

Disclaimer

These minutes reflect the actions taken by the Commission during its Special Meeting on January 27, 2023. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on January 30, 2023.

PINELANDS COMMISSION SPECIAL MEETING

MINUTES

January 27, 2023

All participants were either in-person or present via Zoom conference and the meeting was livestreamed through YouTube: <https://www.youtube.com/watch?v=pL24uP9br70>

Commissioners Participating in the Meeting

Alan W. Avery Jr., John Holroyd, Theresa Lettman, Ed Lloyd, Mark Lohbauer, Mark Mauriello, Davon McCurry, William Pikolycky, Douglas Wallner and Chair Laura E. Matos. Also participating were Acting Executive Director (ED) Susan R. Grogan, Deputy Attorney General (DAG) Nicolas Seminoff and Governor's Authorities Unit representative Janice Venables.

Commissioners Absent

Dan Christy, Jerome H. Irick & Jonathan Meade.

Call to Order

Chair Matos called the meeting to order at 9:01 a.m.

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

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

The Commission pledged allegiance to the Flag.

Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution to reconsider an application to place a soil cap on a closed landfill in Berkeley Township.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 1986-0127.001) (See Resolution # PC4-23-05). Commissioner Lohbauer seconded the motion.

Director Charles Horner provided an overview of the amended report. He said the revisions to the report are noted in bold. He said the application proposes an approximately 42 earthen cap on a closed landfill in Berkeley Township. He said the application was considered by the Commission at its January 13, 2023 meeting but was not approved. The applicant granted an extension of time for the Commission to reconsider the application at a later date to address questions raised by Commissioners.

He said staff issued an amended report on January 20, 2023 that clarified the following three points: the Commission's prior approval for the closure of the landfill, Threatened and Endangered (T&E) species protection standards and the existence of a leachate plume associated with the closure of the landfill.

He said in June of 1990, the Commission approved the closure of the Berkeley landfill with a soil cover. He added that approval did not include or address an analysis of potential groundwater or soil contamination. He said that led the staff to require the application in question today so that analysis would be completed.

He said one northern pine snake was found on the parcel. He said based on the radio tracking, the snake remained 400 feet from the proposed development area. He said there have been known snake sightings approximately a half-mile north of the landfill site. He said based on the T&E surveys that were submitted, staff determined that the proposed development area will avoid irreversible, adverse impacts on the habitat critical to the survival of the local population of the species.

He said lastly, there is a plume that is associated with the landfill. He said based on the extensive data and analysis submitted by the applicant, staff concluded that the plume is having no adverse impacts to wetlands.

Commissioner Wallner said he was wrestling with the impacts of capping the landfill due to the amount of required clearing and potential negative impacts on T&E habitat. He said he was trying to determine the lesser of the two evils.

Acting ED Grogan said staff often grapples with that same issue. She said the Comprehensive Management Plan (CMP) does not specify which of its standards is more important; all the environmental standards must be met. She said the soil cap is not going to disturb critical habitat, based on the extensive T&E survey work completed by the applicant. She said the CMP permits vegetative clearing as long as the environmental standards are met and the proposed use is permitted.

She said that staff has been working with the Township and the applicant on the landfill cap for a very long time.

Commissioner Lettman asked if staff knew when the work on the soil cap would begin. She said she hopes that T&E species would be actively moving when the work does commence, as opposed to remaining in their underground dens.

Director Horner said he believes the applicant would like to start work on February 1st but that is dependant on the New Jersey Department of Environmental Protection's issuance of a landfill closure permit. He stated that the staff has determined the landfill area does not constitute critical habitat. In such cases, seasonal limitations on site work are not typically imposed.

Commissioner Lohbauer thanked staff for its thorough job in revising the report, specifically as it related to the T&E section. He said the amended report is very well done and strikes an important balance between the relevant CMP standards. He said he is now convinced the matter is clearly defined as a unique situation and the Commission will not be setting a precedent by approving the application. He noted that he is not convinced that the Township will resolve the violations and stressed the importance of the Commission's retaining its leverage in this matter.

Commissioner Lloyd said he is appreciative of the staff work that went into amending the report. He said the amended report is well done and much clearer. He said he is satisfied with going forward today but noted there is plenty of additional work to do to resolve the violations that have occurred over the years at the municipal site. He said the solar application is dependant on doing so.

Chair Matos said today was the first step of the process, which was to resolve the landfill violation, and now the next steps can begin, which include resolving the outstanding violations and ultimately installing the solar facility.

The resolution was adopted by a vote of 9 to 0. Commissioner Wallner abstained from the vote.

General Public Comment

James Oris, Director of Planning for Berkeley Township, said he is representing Mayor Carmen Amato, who could not attend this morning. He said the Township is fully committed to resolving the violations. He thanked the Commission for its consideration.

Michelle Forman of Browns Mills, NJ, said that based on the discussion, it sounds like the 16 violations have not been resolved. She said she has noticed that the Commission has been approving all applications and she doesn't agree with that. She said public comment on an application should occur prior to voting. She questioned why that did not happen with this application. She said solar should not be permitted in the middle of a State Forest.

Acting ED Grogan said that the public may comment on applications such as these at the meeting prior to the vote so that staff can include the comment(s) as part of the record. An opportunity for public comment on the Berkeley application was provided at a prior Commission meeting.

Commissioner Lloyd stated that this was an unusual situation but the Commission should ensure there are appropriate opportunities for public comment in the future.

Heidi Yeh of Pinelands Preservation Alliance suggested that the Commission create a tool that explains the public development process so the public can be engaged in a timely manner. She said the closure of the landfill and the protection of the T&E species is a positive outcome of Berkeley Township's application. She said the Commission should be mindful of its limited opportunity to wield enforcement power and not give up any leverage it may have in resolving the outstanding violations.

Adjournment

Commissioner Pikolycky moved to adjourn the meeting. Commissioner Avery seconded the motion. The Commission agreed to adjourn at 9:32 a.m.

Certified as true and correct:



Date: January 30, 2023