the maps. The proposed changes could then be shown with a very thin color layer.

Mr. Stokes stated that staff will take note of Commissioner Lee's request.

Mr. Stokes stated that the Special P&I Committee meeting on February 18 will be devoted exclusively to the map changes. He said that the normal P&I Committee meeting scheduled for February 27 will be devoted to other policy matters. Staff may be asking the P&I to schedule a second special meeting to continue to discuss the map changes.

Commissioner Galletta stressed the importance of reaching out to private owners due to zoning map changes.

Mr. Stokes stated that sending out notices to all the property owners who are affected by the map changes is not required under the Pinelands Protection Act and it isn't anticipated under the Act. Staff has issued a number of press releases and there have been a number of articles in the newspapers. He said that staff will continue to do this when it begins the formal rule process, there are formal notifications that go out and public hearings will be conducted throughout the Pinelands. He said that he believes there will be plenty of opportunity and time for people to get engaged in this process.

Commissioner Galletta stated that he congratulates staff's efforts on this matter so far, but he feels that staff should continue to do outreach with newspapers because he feels that the time is now to engage those individual owners in this process because there are a lot of aggrieved owners.

Mr. Stokes continued with his report.

On February 20, a screening of a documentary on "New Jersey's Red October" regarding the cranberry industry will be held at the Commission's office at 12:15 p.m. This screening will be followed by an Agricultural Advisory Committee meeting. The screening was produced by the same person who did the "The Mighty Humble Blueberry."

Commission disclosure statements are due to be filed with the State Ethics Commission on May 15, 2009 and need to be filed electronically. If any Commission member needs help in this process feel free to contact Ms. Young.

Commissioner Haas stated that he attended the Policy Forum and he thought that it was an excellent day. He pointed out that Nick Scoronski had some excellent data on forest fires and he said that perhaps on some future date, the Commission could have him come to the full Commission, P&I Committee or the Science Committee to give a presentation. He stated further that Robert Nicholson from the U.S.G.S. did an exceptional job in talking about the Kirkwood/Cohansey study and many people were surprised about the level of detail of the work the Commission is having done and when this project comes forward it is going to be very expressive.

Mr. Stokes stated that he was also impressed with Dr. Lathrop's presentation.

Mr. Horner reported on the following items:

About six months ago, staff met with Hamilton Township officials to come up with a strategy for stormwater management basins that have been failing and that have some negative consequences on water quality in Hamilton Township. This matter seems to be on the road to being addressed through a combination of activities. He said that an applicant seeking to develop an addition to the Hamilton Mall has stepped up to rectify the situation at one of the basins at the Mall. An applicant who is proposing an addition at a Wal Mart in Hamilton Township received approval

from the Township and the Township required as a condition of that approval that the existing stormwater management facilities be addressed. He commented on the help that Mr. Fred Akers has provided on this matter through a report he submitted to the Commission that identified a number of these basins.

The Commission's Regulatory Programs staff over the last month has been very helpful to Mullica Township in processing an application for a salt storage dome at its municipal complex. This was processed very quickly and this matter will be on the Commission's agenda for its March meeting. Staff has also been contacted by Medford Township on an historic structure called "Old Stage Coach Stop" which had a fire. The building needs to be demolished and this is being coordinated with the Township to ensure that the project moves along quickly.

Burlington County, who is proposing the widening and improvement of County Route 530, is working on the issue of Pinelands Development Credits with the PDC Bank Board. He said that once the County has received some direction from the PDC Bank Board, the Commission and its staff has agreed to try and assist in that situation to the extent it can.

Mr. Liggett reported on the following items:

In terms of technology upgrades, OIT has agreed to upgrade the Commission's high speed data line. This will be at some cost but will greatly help the staff.

Three things are happening in GIS that are going to upgrade the Commission's abilities: updating the Commission's parcel data to bring it up to date; loading the 2007 aerial photographs; and lastly, staff is working with the Arc GIS consultant to develop a new software package and have created its own map service which will set the Commission up for public access. This includes data coverage, GIS coverage, parcel data, and permitting data.

Jackson Township met with staff to discuss zoning changes in its Regional Growth Area. The Township believes much of the area should be down zoned to Forest Area under the EIA map changes. Due to approved and committed projects, staff does not believe that can be recommended. Secondly, they have a growing noise problem from the Lakehurst base and they are getting a lot of complaints from residents. The Township is worried about the future residential growth in the area and whether it is compatible with the Naval Air Base. He said that the Township will be coming to a future P&I Committee meeting to talk about this issue.

Mr. Stokes stated that staff will ask the Commission to go into closed session relative to acquisition and it will also need to discuss with DAG Haynes the decision that the Ethics Commission issued which might take a little time. He asked the Commission to keep this in mind as it moves through its agenda this morning.

#### Public Comment on Agenda Items

Mr. Fred Akers from the Great Egg Harbor Watershed Association stated that he supports the resolution on the open space acquisition in Winslow Township. He said that they have become

increasingly concerned about the extent of development and impervious coverage in the watershed, especially in Camden County.

Mr. Harry Monessen, Pemberton Township, stated that the Pinelands Commission has never made any attempt in the past to inform property owners of its changes in the Comprehensive Management Plan that altered their ability to use property. He said that there are new developments that are occurring and the governor is strongly motivated in the area of renewable resources and also wind power or electric grid and also solar power. He said that realtors are contacting private owners and letting them know of this situation if they have 50 acres or more. He said that he is wondering how this Commission stands on that issue of clean energy production and utilization of the very property that it has put out of commission without ever informing the people.

### Development Review Matters

#### Review of Public Development Projects

Mr. Stokes stated that Application Numbers 1986-0119.109, South Jersey Transportation Authority, 1987-1058.057, Federal Aviation Administration, and 1988-0390.015, Egg Harbor Township Board of Education, are applications for public development recommended for approval with conditions.

Commissioner Ashmun moved the adoption of the Resolution Approving with Conditions Applications for Public Development (Application Numbers 1986-0119.019, 1987-1058.057 & 1988-0390-015). (See Resolution #PC4-09-08 attached). Commissioner Ficaglia seconded the motion.

The Commission adopted the resolution by a vote of 11 to 0. Commissioner Brown was not present for the vote.

Mr. Stokes stated that Application Number 1983-4193.017, Rutgers University, is an applications for public development recommended for approval with conditions.

Commissioner Ashmun recused herself from the following discussion and left the room.

Mr. Stokes stated that Dr. Dighton, Director of the Division of Pinelands Research, is present today and will be happy to respond to any questions the Commission may have regarding the project.

Commissioner Galletta moved the adoption of the Resolution Approving with Conditions an Application for Public Development (Application Number 1983-4193.017). (See Resolution #PC4-09-09 attached). Commissioner Haas seconded the motion.

Dr. Dighton provided the Commission with an overview of the project, stating that the idea of this is to push the ecosystem slightly to a different level from where it is in the Parker Reserve at

the moment. The Parker Preserve wants to create some different habitats by running a forest thinning experiment to remove the under story in order to encourage grasses to grow underneath. There is an application to the National Science Foundation (NSF) to fund the extension of this project.

Commissioner Lee stated that he looks forward to seeing this experiment happen. He asked why the application is for public development.

Mr. Stokes replied said if a public organization applies to the Commission to undertake an activity then it is public development that must be approved directly by the Commission.

Mr. Horner explained that under the Commission's rules if someone is proposing to clear land for an agricultural purpose that would not require an application to the Pinelands Commission. When this application was received, staff did not view it as an agricultural use but rather an application for clearing of land to undertake an activity.

Commissioner Jackson asked if there is a box that a public entity fits into for doing a research Project.

Mr. Stokes replied that the question is whether it is for research or not whether there is an ability of the Pinelands Commission to approve and authorize land disturbance activities for different purposes. He said that staff recommended approval for this application because staff believes it meets the standards of the CMP. He said that the Plan does recognize research activities.

Commissioner McIntosh stated as he understands the proposal it is an examination of ecosystem dynamics in the specific environment and asked Dr. Dighton how the results of this might help the Pinelands Commission understand the past trend in climate change and future predictions relative to the impacts of climate change.

Dr. Dighton replied that it won't actually tell us per se what the impacts of climate change are but what it will do is allow us to understand in more detail some of the controlling processes, particularly in terms of how the soil relates to the vegetation or the loss of nutrients from that soil into ground water. He said this information may allow for predictions in terms of climate change.

Commissioner Lee asked if this application was being viewed as forestry.

Mr. Horner replied that the CMP does not specifically address the type of project that is being proposed. The staff's report determines why the project is a permitted use. It is comparable to forestry and fish and wildlife management, both of which are permitted uses in the Preservation Area District which is where the project is located.

The Commission adopted the resolution by a vote of 11 to 0. Commissioner Ashmun was not present for the vote.

Other Development Review Matters

Mr. Stokes stated that there were three PDC Letters of Interpretation issued this month allocating 2.842 PDCs to a total of 69.32 acres. He said that there was also one Letter of Interpretation issued for wetlands delineation.

#### Other Resolutions of the Commission

Mr. Stokes presented the Resolution Determining the Eligibility of Parcels of Land for Acquisition by the Department of Environmental Protection Pursuant to the Limited Practical Use Program. (See Resolution #PC4-09-10 attached).

Commissioner Kennedy moved the adoption of the resolution. Commissioner Jackson seconded the motion. The Commission adopted the resolution by a vote of 12 to 0.

#### Ordinances Not Requiring Commission Action

Mr. Stokes stated that Stafford Township Ordinance 2008-94 is an ordinance amendment that does not raise a substantial issue with regard to the provisions of the Comprehensive Management Plan. The Commission took no action, allowing the ordinance amendment to take effect.

#### Public Comment on any Matter Relevant to the Commission's Statutory Responsibilities Other Agenda Items

Mr. Carleton Montgomery, Pinelands Preservation Alliance, referred to the State Ethics Commission decision and questioned why this matter is being discussed in closed session. He said that it seems to him that the Commission is using closed session from time to time in situations where it shouldn't since this is a matter of public interest and public concern.

Mr. Fred Akers, Great Egg Harbor Watershed Association, stated that he is confused with the Ecological Integrity Assessment (EIA). He noted that he had attended the Science Forum and there were very good speakers. He said that he was listening closely about how the science of disturbance ecology connected to the EIA. He said that he likes the idea that when the trees are cut that is a disturbance. When the disturbance stops, knowing how the Pinelands recovers is very valuable. He said that he is still confused as to why farm land and resource extraction lands have zero ecological value because they also have potential to succeed back to a natural state once disturbance stops. They will then have some of the highest ecological values.

Mr. Harry Monesson, Pemberton Township, commented on alternate energy. He said that if farm land or agricultural land is going to be brought into any state there is going to be the need for power from water, wind and sun. There is potential for power in the wetlands. He said that there is tremendous power in the streams. He said that there will be wind power which will require towers noting that there will be towers as tall as the ones the Commission debated for years. He said that this will not harm the environment in any way because it is a renewable resource.

Presentation – Model Septic System Ordinance

Mr. Stokes stated that the next item on the Commission's agenda is a presentation by Mr. Liggett on a model septic system ordinance. He reminded the Commission that a couple of years ago, the Commission engaged Stone Environmental Consulting Firm to work with staff to evaluate what the options might be to improve septic system management in the Pinelands. The DEP was working on State-Wide water quality management planning rules which have since been adopted. These rules require that every municipality in the State in which septic systems are located to adopt a septic management program. The Commission is, in essence, ahead of the curve and it is trying to develop a septic management program that would respond to these State-wide requirements and make sense within the context of the Pinelands.

Mr. Liggett stated that he is providing the presentation on behalf of Mr. Ed Wengrowski who could not be present today. He provided an overview of the model septic system ordinance and went through the proposal for the Commission. (See presentation attached).

Commissioner Jackson referred to enforcement and asked if there has been any thought of how to get compliance without the requirement of paying, such as education.

Mr. Liggett replied that there are two aspects of this -- enforcement through municipalities and building in incentives for those that comply. Staff believes that education is a major component and is very important here, but it will always be a challenge.

Commissioner Kennedy stated that the Commission has to remember whether one is in the Pinelands or not, every municipality in the State of New Jersey needs to worry about this issue. For counties that are half in and half out of the Pinelands, implementation of these DEP rules is happening at the county or municipal level and it is important for the Commission to move forward with this issue so that when the plans are developed at the county and municipal levels there is not a model ordinance developed for the Pinelands then another ordinance has be developed. He said that it is best to have all of this set when the counties or towns decide what they are going to do so they can get some models which are for the Pinelands.

Commissioner Brown stated that in Cape May County whenever a house is sold, one must have a sewer certification by a licensed sewer certifier.

Mr. Stokes concurred and stated that now most mortgaggers require a certification before they will lend.

Commissioner Lee stated that a concern may be timing for individuals who are suddenly forced with finding their septic system in their backyard when they didn't have to do that before. He said that an interval of time should be suggested between the time the municipality adopts the ordinance and when the inspector is going to be there to look for the hole in the ground. This will be better received by property owners.

Mr. Liggett indicated that he believes that DEP is going to use a lot of what is being done here and if the Commission offers that as an idea maybe they can use that. He said that DEP was

thinking about a mandatory 3 year pumping cycle and staff believes that is not the best way to go. Rather, there should be criteria to dictate when a system needs to be pumped.

Commissioner Kennedy asked if staff is confident at this point that DEP is going to agree with the concept of pumping depending on need.

Mr. Stokes replied that within the Pinelands Area he is confident because the Commission is going to set the standards. He said that he can't say that DEP would embrace that outside the Pinelands Area.

#### Closed Session Resolution

DAG Haynes read a resolution to retire into closed session to discuss litigation matters.

Commissioner Kennedy moved to retire into closed session. Commissioner Jackson seconded the motion. The Commission agreed to retire into closed session by a vote of 12 to 0.

Commissioner Witt left the meeting.

#### Return to Open Session

Acting Chairperson Tomasello reopened the public portion of the meeting.

DAG Haynes reported that the Commission was briefed on land acquisition matters. There was also a briefing and some discussion of level advice regarding the most recent ethics decision that was issued on late Wednesday.

Commissioner Haas recused himself from the following discussion and left the room.

Commissioner Ashmun moved the adoption of the Resolution To Award Pinelands Conservation Fund Monies for the Acquisition of a Parcel in Lacey and Manchester Townships Located Outside the Pre-Approved Acquisition Locations (Martone). (See Resolution #PC4-09-11 attached). Commissioner Lloyd seconded the motion.

Ms. Grogan provided a brief overview on the Pinelands Conservation Fund. She said that overall in the third round there is a little over \$2.2 million left in the Pinelands Conservation Fund. The PLP Committee on January 30 approved allocations of funds for four projects and recommended approval of allocations to two additional projects which are before the Commission today. Both of the projects are outside the pre-approved acquisition areas. The Martone property is in Lacey and Manchester Townships which is 73 acres in the Forest Area. The property was submitted by the Ocean County Natural Lands Trust and the request was for \$185,833 thousand of funding. Because this project is not located in one of the pre-approved areas (the 502 areas, the 18 planning areas previously identified by the Committee, the Medford/Evesham planning area or the Toms River Corridor), it does require full Commission approval. The project fits in nicely with the Greenwood Forest Wildlife Management Area and it is ranked highly in terms of the criteria which the Committee previously agreed to. The property

is under contract and ready to go and should close fairly quickly. This was all taken into consideration by the Committee when it recommended the funding. The allocation, if approved by the Commission, would be through June 1 and there have been a series of interim milestones established for this project and have been worked out with Ocean County to keep the project on track in terms of getting to the contract stage and getting the project finished.

The Commission adopted the resolution by a vote of 10 to 0. Commissioners Haas and Witt were not present for the vote.

Commissioner Ashmun moved the adoption of the Resolution To Award Pinelands Conservation Fund Monies for the Acquisition of a Parcel in Winslow Township Located Outside the Pre-Approved Acquisition Locations (Great Egg Harbor Greenway) (See Resolution #PC4-09-12 attached). Commissioner Galletta seconded the motion.

Mr. Grogan stated that the second project before the Commission today is a project located in Winslow Township submitted by the Camden County Improvement Authority which is 81 acres partially in the Forest Area and partially in the Rural Development Area. This is the first project received from Camden County under any of the three rounds of the Pinelands Conservation Funding. The request was for just under \$160,050. The PLP Committee recommended this project. The parcel is located outside of the pre-approved area so it does require full Commission approval. The parcel is adjacent to New Brookland County Park and it is part of Camden County's Greenway Plan. Like the previous project, is pretty far along in the acquisition process and it shouldn't take long if it does receive the funding to close. There is a pending subdivision application on the property. The Committee took this into consideration in making the recommendation to the Commission today for acquisition.

Acting Chairman Tomasello asked if he is permitted to vote on this matter since he lives in Winslow Township.

Ms. Roth replied that she does not see any issue which would require the Acting Chairman's recusal.

The Commission adopted the resolution by a vote of 10 to 0. Commissioners Haas and Witt were not present for the vote.

### Adjournment

Commissioner Ashmun moved to adjourn the meeting. Commissioner Brown seconded the motion. The Commission agreed to adjourn the meeting at 12:35 p.m.

Certified as true and correct:

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Nadine B. Young,  
Executive Assistant to the Commission

Date: \_\_\_\_\_