

Disclaimer

These minutes reflect the actions taken by the Commission during its August 14, 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 August 25, 2009.

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

Minutes  
August 14, 2009

Commissioners Present

Candace Ashmun, William Brown, Guy Campbell, Leslie M. Ficcaglia, Paul E. Galletta, John A. Haas, Robert Jackson, Stephen Lee, III, Judith Y. Link, Edward Lloyd, \*Robert McIntosh, and Acting Chairman, Norman F. Tomasello. Also present were Executive Director John C. Stokes and Deputy Attorney General Amy Donlon.

\*Robert McIntosh was present via telephone conference call.

Commissioners Absent

Daniel M. Kennedy and Francis A. Witt

Acting Chairman Tomasello called the meeting to order at 9:40 a.m.

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

Mr. Stokes called the roll.

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

Minutes

Acting Chairman Tomasello presented the July 10, 2009 open and closed session Commission meeting minutes.

Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Campbell seconded the motion.

Commissioner Ficcaglia referred to page PC2-105, next to the last paragraph, relating to her motion to revise the FY09 operating budget to increase the travel account from \$6,500 to \$9,000 and decrease the telephone budget from \$20,500 to \$18,000. She stated that the latter part of the motion should be revised to read to “decrease the “postage” budget by \$2,500 from \$20,500 to \$18,000 rather than the “telephone budget.” She added that there is still no change in the total operating budget.

With Commissioners Ficcaglia and Campbell accepting the revision, the Commission adopted the minutes by a vote of 12 to 0.

Acting Chairman Tomasello referred to Committee assignments and announced that Commissioner Brown has decided to step down from the Personnel and Budget Committee but has graciously agreed to serve as an alternate to the Committee. He further stated that Commissioner Ficcaglia has decided to step down from the Science Committee. As a result, he indicated that he has appointed Commissioner Link to the Personnel and Budget Committee and also to the Science Committee. A revised copy of Committee assignments was distributed to members of the Commission.

#### Committee Chairs' and Executive Director's Reports

##### Personnel and Budget Committee Meeting

Commissioner Ficcaglia reported that the Committee met on August 6, 2009 and adopted the minutes from the July 2, 2009 meeting.

The Committee discussed the Resolution To Accept the Fiscal Year 2008 Audit Report. Mr. Stokes explained the resolution and mentioned that the resolution states that the report will be published on the Pinelands Commission’s web site. The Committee unanimously recommended Commission approval of the resolution.

The Committee discussed the Resolution To Revise the Policies for the Use and Management of the Pinelands Conservation Fund. Mr. Stokes provided background information and stated that a new source of revenue requires the Commission to decide how to allocate the funds. Mr. Stokes provided his recommendations. After discussion, the Committee unanimously recommended Commission approval of the resolution.

The Committee discussed the Resolution To Authorize the Executive Director to Execute a Memorandum of Understanding among the Pinelands Commission, Buena Vista Township and the Atlantic County Utilities Authority to Assist in the Installation of a Community Waste Water System and to Revise the FY2010 Pinelands Conservation Fund Budget. David Kutner provided information on the tentative agreement that is being recommended for approval among the

parties. After discussion, the Committee unanimously recommended Commission approval of the resolution.

The check register and electronic funds transfer (EFT) disbursements for July 2009 were discussed. Michelle Russell provided information on the checks and electronic fund transfers.

The Committee was updated on the employee actions during July 2009 and application fees for July.

The performance evaluation process was discussed for John Stokes.

A closed session was held to discuss confidential items including several personnel related matters.

#### CMP Policy and Implementation Committee Meeting

Commissioner Lloyd reported that the CMP Policy and Implementation Committee met on July 24, 2009 and adopted the minutes of the June 26 meeting.

The Committee made a number of recommendations related to map changes within Polygon B (Egg Harbor Township).

The Committee discussed the June 25, 2009 NJ Supreme Court decision regarding setting aside lands or making *in lieu* payments for recreational facilities associated with new residential development.

#### Public and Governmental Programs Committee Meeting

Commissioner Lee reported that the Public and Governmental Programs Committee met on July 27, 2009.

The Committee had an introductory discussion regarding a proposed Forest Stewardship MOA with NJDEP. NJDEP staff indicated that it was seeking a new MOA with the Commission regarding forestry applications in the Pinelands Area. The MOA would replace the four existing forestry MOAs between the Commission and NJDEP and streamline the Commission's application process for both public and private forest stewardship applications in the Pinelands. The Committee discussed the four existing forestry MOAs with NJDEP staff. The four existing MOAs include a fish and wildlife management MOA (executed 1988), State parkland improvements and maintenance MOA (executed 1995), a forest stewardship plan MOA (executed 1997) and an Atlantic white cedar restoration MOA (executed 1999). NJDEP staff indicated that it planned to prepare large regional, comprehensive forest management plans for certain areas within the Pinelands. Commission staff indicated that such comprehensive plans could be incorporated into a proposed MOA. Staff reviewed a proposed schedule for the development of the MOA with the Committee. Commission staff and NJDEP staff indicated that they would meet to first address the major issues/details of the proposed MOA before drafting the language of the MOA.

The Committee was provided an update on the draft USGS assessment of the Hammonton Wastewater Land Application Facility. Staff summarized the draft USGS report. Staff indicated that in 1991, NJDEP directed Hammonton to upgrade its sewage treatment plant. Hammonton agreed to replace the plant, terminate the surface water discharge into the Hammonton Creek and utilize a 184 acre parcel for land application (infiltration) of treated wastewater. The termination of the surface water discharge would bring the plant into compliance with CMP water quality regulations. In October 2003, after the construction of the land application facility, Hammonton found that the 184 acre site was not performing as designed. In June 2006, Hammonton, the Commission and USGS contributed funding to a USGS study to determine the cause and identify a solution to the infiltration problems at the 184 acre site. The draft USGS report concluded that the site contained extensive fine-grained, iron-cemented sands that impeded infiltration and led to perched water below the wastewater lagoons. Due to the study results, Hammonton is investigating other methods, including drip dispersal, spray irrigation, injection wells, and removal of pond liners and modified operation of the existing lagoons, to correct the issues at its wastewater treatment plant.

The Committee received a presentation from staff on the National Park Service report and the proposed Pinelands educational exhibits at the Richard J. Sullivan (RJS) Center. In 2008, the Commission received a \$50,000 grant from the National Park Service to fund plans to design Pinelands exhibits in the RJS Center. A professional exhibit designer from the National Park Service prepared a recommendations report. Staff reviewed the findings of the report and the proposed design for the exhibits with the Committee. Staff indicated that the next step would be for Commission staff to either work with the National Park Service or on its own to obtain a designer to complete the planning and design. After planning and design is completed, funding would be needed to complete fabrication and installation. Staff had submitted a request to the NJDOT for a change in scope for a \$900,000 grant that was awarded in 1997 to develop Pinelands-themed exhibits at a proposed Pinelands Visitor Center at Double Trouble State Park. Due to financial constraints, the proposed visitor center at Double Trouble State Park has not come to fruition. The change in scope would allow the \$900,000 grant to be used to fund the proposed educational exhibits at the RJS Center.

The Committee continued discussion of the Local Review Officer Program evaluation. On May 27, 2009, staff reviewed the results of the staff's April 14, 2009 LRO Program evaluation with the Pinelands Municipal Council. Based on that meeting, the staff's April 14, 2009 evaluation memorandum was sent to all the mayors of all the municipalities with Local Review Officer (LRO) Programs, asking for their comments. Their comments are due to the Commission staff by August 17, 2009. Staff will provide recommendations to the Committee regarding the LRO Program at its August Committee meeting.

#### Executive Director's Report

Mr. Stokes reported on the following items:

The Commission received in its packet the annual report on the Alternate Septic System Program. The program is coming to a close later this fall and staff will be submitting to the

Commission the final report along with recommendations regarding how to proceed relative to these special types of septic systems in the Pinelands.

Staff continues to work with the Council on Affordable Housing (COAH) and the Attorney General's office on a variety of affordable housing matters. Some of the issues can be discussed in open session, but some of the core issues will need to be discussed with the Commission in closed session. No action is required at this meeting with regard to this matter.

Mr. Stokes met with Senators Connors and Whalen earlier this week and discussed a wide-range of Pinelands matters. One matter discussed in more depth was the septic management rule proposal. A number of municipalities have expressed concern about the cost of managing the septic program and there have been some who have expressed questions as to whether it is actually needed. Mr. Stokes discussed with the Senators the Commission's interest in trying to integrate the septic system program with the DEP program and to minimize new obligations and burdens.

Relative to forest management, Mr. Stokes and Mr. Horner met with DEP Assistant Commissioner Cradic yesterday and outlined a potential framework for a possible agreement between the Department of Environmental Protection and the Commission. The Department will be looking into some of these matters and staff hopes to brief the Public and Governmental Programs Committee on this issue at its next meeting.

This morning, the Commission received a copy of the Ethics Audit that the State Ethics Commission prepares. It includes the scope of the audit and the types of things the State Ethics Commission analyzes.

Mr. Stokes reminded the Commission that former Chairperson Betty Wilson will be joining the Commission following today's meeting.

Mr. Horner reported on the following items:

Staff continues to meet with representatives from Burlington County on the proposed widening of County Route 530, between Pemberton Borough and Route 206. The question is whether there are any feasible alternatives to doing road construction on lands protected by a Pinelands Development Credit (PDC) deed restriction. Staff engaged, through the cooperation of the Department of Transportation, one of their traffic engineers to review whether or not there are feasible alternatives. Another meeting is scheduled for August 26 at which time the engineer will return with his report on the matter.

Staff attended municipal court on July 30 in Waterford Township. The Township is concerned about a parcel on the White Horse Pike that has been cleared and where certain commercial development activities are occurring. Staff was present to support the Township in this matter. The matter has been continued for two weeks at which time staff will return to municipal court.

On August 6 staff attended a meeting in Egg Harbor City with representatives of the City and many other agencies including representatives from legislators' offices. The meeting was held to

discuss a grant application that the City was attempting to obtain for the construction of a new water treatment plant. DEP has stimulus funding that is available for projects ready to move forward by January 2010. The City was attempting to demonstrate that their project could meet that date. Governor's Authority Unit liaison Joseph Neal was also in attendance. The meeting was very successful and DEP appeared to allow the City more time to get its project in order to qualify for those funds.

Staff recently responded to concerns regarding a sand road at Webb's Mill that had been reconstructed and was damming water. Staff spoke with the State Forest Service which indicated that it was a beaver dam that was causing the flooding. Staff coordinated with the Fish and Wildlife Service and the matter has been resolved.

Mr. Stokes referred to the Egg Harbor City water treatment plant and indicated that staff had worked with the City some time ago to identify a good site for the plant. He said that the Commission and the City are far ahead of the curve on this project and that the City only needs to complete its engineering work. In terms of satisfying Pinelands requirements on this project, staff doesn't expect there to be any issues. He said that he believes this helped to alleviate some of the questions and concerns that other funding agencies may have had.

Mr. Liggett reported on the following items:

Staff continues to have meetings with Atlantic Cape Community College. The College has engaged former Commission member Dan Galletta to help guide them through the development process. The College will split their efforts into two. In the fall they will come back to the Commission with a public development project for a new Science building as well as for other proposed projects on the campus. Dan Galletta will also be working with Commission staff to develop a long range master plan for the College's ultimate plans for the site.

DEP will be readopting a lot of its permitting rules and will be cleaning up issues in terms of water permitting. Commission staff will be reviewing these rules.

Mr. Liggett attended the Pinelands Municipal Council meeting last month. The Council has a lot of concerns about the septic system management rules. The Council hired a staff planner to help them address rules, legislation and other items. The Council endorsed legislation on ATVs in terms of registration and for funding to go towards providing sites for ATVs in the future.

Commissioner Ashmun complimented Edward Wengrowski on the Septic System Management Pilot Program Annual Report. She stated that it is a very good report which shows why the Commission has pilot programs.

Commissioner Ashmun stated that she has an Association for New Jersey Environmental Commissions (ANJEC) list of towns outside of the Pinelands who are doing septic management, which includes some details about that. She stated that she will have copies made available to members of the Commission and staff.

Public Comment on Agenda Items

Mr. Mark Demitroff, resident of Richland Village distributed material to the Commission regarding the Buena Vista Township Memorandum of Understanding (MOU). He commented on his opposition to the MOU noting that Buena Vista Township is in violation of a number of Pinelands rules. He indicated that the Township did not obtain all the permits for the work they have done in Richland Village. He said that Commission staff was contacted in January with regard to the violations and nothing has been done to date, noting that the town continues to violate Pinelands rules. He said until the Commission clears up these violations in Richland Village, no MOA should be considered. He referred to the Department of Community Affairs' (DCA) statute which predates the Pinelands which says that it has jurisdiction over all government agencies throughout New Jersey. He said that there was a high level meeting between the Pinelands and DCA going on and neither agency can tell where redevelopment stands. He said that he understands that Buena Vista Township never applied to DCA for approval of the plan. He suggested that until all of this is cleared up, the Commission should not give the Township more fuel towards redevelopment. He asked the status of the violations in the Township.

Mr. Stokes suggested that this matter be discussed when that item comes up on today's agenda.

Ms. Theresa Lettman of the Pinelands Preservation Alliance supported the concerns expressed by Mr. Demitroff with regard to the violations in Richland Village. She said that if the Commission awards \$100,000 to Buena Vista Township, it is rewarding a bad actor. She said the Commission is involved in the EIA process and at every meeting Buena Vista Township is there indicating that they do not support the changes that the Commission wants to make. She said that it does appear that the Commission is awarding a bad actor.

Mr. Carleton Montgomery concurred with Ms. Lettman's comments.

### Development Review Matters

#### Review of Public Development Projects

Mr. Stokes stated that Application Numbers 1981-1303.008, Atlantic County Facilities Management, 1981-1833.045, The Richard Stockton College of New Jersey, 1986-0370.016, Winslow Township Board of Education, 1987-0835.003, Township of Medford, 1987-1058.052, South Jersey Economic Development District, 1988-0390.014, Egg Harbor Township Schools, 1991-0820.077, Pemberton Township Board of Education, 2000-0637.002, Washington Township, and 2003-0530.006, Greater Egg Harbor Regional High School District, are applications for public development recommended for approval with conditions.

Commissioner Galletta moved the adoption of the Resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-1303.008, 1981-1833.045, 1986-0370.016, 1987-0835.003, 1987-1058.052, 1988-0390.014, 1991-0820.077, 2000-0637.002 and 2003-0530.006) (See Resolution #PC4-09-42 attached). Commissioner Lee seconded the motion.

Commissioner Ashmun asked that staff clarify for the public the number system that is used for development applications so that it is understood that the Commission has not been looking at some of these applications for years.

Mr. Horner explained the numbering system the Commission uses, including the assignment of phases for development applications that were initially opened years ago.

Commissioner Ashmun referred to Application Number 1981-1833.045, The Richard Stockton College of New Jersey, and asked if this application is part of the plan.

Mr. Liggett replied that the application is part of the existing plan that the Commission certified and that the new changes being considered now do not affect it.

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

Commissioner Galletta recused himself on the following matter and left the room.

Mr. Stokes stated that Application Number 1989-0573.009 Town of Hammonton is an application for public development recommended for approval with conditions.

Commissioner Haas moved the adoption of the Resolution Approving with Conditions an Application for a Public Development (Application Number 1989-0573.009). (See Resolution #PC4-09-43 attached). Commissioner Ficcaglia seconded the motion.

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

Commissioner Galletta returned to the meeting.

Mr. Stokes stated that Application Number 1990-0421.009, Department of Regional Planning and Development, is an application for public development and certificate of appropriateness recommended for approval with conditions.

Commissioner Ficcaglia moved the adoption of the Resolution Approving with Conditions an Application for a Public Development and Certificate of Appropriateness (Application Number 1990-0421.009). (See Resolution #PC4-09-44 attached). Commissioner Galletta seconded the motion.

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

#### Other Development Review Matters

Mr. Stokes stated that there were 4 Pinelands Development Credit (PDC) Letters of Interpretation issued this month.

#### Resolutions Relating to Municipal Ordinances

Mr. Stokes presented the Resolution To Accept the Fiscal Year 2008 Audit Report. (See Resolution #PC4-09-45 attached).

Commissioner Brown moved the adoption of the resolution. Commissioner Lee seconded the motion.

Commissioner Ficcaglia stated that the Audit Committee reviewed the Audit Report and was pleased that there were no findings in the report.

Commissioner Lee asked if a management letter was received from the State Auditor.

Mr. Stokes replied that he believed no letter was received.

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

Mr. Stokes presented the Resolution To Revise the Policies for the Use and Management of the Pinelands Conservation Fund. (See Resolution #PC4-09-46 attached).

Commissioner Haas moved the adoption of the resolution. Commissioner Galletta seconded the motion.

Mr. Stokes highlighted the key elements of the resolution for the Commission. He referred to the funds in the Pinelands Conservation Fund and indicated that the Commission will have to decide how it wishes to allocate the additional funds that became available recently. He said that he has had discussions with the Personnel and Budget Committee regarding this allocation of funds and the recommendation before the Commission today would take \$2.5 million of these additional proceeds and dedicate them to land preservation, \$200,000 of which would be required to be used in Cape May County pursuant to the Commission's rules that established the expansion program for the landfill. He said that \$2.3 million would be allocated to the Conservation Planning and Research element of the fund and the balance, slightly less than \$600,000 would be allocated to community planning and design. The result of this is that approximately \$9.9 million would exist within the land preservation account, about \$5.7 million of which has been committed to specific projects. He referred to changes in the policies that govern the fund, the first of which is to remove specific acquisition criteria from the financial policies. He also indicated that proposed changes will make it clear that acquisition program expenses are eligible to be charged and that the community planning and design program can provide grants to local units to government to help them meet Pinelands requirements.

Commissioner Ashmun referred to the policy for acquisition and said that the Commission wants to make sure that this money is leveraged with other money. She referred to the \$915,000 from the DOT which may end up not leveraged and asked if Mr. Stokes is suggesting that this will make that easier.

Mr. Stokes replied that the financial plan and the policy did not speak about leverage. He read the existing policy and what it said relative to acquisition.

Commissioner Ashmun asked if the Committee would recommend to the Commission and the Commission would act.

Mr. Stokes stated that the Commission will have a contract for program administration and that governs the use of the funds. He said that the Commission will determine what those contract provisions will be and they will spell out the priorities it wishes to pursue.

Commissioner Ashmun said that she wants to be sure that the Commission doesn't put itself in a "box" when handling the specific funds.

Mr. Stokes stated that this is one of the reasons why he felt that the policy that governs the funds shouldn't specify exactly how they will be used. Staff hopes to discuss this with the Committee and then ultimately come to the Commission with a formal plan.

Commissioner Lee stated that there seems to be a different allocation percentage than what the Commission originally adopted with the Turnpike Authority money. He said that funds were evenly split between the planning and research initiatives for conservation and for community planning. He said a 4 to 1 split is now being recommended and asked when the Commission discussed this change.

Mr. Stokes replied that extensive discussions were held with the Personnel and Budget Committee. He said that the current balance of the Conservation Planning and Research account is less than the Community Planning and Design account. He said that this is because the Community Planning and Design Program was primarily intended to support a community designer who would be employed by the Commission and lent out to communities. The Commission has not had the opportunity to put this in place because of state staffing policies. The Commission has been fairly successful in rolling out a number of important projects from the Conservation Planning and Research account, the budget for which has averaged about \$337,000 for the past three years compared to \$34,000 for the Community Planning and Design account. The Planning Conservation and Research account is the most active of these two accounts and warrants additional funding. He discussed the income stream from the different accounts and how this income relates to the expenses of each account. He commented on excess funds in the Community Planning and Design program, noting that he had recommended, and the P&B Committee agreed, that the Commission should take advantage of the Community Planning and Design account to provide some grants to municipalities.

Commissioner Ficaglia stated that the Committee felt that Mr. Stokes' recommendation made sense and this is why it is recommending that the Commission adopt this change.

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

Mr. Stokes presented the Resolution To Authorize the Executive Director to Execute a Memorandum of Understanding among the Pinelands Commission, Buena Vista Township and the Atlantic County Utilities Authority to Assist in the Installation of a Community Waste Water

System and to Revise the FY 2010 Pinelands Conservation Fund Budget. (See Resolution PC4-09-47 attached).

Mr. Stokes summarized the comments made by the public today with regard to Buena Vista Township. These related to violations in Richland Village, a statutory conflict between the Commission and the Department of Community Affairs (DCA), and Buena Vista Township not supporting the Commission's initiatives. He said that it was indicated that, for these reasons, the Commission should not move forward today to provide the Township with financial help on its community waste water system. In responding to the comments, Mr. Stokes stated that he is unaware of any statutory issue that exists between the Pinelands Commission and the DCA other than discussions with the Council on Affordable Housing (COAH) about amendments to the Fair Housing Act. He said that if the conflicts relate to redevelopment statutes, the Pinelands Protection Act supersedes that and there have been no issues relative to redevelopment plans in other parts of the Pinelands. He said he regrets the Township's opposition to initiatives that the Commission is considering but everyone doesn't have to agree on all of the issues all of the time. He said that he doesn't believe that the Commission should refuse to work with a town on one issue because the town doesn't agree with us on another issue. He said that he considers community wastewater treatment to be a very important matter for the Pinelands as a whole. He said that there are a number of areas throughout the region that should be served by a more efficient and effective wastewater treatment system.

Mr. Horner referred to the violations in Buena Vista Township and stated that staff became aware, through certain reports, that activities were occurring primarily associated with the existing railroad in the Richland Area. He said that staff did a site inspection along the rail line which included clearing, reconstruction of certain small buildings, a parking area that was improved and some minor improvements to a park. He said that working through these issues, he spoke to the mayor and other Township officials about the necessity of an application. He said one of the complicating factors that arose was the fact that activities that are undertaken by railroads are not required to secure approval from the Pinelands Commission but they do have to be consistent with the Commission's regulations. He said that staff is working through this particular issue. Staff has also received a report on multiple changes of uses that were occurring in the Township. Staff discussed this with Township officials and on July 27 it received a report back from the Township engineer who is addressing the issues. He said that staff has not completed its review of that matter. Mr. Horner indicated that he has spoken with the mayor on several occasions, indicating the importance of completing these applications with the Pinelands Commission. He believes the township officials acknowledge that certain activities have occurred that shouldn't have. He said that he does not believe these activities were due to malice.

Commissioner Ashmun referred to the memorandum of agreement and said that there should be something said about the availability of water supply.

Mr. Stokes said that he will ask David Kutner, who is the Commission's lead on this matter, to look at water supply. He said that the water will be coming from individual wells. He indicated that there is no public water supply system and that there are no plans to provide that system. He indicated that Atlantic County Utilities Authority will be dealing with the wastewater aspects.

He said that he will make a note of this and the minutes will reflect that staff will, as it moves through this, factor water supply into the overall equation.

Commissioner Ashmun moved the adoption of the resolution.

Commissioner Ashmun stated that the Commission actually committed itself to this project when it granted the waiver in Buena Vista Township on the dilution model. She said that she feels it is important that the Commission proceed with this project.

Commissioner Ficcaglia said that it is also a model project for every township in the Pinelands.

Commissioner Haas seconded the motion.

Commissioner Jackson questioned Mr. Horner's characterization of the fact that Buena Vista Township hadn't acquired permits for the different activities.

Mr. Horner said that he does not believe that the municipal officials that were involved recognized that permits were required for certain activities.

Commissioner Jackson said that in terms of some of the comments he heard today, it is hard for him to believe that the township officials would not have checked before some of the work was done, rather than do the work and take the heat later. He said that this shows disrespect for what the Commission is trying to do.

Commissioner Ashmun said that she doesn't disagree with Commissioner Jackson but that she doesn't see this as a reward.

Commissioner Jackson said that he isn't associating this with that, but rather, he doesn't believe the township officials were naïve.

Mr. Horner said that he understands Commissioner Jackson's concern. He said that after talking to the municipal officials he doesn't believe this is the case. He said that staff has put the municipality on notice that these issues do require application to the Commission.

Mr. Stokes said setting aside the railroad violation, some of the other violations are minor and occur fairly regularly (curbs, paving sidewalks in a park, etc). He said that staff has been working with the Public and Governmental Programs Committee to try to come up with an agreement that the Commission can enter into with towns that will make it much clearer as to what types of things they need to apply for and what types of things they don't.

Commissioner Lloyd asked why this wastewater MOU didn't go through the Public and Governmental Programs Committee.

Mr. Stokes replied that, without the \$100,000 contribution, this would be an agreement that he would sign. He said that this doesn't represent a policy obligation, but rather, provides for Commission cooperation. He said that the financial component to this program surfaced at a

recent meeting he had with the president of the Atlantic County Utilities Authority. He said that at that point, ACUA did enough preliminary work to realize that there would have to be some fairly extensive out-of-pocket expenses incurred before a grant would be likely. He said he consulted with the Personnel and Budget Committee since it was a monetary issue. Commissioner Lee said that it's unclear from the proposal how the \$100,000 will be leveraged against work others will do.

Mr. Stokes stated that the commitments are that ACUA will prepare the design and then Buena Vista Township will probably contract with them to construct and operate the facility, presuming that the capital expenditures can be funded. Both ACUA and Buena Vista Township are committed to seeking the funding. In consulting with ACUA, this \$100,000 should be able to finance all of the out-of-pocket design expenses, at least to the point where a grant can be sought. ACUA has already contacted the state Environmental Infrastructure Trust that may have funds available in the spring.

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

Mr. Stokes presented the Resolution To Authorize the Executive Director to Enter into a New Task Agreement between the Pinelands Commission, the State of New Jersey Department of Environmental Protection – Division of Parks and Forestry and the National Park Service to continue the work started under Cooperative Agreement H1846-06-002 to implement the Pinelands Interpretative Plan. (See Resolution PC4-09-48 attached).

Mr. Stokes stated that this agreement is to continue work on the Pinelands Interpretative Plan. He said that the Commission received \$50,000 to prepare an exhibit plan for the Richard Sullivan Center. The National Park Service was engaged to help staff with that and they prepared a conceptual plan which was reviewed with the P&G Committee at its last meeting. At that time, staff also discussed with the Committee the fact that a Federal Transportation Enhancement (ISTEA) grant was set to expire because the state, who was to use this money for exhibits at Double Trouble State Park, has not had the financial means to advance the project. He said that staff discussed with the Committee the prospects of asking if a portion of that ISTEA grant could be reallocated to help fund the exhibits at the Richard J. Sullivan Center. He said that staff begun that process. Shortly thereafter, staff received word from the National Park Service that it had funds available. Since those funds are much more certain than the ISTEA grant, it was felt that this was the best avenue to pursue. He said that, if the Commission concurs with this agreement, it will yield approximately \$300,000 to finish up the project at the Richard J. Sullivan Center. He said that Commissioner Lee had asked him where the Commission stands with the ISTEA grant and whether there were other opportunities where this money could be used. This matter will be taken up at the next P&G Committee.

Mr. Stokes indicated that staff has still not received final confirmation from the National Park Service as to the amount of money for the project. He referred to the 8<sup>th</sup> Whereas clause and said that it specifies a maximum amount. He suggested that the Whereas clause be revised to include the words "up to" between "provide" and "\$328,786.70."

Commissioner Ficcaglia moved the adoption of the resolution with Mr. Stokes suggested change. Commissioner Ashmun seconded the motion. The Commission adopted the resolution by a vote of 12 to 0

#### Ordinances Not Requiring Commission Action

Mr. Stokes stated that Barnegat Township Ordinance 209-10, Dennis Township Ordinance 2009-01, Lakehurst Borough Ordinance 09-09, Pemberton Township Ordinance 11-2009, and Winslow Township Ordinances 0-33-08 and 0-2009-017 are ordinance amendments that do not raise a substantial issue with regard to the provisions of the Comprehensive Management Plan. The Commission took no action, allowing the ordinance amendments to take effect.

Commissioner Ashmun referred to ordinances dealing with solar for renewable energy. She stated that the Commission is not ready to deal with these types of issues.

Mr. Stokes stated that Mr. Liggett has tried his best to get the Commission ahead of the curve and that staff is making some progress, principally on solar facilities. He referred to wind energy and said that this hasn't been much of an issue because it is mostly a coastal issue.

Commissioner Ashmun said that in other places wind energy has become a huge issue.

Mr. Stokes stated that he met with a board of public utilities commissioner a few weeks ago to discuss solar energy within the Pinelands and to ask if BPU would be willing to work with staff to develop some recommendations for the Commission. He said that the commissioner agreed and that Mr. Liggett has a meeting later this month to begin this process.

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

Mr. Stokes informed the Commission that staff is receiving comments on four different rule proposals and noted that the written comment period for those end later today. He said that there may be some people in attendance today who may wish to speak on one or more of those rules. He said that the hearing has ended, but that the written comment period remains opened. He asked DAG Donlon to advise the Commission on how it may wish to deal with any additional comments on those rules today.

DAG Donlon stated that the issue is oral versus written comment. She said that public hearings are taped so staff can review those comments. The public notice provided for oral testimony on July 15 and written comments are allowed until the end of business today. She said that the concern is that any oral testimony today may get lost and not be kept within the record for the rules. She said, if permitted, oral testimony today should also be provided in writing to ensure the record.

Mr. Stokes stated that the Commission needs to decide whether or not to entertain any comment today on any of those four rule proposals. He said that his suggestion is oral comments are okay but any comments should be kept brief, focused, and to supplement them if one can, in writing. He said that this meeting is being recorded so any comments that may be made will not be lost.

The Commission discussed whether or not to permit public comment on any of the four rule proposals and, if oral comment is permitted, whether or not those comments should also be submitted in writing.

Ms. Grogan informed the Commission that the comment period is established by the Office of Administrative Law. She noted that it was completely coincidental that the deadline for comment happened to coincide with the Commission meeting, noting that this will probably never happen again.

Mr. Stokes indicated that, if comment is permitted, any comments made today would be made part of the record and included in staff's response document. He said that, if the Commission does permit comment today, it should be treated as an exception rather than a new rule.

After further discussion by the Commission, Commissioner Jackson made a motion that public comment be accepted at today's meeting and that those comments be made part of the formal record.

Commissioner Lee asked if any comment made at a Commission in the future, including Committee meetings, needs to be incorporated into the public comment document.

DAG Donlon replied no and said that it is within the Commission's rights to disallow oral comments during the public meeting.

Commissioner Campbell asked if this will be a continuous practice.

Mr. Stokes replied no.

Commissioner Lloyd made a motion that the Commission not hear any oral comments today on pending rules and if anyone wants to comment on a rule, they need to submit it in writing by 5:00 p.m. today via e-mail, fax, etc. Commissioner Ashmun seconded the motion.

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

Mr. Fred Akers from the Great Egg Harbor Watershed referred to wetlands and the EIA and thanked the P&I Committee for including the 300 foot buffer as an alternative view on some of the planning maps. He said that he was at a meeting where Mr. Kutner was speaking on the restoration rules and had indicated that one of the reasons that the Commission was doing this was because they treat all wetlands equally. He referred to the Commission's buffer delineation model, which was produced in 1985, and stated that there is a lot more science now on wetland value and that the model should be upgraded.

Mr. Mark Demitroff of Richland Village added to some of the comments made earlier regarding DCA and the Pinelands Commission and said that he has e-mails that say it hasn't been established as to who has jurisdiction over Pinelands redevelopment. He said that Ms. Grogan is copied on the e-mails he has been having with DCA. He referred to Conrail and said that there is

a half mile of railway that was done privately for a tourist railway by Buena Vista Township and there were no applications for the buildings that are there. He said that these are fairly major things that have been done in the Township. He referred to the park in the Township and said that the whole park is new. He went through other violations that have occurred in the Township and said that these were not all minor indiscretions. He said that if the Commission accepts these types of things every day, he doesn't know why there is a Pinelands Commission.

Mr. Carleton Montgomery of the Pinelands Preservation commented on gubernatorial appointments to the Commission and stated that the issue here is not with the Governor, but rather, Senator Bill Haines who has not signed off on the new nominee, or the renominations of the two sitting Commission members. He said that he thinks it is important to clarify where the holdup is. He referred to a legislative hearing held previously by the Senate and Assembly Environment Committees regarding Barnegat Bay and said that he hopes that the Commission will take a look at this issue when the testimony which documents the severity of the crises that Barnegat Bay faces due to the non point source pollution is made available. He said that this issue goes with the kind of development that has been occurring both inside the Pinelands and outside the Pinelands boundary, and affects the Pinelands National Reserve. He said that there is a lot of momentum building among government and non profit organizations to really tackle this issue on a watershed wide basis. He referred to the new office park technology facility at the FAA center and said that this is a big facility and that the stormwater basins will be bad for water quality. He stated that these basin designs really do not work efficiently. He referred to the Conservation Area created in Ocean Acres for critical habitat and stated that a principal developer wants to get a part of this area taken out of the conservation area. He said when the developer did its own survey of the area, the area ceased to be critical habitat for pine snakes. He said that the developer's explanation for this is the development that was permitted by the plan next to that conservation area has now made this portion unsuitable for critical habitat. He said that this rationale raises fundamental policy questions about how the Commission protects endangered species. He said that it would be a tragedy to see this area given away piece by piece. He said that they hope that the Commission will take a hard look at this issue. He said that the Pinelands Preservation Alliance has submitted comments along with a report from Dr. Joanna Burger and Dr. Emile DeVito critiquing the developer's survey and conclusions for the basis of that claim. He said that it is their understanding that Barnegat Township does not support this change. The developer is claiming the Township is constrained by the decision of the Pinelands Commission to rezone the area if the Commission makes a determination that it is no longer critical habitat. Mr. Montgomery further referred to the Commission's decision to spend Pinelands Commission money on the sewer project in Buena Vista Township and said that it does raise important policy issues when the Township is cutting corners and is in opposition to protecting habitat in its Rural Development Area. He said that the Commission should have had more discussion about this matter. He indicated that the public that support these issues will be looking to the Commission to follow through on the management area changes in Buena Vista Township, particularly where the Commission is financing growth in a portion of the Township.

Acting Chairman Tomasello referred to the Governor's appointees and asked Mr. Montgomery if the appointees are in the same district.

Mr. Montgomery replied that is correct.

Mr. Bill Fox of Jackson Township referred to the beaver dam flooding and asked Mr. Horner what will happen to the beavers.

Mr. Horner replied that the State Fish and Wildlife Division have an agency that deals with beaver issues. He said that he doesn't know the answer to Mr. Fox's question, but will follow-up and have an answer for him at the next Commission meeting.

Mr. Fox referred to a state tree farm in Jackson Township, located in the Toms River Corridor. He indicated that there are concrete structures and plastic pipe on the site and asked if there has been anything permitted there. He said that one of the objections he has with the Toms River Corridor study is that it would preclude, among other things, the tree farm from making any further improvements because the whole farm is impacted by the buffer.

Mr. Horner replied that he is not aware of anything, but Commission staff will follow up on this matter.

Mr. Fox said that Jackson Township is redoing its master plan and one of the things the Township is dealing with is the expansion of the mega base. He expressed concerns with the impacts of the airplanes flying over Jackson Township and stated that he has asked the Jackson Township Planning Board to ask the military for the potential environmental impacts of these planes and what they see is going to happen in the future. He said that he hasn't received a response. He said that the military has many other facilities in the United States that have similar projections and they should know what to expect, but when asked, they say they don't know yet. He asked if the Commission has the environmental impacts statement on the exhaust of the planes flying over Jackson Township. He said if the Commission has this information to share it and if not to ask for it.

Commissioner McIntosh left the meeting at this time.

#### Presentation on the Cape May County MUA Land Acquisition Fund

Mr. Stokes stated that 10 years ago the Commission entered into an agreement with The Nature Conservancy to use a couple of million dollars from the Cape May County Municipal Utilities Authority to help preserve land in the Pinelands. He said that this contract has come to a close. He said that Bob Allen from The Nature Conservancy is here today to brief the Commission on the results of this program.

Ms. Grogan said that the contract with The Nature Conservancy has ended and the last reimbursement was made a couple of weeks ago. She said that the funds have been expended and Mr. Allen will brief the Commission on how these funds were used over the ten year period.

Mr. Allen of The Nature Conservancy provided the Commission with a power point presentation regarding acquisition monies for land preservation. He indicated that the grant was originally for \$2.25 million. He said along with the one-to-one match by The Nature Conservancy, a total of \$4.5 million was spent for land acquisition. He noted that in the end, the amount of acquisition

money ended up to be a little over \$8 million. He said that this was in part because there was a number of costs involved in land acquisition that were not reimbursable as part of the program. He said that The Nature Conservancy ended up putting in more match than what was required which also included interest over time. He said that there was a requirement to spend a little over \$200,000 in Cape May County and that a little over \$400,000 was spent in the County, purchasing approximately 70 acres. He indicated that approximately 2200 acres of protected lands were purchased and, through the local grants program, an additional 785 acres were purchased. He said that approximately 3000 acres of land have been protected through the program in the 10 year period. During the past 10 years, The Nature Conservancy acquired over 13,000 acres in the Pinelands National Reserve using funds from the CMCMUA Land Acquisition Program and other sources. These 13,000 acres had a fair market value of approximately \$16,000,000. He said that the program was very successful. He thanked the Commission for the opportunity to work with them and said that The Nature Conservancy looks forward to any future opportunities that may become available.

Commissioner Ashmun congratulated The Nature Conservancy on the program and said that she believes it worked very well. Commissioners concurred.

Closed Session Resolution

DAG Donlon read a resolution to retire into closed session to discuss matters relating to affordable housing obligations.

Commissioner Ashmun moved to retire into closed session. Commissioner Lee seconded the motion. The Commission agreed to retire into closed session by a vote of 11 to 0.

Return to Open Session

Acting Chairman Tomasello reopened the public portion of the meeting.

Adjournment

Commissioner Lloyd moved to adjourn the meeting. Commissioner Ficaglia seconded the motion. The Commission agreed to adjourn the meeting at 12:15 p.m.

Certified as true and correct:

\_\_\_\_\_  
Nadine B. Young,  
Executive Assistant to the Commission

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