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Disclaimer

These minutes reflect the actions taken by the Commission during its May 9, 2014 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 June 3, 2014.

PINELANDS COMMISSION MEETING<sup>1</sup>

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

MINUTES

**May 9, 2014**

Commissioners Present

Candace Ashmun, Alan W. Avery, Jr., Bill Brown, Joe DiBello, Sean Earlen, Paul E. Galletta, Robert Jackson, Ed Lloyd, Richard Prickett, D'Arcy Rohan Green, Gary Quinn and Chairman Mark Lohbauer. Also present were Executive Director Wittenberg, Governor's Authorities Unit Liaison Kerstin Sundstrom and Deputy Attorney General Kristen Heinzerling.

Commissioners Absent

Jane Jannarone, Ed McGlinchey and Fran Witt.

Chairman Mark Lohbauer called the meeting to order at 9:39 a.m.

DAG Heinzerling read the Open Public Meetings Act Statement.

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<sup>1</sup> Please note that all attachments are maintained with the original minutes, but are not attached to copies. For information about attachments, please contact the office.

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

### Minutes

Chairman Lohbauer presented the closed session minutes from the March 14, 2014 Commission meeting. Commissioner Jackson moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The closed session minutes of the March 14, 2014 Commission meeting were adopted by a vote of 11 to 0, with Commissioner Rohan Green abstaining.

Chairman Lohbauer presented the minutes from the April 11, 2014 Commission meeting. Commissioner Avery moved the adoption of the minutes. Commissioner Ashmun seconded the motion.

The minutes of the April 11, 2014 Commission meeting were adopted by a vote of 11 to 0, with Commissioner Quinn abstaining.

### Committee Chairs' Reports

#### Personnel & Budget Committee

Acting Committee Chairperson Prickett updated the Commission on action from the April 29, 2014 Personnel and Budget (P&B) Committee meeting:

The Committee did not adopt the minutes from the April 1, 2014 meeting as there were not enough Commissioners present.

Donna Connor provided an update on the FY 2014 budget, noting that we continue to expect that application fees will not reach the budgeted amount of \$425,000. The purchase of a four-wheel drive vehicle was not anticipated this year but is needed for the upcoming field season. The Committee had previously discussed and agreed to this purchase and the necessary budget revision.

*Commissioner Prickett said he would make a motion to shift money in the budget for the purchase of the vehicle at the end of his update.*

Ms. Connor discussed the initial process for putting the base budget together and noted that managers are working on their requests for additional items. A draft Operating budget will be reviewed at the next P&B meeting. The final draft of all three budgets (Operating, Pinelands Conservation Fund, and Kirkwood/Cohansey) along with budget notes will be presented at the following P&B meeting.

Ms. Connor also informed the Committee of an upcoming meeting to discuss the National Park Service (NPS) funding needed to continue the economic and environmental long-term monitoring programs. The amount of the assistance has not increased since 1994. Acting Committee Chairperson Prickett asked staff to tell the Commissioners what they can do to

help with this effort.

Ms. Connor stated that this is her last P&B meeting and acknowledged that the Committee has always been very supportive of her work at the Commission and that she was very appreciative. Acting Committee Chairperson Prickett thanked Ms. Connor for all of her years of service to the Commission.

The Committee met in Closed Session to discuss confidential matters.

Commissioner Prickett made a motion to *Increase the Pinelands Commission's FY 2014 Operating Budget by \$27,000 to Purchase a Four-wheel Drive Vehicle. The Revenue Sources for this Purchase are \$20,000 from the Reserve for Vehicle Replacement and \$7,000 from the Commission's Undesignated Fund Balance.* Commissioner Ashmun seconded the motion. All were in favor.

Chairman Lohbauer thanked Commissioner Prickett for chairing the last couple of Personnel & Budget Committee meetings in Commissioner Witt's absence.

#### Plan Review Committee

Commissioner Ashmun said the Plan Review Committee met on April 11, 2014. The Committee approved the February 24, 2014 meeting minutes.

Staff provided an update regarding the progress of the Plan Review Report. Staff anticipates that the report will be completed and ready for distribution in July 2014.

Staff said that the hearing for the first Plan Review rule proposal was held on Wednesday, March 26 at 7 PM at the Commission's office. The scaled-back rule proposal contains administrative efficiency improvements and an extension of time for the alternate design septic system pilot program for the FAST technology. No public comment was offered at the March 26 hearing. One written comment has been received.

Staff delivered a presentation that provided an overview of the Land Use Planning chapter of the Plan Review Report.

The Committee discussed the topics identified during Plan Review that merit future work, rule proposals and/or program initiatives. These topics will be included in the Recommendations chapter of the Plan Review Report.

The next meeting of the Plan Review Committee is scheduled for July 11, 2014 immediately following the full Commission meeting.

#### Policy & Implementation Committee

Commissioner Ashmun updated the Commission on action from the April 25, 2014 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the March 28, 2014 meeting.

The Committee discussed existing Comprehensive Management Plan (CMP) sign rules and how they apply to digital sign technology. The Committee concurred with staff recommendations for proceeding with the two recently submitted municipal sign ordinances and for consideration of a CMP amendment in the long term.

Following a discussion of the Pinelands Conservation Fund (PCF), the Committee may establish a PCF Education and Outreach component and reallocate PCF funds. The Committee will need to amend PCF objectives and policies, seek public comment and present the full Commission with amended objectives and policies for approval.

#### Executive Director's Reports

Ms. Nancy Wittenberg updated the Commission on the following:

- Donna Connor's retirement date is approaching and staff continues to conduct interviews for her position. The goal is to hire someone prior to Ms. Connor leaving.
- Staff is working on the FY15 budget. We have received no indication that our state appropriation will be any different than last year. We continue to monitor the state's \$800 million FY14 deficit.
- Staff met with the Commission's representative from the National Park Service (NPS), Phil Correll. The meeting helped Ms. Connor finalize outstanding matters with NPS.
- Ms. Wittenberg said Karen Young is retiring at the end of the month. She said Ms. Young has been an integral part of the Commission's Regulatory Programs staff for 27 years. Ms. Wittenberg presented Ms. Young with her Commission name plate and wished her a happy retirement.

Mr. Charles Horner thanked Ms. Young for her work over the years.

Commissioner Ashmun said Ms. Young joined the Commission when staff had just begun implementing the Plan.

Chairman Lohbauer asked everyone to rise and honor Karen's achievement.

Ms. Young thanked everyone.

Mr. Charles Horner updated the Commission on the following:

- Staff attended a site visit in Buena Vista Township to resolve some of the town's violations. The Mayor and municipal officials were in attendance.
- Recently the Commission has received a couple of applications for railroad activities in the Pinelands. The Interstate Commerce Commission Termination Act (ICCTA) has language that exempts railroads from state and local approval. The Commission continues to argue that railroads must file an application. After the Commission reviews the application and if the application is deemed exempt, the

railroad activities must follow the Commission's environmental standards to the extent possible.

Ms. Stacey Roth said that some Commissioners may remember the Southern Railroad application regarding a waste transload facility. The Commission was successful in arguing that the CMP was created under the Federal Act and that needed to be taken into consideration. She said the current application has more to do with railroad activities.

Commissioner Lloyd asked what types of railroad activities were being proposed.

Ms. Roth said the applications are associated with sand mining operations, aggregate transload facilities and bridge repairs.

Mr. Horner added that there are two current applications with multiple components, such as bridge repairs, bridge replacement, rail replacement and tie replacement.

Commissioner Jackson brought up contaminants in rail ties.

Ms. Roth said all activities would need to comply with the environmental standards of the CMP.

Mr. Horner finished his update:

- Staff met with Medford Township officials to discuss an application for a bike path along Route 541. Topics such as wetlands, wetland buffers and cultural resources were discussed.
- Staff recently worked with the County Soil Conservation District and Ocean County to resolve a stormwater erosion problem stemming from the development of the crosswind runway at the Robert Miller Airpark.

Mr. Larry Liggett updated the Commission on the following:

- A first draft of the Cape May County Municipal Utilities Authority /Woodbine Leachate feasibility study was submitted to the Commission. The draft study suggests six potential options to deal with the wastewater.
- The United States Geological Survey has submitted a proposal to the Commission on the implementation of the Kirkwood-Cohnasey study data. The study would focus on the local and regional impacts.
- Staff recently met with the New Jersey Builders Association on stormwater regulations. He said although the meeting was complex because the New Jersey Department of Environmental Protection, the Soil Conservation District and the Commission have different stormwater regulations, it was useful.
- NJ Future, in coordination with the Pinelands Preservation Alliance, presented its draft report entitled "Effects of Land Development on water resources in the Pinelands Region" to staff. The report assessed three developed areas of the Pinelands: Hammonton, Medford/Evesham and Little Egg Harbor.

Commissioner Ashmun asked if the report is available.

Mr. Liggett said the final report would be available in June.

Commissioner Ashmun said she thinks it is important for the Commission to be responsive to the pollution stemming from railroad ties.

Ms. Roth said she would have to look into the matter.

Mr. Horner said the issue of whether the Commission can regulate construction materials has been raised before.

Ms. Roth updated the Commission on the following:

- The May 15 deadline to file Financial Disclosure Statements is approaching quickly.
- South Jersey Gas has filed an appeal with the Appellate Division for the failure of the Memorandum of Agreement (MOA) to proceed. The Board of Public Utilities and the Commission are named as parties in the suit. South Jersey Gas claims the Commission's decision was arbitrary and capricious and deviated from the Commission's normal practice concerning MOA's without engaging in rulemaking as required by the New Jersey Administrative Procedures Act. The appeal was filed in late March. The case information statement has been filed, and a briefing schedule will follow.

Commissioner Galletta asked what happens if the court orders a revote.

DAG Heinzerling said if the Commissioners have questions, it would be best to discuss them in closed session.

Chairman Lohbauer suggested waiting until the end of the meeting to go into closed session.

Commissioner Galletta agreed.

Ms. Roth said that it has come to the Commission's attention that a turf farm in Hammonton has been holding large soccer tournaments on its fields. The Commission has issued a letter that the soccer events are not a permitted use under Hammonton's land use ordinance and the CMP, nor is it consistent with the Pinelands Development Credit (PDC) deed restriction on the parcel. In that letter, the property owners are advised to cease soccer activities on the parcel. Ms. Roth said she has reached out to the property owner's attorney.

Commissioner Avery asked if the property owner sold the development credits under the state agricultural program.

Ms. Roth said no protection occurred through PDC severance.

Commissioner Galletta said other townships are also involved.

Other

Ms. Wittenberg said that resolutions honoring John Haas and Leslie Ficcaglia have been added to today's agenda.

Chairman Lohbauer read the resolution honoring the late John Haas.

Commissioner Ashmun moved the adoption of a Resolution Expressing the Commission's appreciation to the family of John Haas for his Service as a Member between December 2005 and November 2013 (See Resolution # PC4-14-12). Commissioner Rohan Green seconded the motion.

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

Chairman Lohbauer read the resolution honoring Leslie Ficcaglia.

Commissioner Lloyd moved the adoption of a Resolution Expressing the Commission's appreciation to Leslie Ficcaglia for her Service as a Member between April 1996 and April 2014 (See Resolution # PC4-14-13) Commissioner Jackson seconded the motion.

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

Public Development Projects and Other Permit Matters

Chairman Lohbauer presented the Resolution recommending approval for Galloway Township's application proposing the demolition of an existing service building and the reconstruction of a new service building.

Commissioner Galletta moved the adoption of a Resolution Approving With Conditions an Application for a Public Development and Certificate of Appropriateness (Application Number 1989-0538.006) (See Resolution # PC4-14-14). Commissioner Earlen seconded the motion.

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

Chairman Lohbauer presented the Resolution recommending approval of an application to apply herbiciding of 12 acres in order to control invasive stiltgrass.

Commissioner Avery moved the adoption of a Resolution Approving With Conditions an Application for a Public Development and Certificate of Appropriateness (Application Number 1992-0102.006) (See Resolution # PC4-14-15). Commissioner Galletta seconded the motion.

Commissioner Ashmun asked that these two public development applications be separated in order to discuss and vote on them separately. She said staff has implemented the CMP.

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However, she is not in favor of planting non-native pines in the Pinelands. She believes the species was previously ruined by the beetle most likely due to climate change. She thought it was a good time to highlight this issue.

Commissioner Prickett asked if the State Historic Preservation Office (SHPO) was concerned about the tree plantation or the artifacts under the soil.

Mr. Horner said SHPO was not concerned about the trees but because this parcel lies in a historic district, eligible for federal designation, the CMP requires certain actions when any kind of development is proposed in these areas.

Commissioner Prickett added that the plan to plant non-native species seems contrary and it may fail. He said in the future it may be best to plant shortleaf pine.

Chairman Lohbauer said staff did an excellent job on this application. He thanked Dr. Amy Karpati of the Pinelands Preservation Alliance and Dr. Emile Devito of the New Jersey Conservation Foundation for a great analysis of their viewpoints.

The Commission adopted the resolution by a vote of 11 to 0, with Commissioner Ashmun abstaining.

Chairman Lohbauer presented the Resolution recommending approval for the development of one single family dwelling.

Commissioner Avery moved the adoption of a Resolution Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 2012-0149.001) (See Resolution # PC4-14-16). Commissioner Earlen seconded the motion.

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

#### Public Comment on Agenda Items and Pending Public Development Applications

No one from the public spoke.

#### Ordinances Not Requiring Commission Action

Chairman Lohbauer asked if any Commissioner had questions regarding the ordinances not requiring Commission action:

- Lacey Township Ordinance 2014-07
- Lacey Township Ordinance 2014-08
- Waterford Township Ordinance 2014-2

No members of the Commission had questions.

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

Tony DiLodovico of Tony D. Environmental Permitting said he is here today representing the New Jersey Builders Association. He said the Builders recently met with Commission staff to discuss stormwater regulations. He said he was encouraged by the meetings and hope they continue. He said there are many inconsistencies in the stormwater rules between DEP, the Soil Conservation District and the Commission and he hopes a solution can be agreed upon.

Fran Brooks of Tabernacle Township said she appreciated the brief discussion about the South Jersey Gas lawsuit. She asked why the case is at the appellate court versus the Office of Administrative Law or Superior Court.

DAG Heinzerling said there are court rules that allow final agency action or inaction to go straight to the appellate division.

Ms. Brooks asked who will represent the Commission.

DAG Heinzerling said she has been assigned to the matter.

Ms. Brooks asked if the decision would come back to the Commission, should South Jersey Gas prevail at the appellate court.

DAG Heinzerling said the court will decide what happens next.

Fred Akers of the Great Egg Harbor Watershed Association praised the staff and Commission for informative minutes. He also commended Ms. Grogan and Mr. Liggett on the presentation they delivered on signs at the last P&I meeting. He said he learned a lot. He said he believes it is important for the Commission to offer guidelines to the towns so they have more reason to comply with the CMP.

Georgina Shanley said she is representing the Don't Gas the Pinelands Coalition. She said she has concerns over the South Jersey Gas litigation. She questioned why South Jersey Gas filed an appeal when the agreement was between the Board of Public Utilities and the Commission. She read the South Jersey Gas appeal into the record. She said her understanding is that there have been meetings between South Jersey Gas and staff regarding a waiver of strict compliance.

Ms. Wittenberg said no.

Ms. Shanley asked if a waiver application is making its way to the Commission.

Chairman Lohbauer said currently there is no application from South Jersey Gas before the Commission.

Ms. Shanley asked how often waivers are granted.

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Chairman Lohbauer said we granted one today, but they are not common.

Ron Hutchison thanked both past and present Commissioners for dealing with the controversial pipeline issue.

Arnold Fishman said the court will resolve whether South Jersey Gas has standing. He said the court won't resolve it unless the Commission raises it as an issue. He asked Commissioners to request their legal representatives to raise it as an issue.

Commissioner Avery said he thought there was an effort to have all three agencies (DEP, Soil Conservation District and the Commission) coordinate their stormwater regulations when the CMP was amended in 2006.

Ms. Wittenberg said she doesn't think the stormwater rules were ever perfectly lined up between the agencies.

Commissioner Avery asked if there was an outline that lays out the inconsistencies.

Mr. Liggett said there is an outline but it is still unclear to staff where the specific issue lies.

Commissioner Ashmun agreed that it would be helpful if the three agencies could line up better but the Commission has a specific mission and the Commission's stormwater rules reflect that.

Mr. Liggett said the municipalities have a role in the stormwater regulations as well.

Wendy Brophe asked the Commissioner to make a nonpolitical decision regarding the pipeline and to use their conscience.

Chairman Lohbauer said the Commission voted on this matter in January.

Ms. Brophe said based on recent newspaper articles she is concerned the application will be back before the Commission.

Chairman Lohbauer said staff stated earlier in the meeting that there is no application for the pipeline before the Commission.

#### Closed Session Resolution

DAG Heinzerling read a resolution to retire into closed session regarding a litigation matter.

Commissioner Galletta moved to retire into closed session. Commissioner Jackson seconded the motion. The Commission agreed to retire into closed session by a vote of 12 to 0, beginning at 10:56 a.m.

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Return to Open Session

The meeting resumed at 11:10 a.m.

DAG Heinzerling said no action was taken in closed session

Adjournment

Commissioner Prickett asked about the Pinelands Municipal Officials Orientation.

Ms. Wittenberg said the Orientation will be held on May 29, 2014 at 4:00 p.m. here in this room. This year Ed Wengrowski will be presenting the findings from the Rapid Landfill Assessment.

Chairman Lohbauer mentioned the passing of former Commissioner Peter Burke.

Commissioner Lloyd suggested creating a resolution in his memory.

Commissioner Avery moved to adjourn the meeting. Commissioner Prickett seconded the motion. The Commission agreed to adjourn at 11:15 a.m.

Certified as true and correct:

\_\_\_\_\_  
Jessica Noble, Executive Assistant

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