

Disclaimer

These minutes reflect the actions taken by the Commission during its April 14, 2023 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 April 20, 2023.

PINELANDS COMMISSION MEETING

MINUTES
April 14, 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=Rs_NybsHWiM

Commissioners Participating in the Meeting

Nicholas Asselta, Alan W. Avery, Jr., John Holroyd, Jr., Theresa Lettman, Ed Lloyd, Mark Lohbauer, Mark Mauriello, Douglas Wallner and Chair Laura E. Matos. Also participating were Executive Director 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 and William Pikolycky.

Call to Order

Chair Matos called the meeting to order at 9:32 a.m.

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

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

The Commission pledged allegiance to the Flag.

Minutes

Chair Matos presented the minutes from the Commission's March 10, 2023 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Asselta seconded the motion.

The minutes from the March 10, 2023 Commission meeting were adopted by a vote of 8 to 0. Commissioner Lettman abstained from the vote.

Committee Reports

Chair Matos provided a summary of the March 31, 2023 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the February 24, 2023 P&I Committee meeting. The Committee was briefed on the Haines Boulevard Redevelopment Plan in Waterford Township's Regional Growth Area. The Township has adopted two new ordinances to repeal the existing expedited permitting process and to establish a Planned Industrial Overlay District in a portion of the Redevelopment Area. The Planned Industrial Overlay District is meant to accommodate development of a large nonresidential use at the site of the former movie theater, in recognition of the fact that there has been no interest in high-density residential development in that area for 20+ years. Nonresidential uses in the new overlay district will have a mandatory requirement for the redemption of Pinelands Development Credits (PDCs). The Committee voted to recommend certification of the ordinances by the full Commission in April.

ED Grogan discussed new state legislation and ordinances recently adopted in Pinelands municipalities intended to curb illegal all-terrain vehicle (ATV) use through impoundment, forfeiture, and disposal of such vehicles found to be operating illegally on public streets or rights-of-way. The Committee suggested distributing a model ordinance to Pinelands communities and encouraging municipalities to post signs warning that ATVs could be seized and destroyed by law enforcement officers.

The Committee was briefed on the Land Preservation Summit that Commission staff held in early March. The rally assembled partners in stewardship from across the region and addressed challenges to local stewardship and the recent lack of potential projects using the Pinelands Conservation Fund (PCF). Following the summit, staff elected to hold off on launching a new round of PCF acquisitions and plans to submit a pre-proposal to the National Fish and Wildlife Foundation's America the Beautiful grant matching program related to stewardship of preserved lands.

The Committee received a presentation on upcoming Comprehensive Management Plan (CMP) amendments, including the Black Run management changes, vegetation management in electric transmission line rights-of-way and establishment of expiration dates for old waivers and Certificates of Filing.

Commissioner Avery provided a summary of the March 21, 2023 Personnel and Budget Committee meeting:

The Committee approved the minutes from its August 23, 2022 meeting.

Ms. Lynch reviewed various financial matters, including the check register and the Electronic Funds Transfer (EFT) report. She provided a summary of application fees received to date this fiscal year and emphasized that fees have exceeded the annual anticipated amount.

The Committee reviewed and recommended Commission adoption of a resolution to establish a separate bank account for the acceptance of online application fee payments.

The Committee approved a Fixed Asset Deletion request.

Executive Director Susan Grogan and HR Manager Charlene Cruz briefed the Committee on personnel matters. Recent retirements and open positions were explained in detail by Executive Director Grogan. Ms. Cruz explained the websites typically used by the Commission for recruitment. Staff also announced the Commission will be partnering with Rutgers University on an internship program this summer. It will hopefully lead to other future internship opportunities.

The Committee discussed sources of revenues and funding for the annual budget. The State allowance for health insurance was discussed and how it hasn't changed.

The Commission's consultants, Connolly & Hickey Architects, presented the draft Fenwick Manor Preservation Plan. They proceeded to discuss the necessary interior and exterior rehabilitation work that is needed, and the associated costs. Staff discussed the next steps in the grant application process. The Committee voted to recommend Commission adoption of a resolution authorizing the Executive Director to apply for a 2023 Preserve New Jersey Historic Preservation Fund Grant.

Executive Director's Report

ED Grogan provided information on the following matters:

- The revised water management (Kirkwood Cohansey) rule proposal was published in the New Jersey Register on April 3, 2023 and a public hearing has been scheduled for May 3, 2023.
- The Planning office continues to review stormwater ordinances that have been introduced and adopted by Pinelands municipalities, while the Regulatory Programs staff is busily implementing the new stormwater management rules through the review process of development applications.

- The search for outside labor counsel to assist with upcoming contract negotiations has been unsuccessful. One law office had a conflict of interest because a member of the firm represents Pinelands Commission applicants. Another labor counsel was unwilling to accept the fees authorized by the state because it has not been revised since 2018.
- Staff members are finalizing a capital grant application for the preservation of Fenwick Manor. The grant is due to the New Jersey Historic Trust on Wednesday, April 19th. The application will include photographs and letters of support. The staff is also preparing a pre-proposal for a federal grant that will facilitate the maintenance, monitoring and stewardship of land previously preserved with money from the Pinelands Conservation Fund. If the proposal is selected, a full application will be prepared and submitted in June.
- Financial Disclosure Statements must be filed by May 15, 2023.

ED Grogan introduced Christian Jeitner, who joined the Science office where he will manage the water-level and water-quality monitoring programs, help to analyze data, and participate in reptile research.

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

- Staff is reviewing numerous cannabis facility applications beyond the five summarized in the March Management Report.
- An application was submitted for the development of a warehouse in Winslow Township with a proposed building height of 60 feet, however the maximum building height in a Pinelands Village Management Area is 35 feet. Staff advised the applicant early in the review process of the height limitation outlined in the township ordinance and the CMP. Staff reviewed the township approval and issued a letter scheduling a public hearing to review the substantial issue raised by the height of the structure. The applicant is attempting to resolve the reducing the building height and factoring in the grade and visibility of the building from the road.

Director Horner said that the management report now includes the name of applicants, a suggestion made by Commissioner Mauriello. He noted that staff determined it would be inadvisable to specifically identify which threatened or endangered plant or animal species has been located on a particular parcel as part of an application.

Director Horner said at the March Commission meeting, Commissioner Mauriello asked about the destination of the solid waste associated with the demolition of the juvenile detention center in Pemberton Township. He said Ernest Deman of the Regulatory Programs Office spoke with the County and he will provide additional details regarding the application.

Mr. Deman said Burlington County will be handling the entire demolition process as there is no outside contractor involved. He noted that the building was tested for hazard materials including asbestos and no hazardous materials were discovered. He said the County advised that in 1990 the detention center was renovated, and any contaminants were probably removed at that time. He said fluorescent lights and light switches have been removed. All debris will be disposed of at the Burlington County landfill outside of the Pinelands Area.

Commissioner Lloyd questioned whether the Commission should be reviewing any additional documents associated with the demolition.

Director Horner said typically the waste would be outlined in a contract but absent a demolition contractor, there is no such document to review.

Paul Leakan, Communications Officer, said the 34th Annual Pinelands Short Course attracted 430 attendees and received excellent feedback. The staff is in the process of preparing for the Summer Short Course, which is scheduled for Friday, June 23rd.

Mr. Leakan noted that the rain garden that was installed at the Commission's headquarters last year is flourishing. The rain garden is designed to capture, treat and infiltrate more than 53,000 gallons of stormwater onsite each year.

Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution for the replacement of an existing road bridge in Jackson Township.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 1981-0809.010)(See Resolution # PC4-23-11). Commissioner Lohbauer seconded the motion.

Director Horner said the project will impact approximately 3,300 square foot of wetlands.

Commissioner Lloyd said four utility poles will be moved as part of the application. He asked if the utility company would be performing that work.

Director Horner said he believes the poles will be relocated by the utility company. He said staff does not typically ask who is performing the work, adding that any public or private utility company would have to adhere to the regulations outlined in the CMP.

The resolution was adopted by a vote of 9 to 0.

Chair Matos introduced a resolution for two separate subdivisions, an addition to a public works garage and the expansion of an existing gravel parking area in South Toms River Borough.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 2005-0232.006). Commissioner Asselta seconded the motion.

Director Horner said this application is to resolve the land development violations that occurred on the parcel without Commission review or approval. He noted that 10,000 square feet of the parking area will be restored and revegetated and the parking lot will be approximately 5,500 square foot in size.

Commissioner Lettman said she had questions regarding the subdivision. She asked if the subdivision would locate the portion of the parcel subject to a Green Acres restriction on a separate lot.

Director Horner said before providing an answer he would like to speak with the applicant and suggested delaying the matter until later in the meeting.

Commissioner Lettman asked for confirmation that the only other outstanding violation on the parcel is the uncapped landfill.

Director Horner said yes and that the capping of the landfill is a separate application.

Commissioner Lettman asked if the parking lot would be serving the recreation center or the Department of Public Works building.

Director Horner said the Borough had not specified who would be using the existing parking lot, only that it is being reduced in size. He noted that staff did not ask the Borough about the use of the parking lot because such information is not relevant to any CMP standards or the Commission's review of the application.

Commissioner Lloyd asked if the parking lot is considered an accessory use or principal use.

Director Horner said the parking lot is an expansion of an existing use.

Chair Matos said that further discussion of the resolution would be delayed until later in the meeting.

Chair Matos introduced a resolution for two Waiver of Strict Compliance applications, both proposing single family dwellings in Pemberton Township.

Commissioner Asselta made a motion Approving With Conditions Applications for Waivers of Strict Compliance (Application Numbers 1988-1096.001 & 2000-0528.001) (See Resolution # PC4-23-12). Commissioner Avery seconded the motion.

Director Horner said this will be the fourth time that the Commission has granted a waiver for Application Number 1988-1096.001. He noted that a waiver expires after five years. He said the applicant cannot meet the required 300-foot buffer to wetlands.

He said Application Number 2000-0528.001 is seeking a waiver from the buffer to wetlands and the depth to the seasonal high water table for a septic system.

Commissioner Lloyd asked if an application fee is required when a Waiver expires and the applicant must obtain a new Waiver.

ED Grogan said currently there is no application fee for the reissuance of a Waiver of Strict Compliance. She said in the next set of CMP amendments, the Commission should propose changes to applications fees so applicants would have to pay a fee for the reissuance of a Waivers. She said typically Waivers are for the development of a single-family dwelling so the fee would be \$250.00. This would recognize the time and work that occurs each time an applicant applies to the Commission for a Waiver application.

The resolution was adopted by a vote of 9 to 0.

Planning Matters

Chair Matos introduced a resolution to certify Waterford Township's Ordinance and the Haines Boulevard Redevelopment Plan.

Commissioner Lohbauer made a motion Issuing an Order to Certify Waterford Township Ordinance 2023-1, Amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, and Ordinance 2023-2, Adopting the Second Amendment to the Haines Boulevard Redevelopment Plan (See Resolution # PC4-23-13). Commissioner Asselta seconded the motion.

ED Grogan said Waterford Township ordinance and redevelopment plan has been a long planning effort between staff and the township. She noted that Dave Patterson, the Township Solicitor, was in attendance at the meeting.

She said the Haines Boulevard Redevelopment Area is located in a Regional Growth Area (RGA) at the intersection of Route 73 and Route 30. Commercial zones sit to the north and south of the Redevelopment Area. A map of the Redevelopment Area was displayed (see attached). ED Grogan said the crosshatched portion is referred to as the Planned Industrial Overlay District and was the site of a former movie theater, a good portion of which is still existing impervious surface. She said the prior plan called for high-density, residential development with affordable housing, and mixed-use development. The current zoning has not been able to attract residential development the way the Township envisioned. The new Overlay District will permit non-residential uses and is appropriate due to the accessibility of the highway and existing impervious surface.

She said the CMP authorizes municipalities to make these types of zoning changes through the municipal flexibility provision. She said when one portion of an RGA sees a loss in residential development potential; however, other portions of the municipality's RGA must still be able to accommodate the minimum required residential development opportunities. Also, a mandatory Pinelands Development Credit (PDC) obligation must be provided. She said the Overlay District includes such a PDC component and will require the redemption of PDCs for non-residential development, one right for every 17,000 square foot of floor area.

She noted that staff is comfortable in recommending certification of the ordinance and the amended redevelopment plan. Lastly, the ordinance repeals the alternate permitting process that had been instituted in the redevelopment area, primarily due to the complexity of the zoning. She said future applicants will need to apply to the Commission through the normal application review process.

Commissioner Lettman asked how the PDC requirement (one right for every 17,000 square feet of floor area) was derived and if the Commission has ever used that number before. ED Grogan said staff determined the requirement and it's based on the number of acres that are being zoned for non-residential uses, the required PDC obligation that the CMP has set for Waterford Township and the remaining zoning. She said the PDC requirement will be different in each municipality that seeks to implement zoning or redevelopment plan changes similar to Waterford's. She noted municipalities are currently working on such plans.

Commissioner Lohbauer said he is an advocate of transit-oriented development. He said initially he was skeptical of the proposal to eliminate transit-oriented housing to permit warehouses but unfortunately the township has been trying for years to develop the site and has not succeeded. He said he is supportive that PDCs will be used for non-residential development.

Commissioner Wallner said he recalls Commissioner Irick expressing concern at the P&I Committee meeting over the reduction in PDC use. Commissioner Wallner said staff explained that the amended redevelopment plan would result in a net loss of PDC use.

ED Grogan said Waterford's prior plan called for the development of hundreds of housing units and a greater opportunity to use PDCs, and although it was a well-conceived plan, it has not advanced. She said the proposed plan is much more realistic and there is a certainty that the purchase and redemption of PDCs in the Overlay District will occur. She added that this plan recognizes the Township's goals and meets the minimum requirements of the CMP. She said the current redevelopment plan far exceeds the number of units required by the CMP.

The resolution was adopted by a vote of 8 to 0. Commissioner Holroyd abstained from the vote, stating that he works for Waterford Township.

Director Horner said staff spoke with the former South Toms River Borough Administrator, who advised that the parcel subject of the subdivision application (Application Number 2005-0232.006) was not encumbered by Green Acres. Director Horner suggested deferring the application to the May Commission meeting while staff determine whether the parcel is listed on the State's Recreation and Open Space Inventory (ROSI).

Commissioner Lohbauer, who made the original motion, said he had no objection to deferring action on the application until the May Commission meeting.

Public Comment on Development Applications and Items Where the Record is Open

Chair Matos read the list of Public Development applications.

Heidi Yeh of the Pinelands Preservation Alliance asked questions related to the soil capping of Woodbine's landfill and the presence of wetlands.

ED Grogan said this portion of the meeting is for the public to provide comment. She said staff will be able to answer questions after the meeting.

Ordinances Not Requiring Commission Action

ED Grogan read the list of Ordinances:

- Barnegat Township Ordinance 2023-1
- Egg Harbor Township Ordinances 18-2022 and 5-2023
- Evesham Township Ordinances 1-2-2023 and 3-2-2023
- Ocean Township Ordinances 2011-1, 2021-20, 2023-1 and 2023-2
- Woodbine Ordinance 612-2022

ED Grogan said Ocean Township adopted a number of ordinances related to the Southern Ocean Landfill Redevelopment Plan. She noted that the landfill is closed. She said over the years the redevelopment area has changed in size and the location has shifted. The Township had to work out several issues. She said the ordinances submitted in 2021 and 2023 incorporate solar energy facility standards consistent with the CMP.

Other Resolutions

Chair Matos introduced a resolution to open a new bank account designated for the on-line payment of application fees.

Commissioner Lloyd made a motion To Authorize the Executive Director to Establish an Additional Account at The Bank of Princeton for Purposes of Accepting Application Fees Through a Third-Party Payment Module (See Resolution # PC4-23-14). Commissioner Lohbauer seconded the motion.

The resolution was adopted by a vote of 9 to 0.

Chair Matos introduced a resolution regarding the submission of a grant to the New Jersey Historic Trust.

Commissioner Avery made a motion To Authorize the Executive Director to Submit an Application to the New Jersey Historic Trust for a 2023 Preserve New Jersey Historic Preservation Fund Grant and to Certify the Availability of Matching Funds (See Resolution # PC4-23-15). Commissioner Lohbauer seconded the motion.

The resolution was adopted by a vote of 9 to 0.

General Public Comment

No one from the public provided comment.

Chair Matos said that a member of the public emailed comment to the Commission and paper copies have been shared with Commissioners participating in-person. She said an email copy will be sent to Commissioners who are participating remotely and the comments will be attached to the minutes.

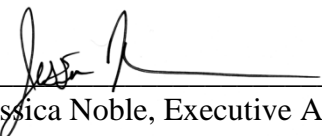
Adjournment

Commissioner Lohbauer said he attended a recent enduro event and would like to share the photographs at a future meeting.

Chair Matos requested that the photographs be shared with her and ED Grogan.

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Asselta seconded the motion. The Commission agreed to adjourn at 10:35 a.m.

Certified as true and correct:









Jessica Noble, Executive Assistant

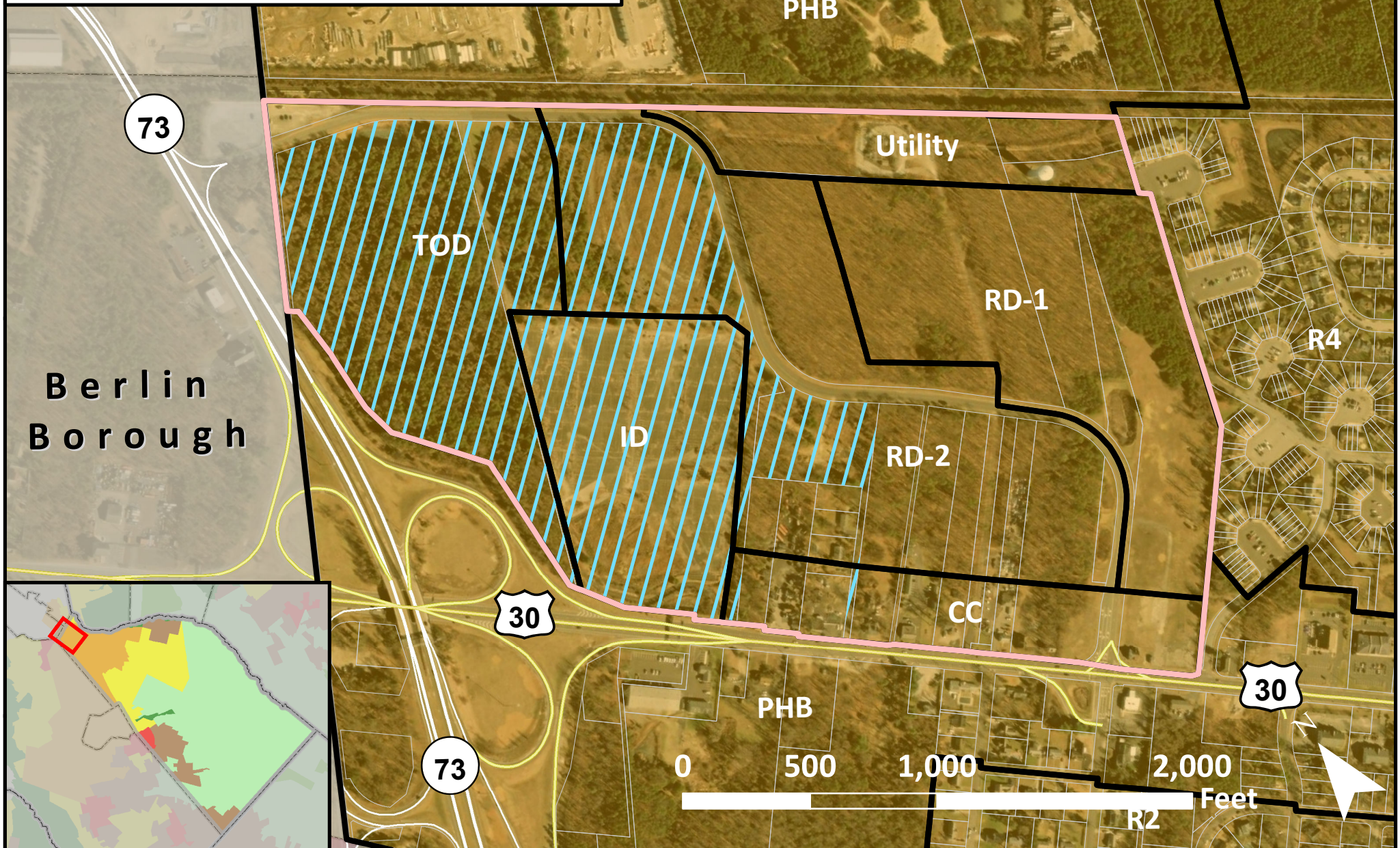
Date: April 20, 2023

Waterford Township

Haines Boulevard Redevelopment Area

-  Planned Industrial Overlay Zone
-  Redevelopment Area
-  Pinelands Management Area
-  Existing Zoning
-  Regional Growth Area
-  Lots

Executive Director's Report
Waterford Twp Ord. 2023-1 and -2
3/31/2023
Exhibit #1



From: Bill WOLFE <bill_wolfe@comcast.net>

Sent: Friday, March 24, 2023 1:05 PM

To: Info, PC [PINELANDS] <info@pinelands.nj.gov>; Grogan, Susan [PINELANDS] <Susan.Grogan@pinelands.nj.gov>; Mark Lohbauer <mlohbauer@jgscgroup.com>; LaTourette, Shawn [DEP] <Shawn.LaTourette@dep.nj.gov>; Cecil, John [DEP] <John.Cecil@dep.nj.gov>; eileen.murphy@njudubon.org; carleton@pinelandsalliance.org; Jason Howell <jason@pinelandsalliance.org>; Anjuli Ramos <anjuli.ramos@sierraclub.org>; emile@njconservation.org; tom@njconservation.org; Moran, Tom <tmoran@starledger.com>; Taylor McFarland, NJ Sierra Club <taylor.mcfarland@sierraclub.org>; Tittel, Jeff <jeff.tittel@verizon.net>; senbsmith <SenBSmith@njleg.org>; sengreenstein <sengreenstein@njleg.org>; fkummer@inquirer.com; Hurdle, Jon <jonhurdle@gmail.com>; Robert Hennelly <rhennelly55@gmail.com>; domalley <domalley@environmentnewjersey.org>; Matthew Smith <msmith@fwwatch.org>; Margo Pellegrino <outriggerone@me.com>; Silvia Solaun <ssolaun@gmail.com>; Shanley, Georgina <shanleyg2001@yahoo.com>; Ken Dolsky <kdolsky@optonline.net>; Agnes <agdrums@verizon.net>; SUSAN RUSSELL <selizabethrussell@verizon.net>; jrsanchezphd@gmail.com; Albert Horner <hornerad2@verizon.net>; senscutari@njleg.org; kduhon@njleg.org; asmmckeon <asmmckeon@njleg.org>; wparry (ap.org) <wparry@ap.org>; Jeff Pillets <jeffpillets@icloud.com>

Subject: [EXTERNAL] Testimony to the Pinelands Commission

Dear Pinelands Commission -

Please accept the following public testimony and distribute it to all Commissioners and enter it into the record at your next public meeting as public comments.

You may find a link to this testimony, with the referenced maps here:

<http://www.wolfenotes.com/2023/03/the-dep-considers-virtually-the-entire-nj-pinelands-as-a-military-influence-area/>

The DEP Considers Virtually The Entire NJ Pinelands As A “Military Influence Area”

- **DEP Logging Plan Only The Beginning – A Model For Fake Climate & Wildfire Solutions**
- **Pinelands Commission Caves To Military Priorities Over Pinelands Forest Preservation**
- **Military And DEP Funded So Called “Preservation” Groups Lack The Integrity To Fight**

For anyone who cares about preserving the Pinelands, the map above should scare the hell out of you.

The DEP considers huge portions of the Pinelands – a designated World Biosphere Reserve due to its unique ecology – as a “Military Influence Area”.

The US military's objectives – particularly in managing wildfires that impede its military training mission – appear to over-ride all other considerations, including the Pinelands Comprehensive Management Plan (CMP) and its protections of forests and the plants and animals that live there.

The US military has unlimited funds and political power to advance that mission.

The recent experience with a military “REPI” Program funded DEP “Wildfire” and “Carbon Defense” and “Habitat” “Forestry” plan should absolutely terrify you. The negative implications are stunning in scope and severity in terms of the integrity of the Pinelands region.

That experience – as [my 5 part series as demonstrated](#) – reveals deeply troubling facts:

1) The Pinelands Commission can not stand up to the military and DEP to enforce the CMP and block extremely damaging military funded DEP “forestry” plans.

2) The so called “conservation” groups (i.e. NJCF, Sierra Club) and “preservation” (PPA) groups that are supposed to watch out for the Pinelands and rally the public to defend and preserve the Pinelands are corrupted by military and DEP funding and/or lack the spine to oppose the military and DEP.

In fact, they all SUPPORTED this REPI DEP “forestry” plan.

3) The DEP is totally captured and corrupted by their funding sources, in this case the military. They literally will do anything for money to fund their programs and well paid staff.

In fact, in the DoD REPI grant application documents, DEP defined the eligible military funded land area as **1.3 MILLION ACRES**, a land area larger than the entire Pinelands.

4) This particular military REPI DEP “forestry” plan was sold to the Pinelands Commission and the public under obviously false pretexts and rationales, while it's true propose was hidden.

Yet the NJ media, like the cowards in the conservation groups, refused to tell the public the truth; refused to skeptically interrogate DEP spin and lies; and refused to print the facts, even when they were given those facts in writing in government documents and could see them in the forest with their own eyes (e.g. the DEP lies that all the cut trees were 2 inches or less in diameter and the DEP lies about maintaining the existing canopy cover).

5) The DEP manufactured a deeply cynical and false justification of this military REPI logging project as advancing climate goals via a “carbon defense” strategy. The

essence of that strategy is the absurd contradiction that recalls the Vietnam War's "we must burn the village to save the village".

This DEP "carbon defense" lie says that we must log the forest to prevent wildfire from releasing even more carbon than the logging creates.

This lie must not become the model for forest management for climate carbon sequestration and storage.

It is even MORE dangerous and destructive than the "young forest" sham DEP uses to log forests under the pretext of forest health or creating of habitat for endangered species.

6) DEP also used manufactured fear of wildfire to promote this scam. Again, no one will call that out.

7) The public was kept in the dark and completely shut out of this entire process. The public was blatantly lied to and misled by all institutions involved: the military, the DEP, the Pinelands Commission, the conservation groups and the media.

This means that the military and military objectives are shaping and even actually dictating the management of our public lands – not the Pinelands CMP, DEP plans and regulations, and public preferences – and with absolutely no resistance, transparency, or public participation. That alone is terrifying and totally unacceptable.

With all these destructive dynamics illustrated by the recent REPI DEP Pinelands logging fiasco – and the unlimited money, political power, and complete institutional failures (i.e. by the Pinelands Commission, the DEP, the conservation groups and the media) to stand up to the military – the Pinelands forests and ecology are highly at risk.

Word.

Respectfully submitted,
Bill Wolfe

From: Bill WOLFE <bill_wolfe@comcast.net>

Sent: Saturday, April 1, 2023 2:57 PM

To: Info, PC [PINELANDS] <info@pinelands.nj.gov>; Roth, Stacey [PINELANDS] <Stacey.Roth@pinelands.nj.gov>; Mark Lohbauer <mlohbauer@jgscgroup.com>; Grogan, Susan [PINELANDS] <Susan.Grogan@pinelands.nj.gov>; wparry (ap.org) <wparry@ap.org>; fkummer@inquirer.com; Hurdle, Jon <jonhurdle@gmail.com>

Subject: [EXTERNAL] Commission comments on DEP rules

Dear Pinelands Commission:

Please consider the following as public comments during your upcoming public meeting.

I just read the Pinelands Commission's 2/2/23 written comments submitted by Stacey Roth on proposed DEP stormwater management and Flood Hazard Act regulations.

The Commission supported those proposed rules on the following basis:

"Development within the State of New Jersey must be designed and constructed to manage not only for today's flood conditions but for the significantly higher precipitation level anticipated to occur in the future."

Yet, according to the DEP proposal itself, the proposed rule's precipitation, runoff, flood elevation, and storm frequency data do not reflect current conditions and do not reflect projected (modeled) conditions.

Accordingly, as explained below, the Commission's comments are not accurate.

1. DEP based the rule on the 100 year storm event, despite the fact that NJ already has experienced several far more severe 500 year storm events.

DEP's proposal documents the fact that NJ has suffered 500 year (or more) Storm events and flooding (proposal [@ page 10](#)):

Specifically, the remnants of Tropical Storm Ida resulted in flooding significantly more severe than FEMA's published 100-year flood at various locations in New Jersey:

Raritan River at Bound Brook:

- Flooding during Tropical Storm Ida equaled 1999's Hurricane Floyd, which was the highest elevation ever recorded at Bound Brook.
- Including Floyd, flooding at this location in the past 23 years has equaled or **exceeded FEMA's 500-year flood elevation three times.**
- The Raritan River during Tropical Storm Ida peaked at 42.13 ft NGVD (41.21 ft NAVD) which is 3.01 feet above FEMA's 100-year elevation (38.2 ft NAVD) and **0.21 ft above FEMA's 500-year flood elevation** (41.0 ft NAVD).

Raritan River at Bridgewater

- Flooding during Tropical Storm Ida **peaked at roughly FEMA’s 500-year flood elevation** (41.0 ft NAVD) which is 2.8 ft above FEMA’s 100-year flood elevation (38.2 ft NAVD)

Millstone River at Manville:

- Flooding during Tropical Storm Ida **peaked at roughly one foot above FEMA’s 500-year flood elevation** (43.5 ft NAVD) which is 2.5 ft above FEMA’s 100-year flood elevation (41.0 ft NAVD). Thus, flooding at this location peaked at approximately 3.5 feet above FEMA’s 100-year flood elevation.

DEP then explains the significance of the 500 year flood event: ([@page 11](#))

These examples illustrate not only that Ida was a significant flood event that **exceeded the anticipated flooding depicted on available flood mapping products, upon which many roads and buildings were financed, constructed, and insured in the impacted communities, but also that there is an upward trend in the number and severity of flood events in the State.** As noted above, **flooding in Bound Brook has exceeded FEMA’s 100-year flood elevation four times and FEMA’s 500-year flood elevation three times since 1999, which leads to the conclusion that we are already experiencing increased flooding as compared with past recurrence interval calculations.**

Despite the facts that NJ is **already experiencing 500 year floods and that climate science projects that extreme storms will significantly increase in rainfall amount, rainfall intensity (short severe bursts of rainfall that create floods), and extreme rainfall frequency, the DEP did not even use the 500 year storm.**

Instead, DEP merely added a 25% “safety factor” addition to the current 100 year storm event they’ve been using for decades.

And look how they then falsely stated that it would be adequate – a statement made before the facts on 500 year storms are summarized on page 10-11: ([@page 5](#)):

This rulemaking incorporates anticipated greater depths of **precipitation for the two, 10, and 100-year storm events for the purposes of stormwater management.** These proposed amendments are necessary **to ensure that buildings, roads, stormwater management features and other structures are designed and constructed to manage and be protective for today’s flood conditions and precipitation as well as anticipated future conditions and precipitation. [...]**

Specifically, **the flood hazard area design flood elevation is based on a flood that is 25 percent greater than the 100-year peak flow rate in the stream or river being analyzed and mapped.**

The technical regulatory fine print for this standard is on page 102:

6. Table 3.6B below sets forth the change factors to be used in determining the projected 100-year storm event for use in this chapter,

The 100 year storm – even with an additional 25% “safety factor” increment – can not **“ensure that buildings, roads, stormwater management features and other structures are designed and constructed to manage and be protective for today’s flood conditions and precipitation as well as anticipated future conditions and precipitation.”**

That proposed new standard is already exceeded now, never mind projected climate driven increases.

DEP admits this multiple times in the proposal:

“More than 12 rivers exceeded their 100-year flood levels”

“On August 27 and 28, 2011, Hurricane Irene resulted in record breaking floods on many New Jersey streams, with 33 USGS stream gauges recording peak flows equal to or greater than the 100-year recurrence interval (USGS, 2011).”

DEP exposed the inadequacy of the 100 year design storm for the purpose of justifying their new 25% “safety factor”.

But, ironically, in doing so, DEP also exposed the flaws in relying on the 100 year flood.

2. DEP Ignores Land Use Increases In Development. DEP’s proposed new standards are obsolete for the same reasons that DEP correctly rejects current rainfall methods

Just some basic observations make it obvious that, in addition to underestimating extreme rainfall amounts and flood elevations, DEP is failing to consider a basic driver of increased flood impacts.

Flooding is a combination of the amount and timing of rainfall and the ability of the landscape to absorb that rainfall.

NJ is a highly developed state.

Development destroyed forests, wetlands, and natural landscapes that absorb rainfall and dampen flooding. It also puts people and property at risk when located in areas prone or vulnerable to flooding.

Development also increases impervious surfaces that dramatically increase the generate stormwater runoff volumes.

Yet the DEP proposal ignores the changes in land use and impervious surfaces that generated huge volumes of stormwater that contribute to bad land use decisions that result in devastating deadly flooding.

The proposal ignores existing development, it will influence new development at the margin, and it therefore depends on market forces, not any overarching State Land use and climate plan or infrastructure investment program.

A critical [Star ledger editorial got that:](#)

“A lot of New Jersey was developed prior to the stormwater regulations,” Obropta said. **“The state needs to require municipalities to [begin retrofitting existing development](#) with stormwater management if we have any hope to reduce flooding.”**

The proposal ignores existing development.

The proposal does very little to cap or reduce impervious surfaces or stop the loss of natural lands like forests, wetlands and stream buffers. It guarantees that the flooding problems will get worse.

I urge the Commission to conduct technical reviews and submit technical comments on DEP regulatory proposals, instead of vague and misleading political endorsements.

Bill Wolfe