

Disclaimer

These minutes reflect the actions taken by the Commission during its November 10, 2011 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 November 22, 2011.

PINELANDS COMMISSION MEETING<sup>1</sup>

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

MINUTES

**November 10, 2011**

Commissioners Present

Candace Ashmun via teleconference, William Brown, Sean Earlen, Leslie Ficcaglia, John A. Haas, Ed McGlinchey, Bob Jackson, D'Arcy Rohan Green, Francis A. Witt and Chairman Mark S. Lohbauer. Also present were Executive Director Nancy Wittenberg, DAG Kristen Heinzerling and Governor's Authorities Unit Liaison David Reiner.

Commissioners Absent

Paul E. Galletta, Richard Harris, Edward Lloyd and Gary Quinn.

Chairperson Lohbauer called the meeting to order at 9:34 a.m.

DAG Heinzerling read the Open Public Meetings Act Statement.

Ms. Wittenberg called the roll and announced the presence of a quorum. (There were 10 Commissioners present.)

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

Minutes

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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.

Chairperson Lohbauer presented the October 14, 2011 Commission meeting minutes, and Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Jackson seconded the motion.

The minutes of the October 14, 2011 meeting were adopted by a vote of 10 to 0.

#### Special Presentation

Andrew and Brian Zhong of Millstone River Elementary School made a presentation on the Pine Barrens Treefrog. Their goal is to gain enough support to designate the Pine Barrens Treefrog as the official State Amphibian of New Jersey (see attached slides).

Chairman Lohbauer requested a motion to send a letter of endorsement on behalf of the Commission. Commissioner Ficcaglia moved the motion. Commissioner Rohan Green seconded the motion. All were in favor.

Both Commissioner Haas and Commissioner Rohan Green commended the boys on a great presentation. Chairman Lohbauer presented the boys with a letter of endorsement (see attached).

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

Commissioner Haas updated the Commission on the October 24, 2011 Personnel and Budget Committee meeting.

- ✍ The minutes from the September 19, 2011 Personnel and Budget Committee meeting were adopted.
- ✍ Resolution: To Authorize the Executive Director to Accept a Grant from the U.S. Environmental Protection Agency to Conduct a Study titled “Assessing the Ecological Integrity of Intermittent Ponds and Their Vulnerability to Land-use Impacts” and to Revise the FY 2012 Pinelands Conservation Fund Budget – John Bunnell presented information on the EPA grant, and noted that the study will take four and a half years to complete. Three quarters of the cost of the study will be financed by the grant and the remainder will be funded by PCF. Donna Connor reviewed the budgetary impacts, including a revision to the PCF budget covering the second half of FY 2012. Following the discussion, the Committee unanimously recommended Commission approval of the resolution.
- ✍ Donna Connor gave an update on insurance renewals and provided answers to several outstanding issues raised at the last meeting. Dawn Rago also provided information on the rates for renewal. Several Commissioners requested additional information which will be provided at the next meeting. It was decided that the general liability and property (contents) deductibles will be decreased from \$5,000 to \$2,500. Funds are available in the budget.

- ✍ Financial Updates – Check Registers (September 2011) and Electronic Funds Transfer (EFT) Disbursements (September 2011) were reviewed. Application Fees Update – Donna Connor reported that the fees received so far in October are below the budgeted amount.
- ✍ There were no comments from the public.
- ✍ Other Items of Interest – September employee actions were reviewed, and it was noted that one employee resigned in October.

Chairman Lohbauer updated the Commission on happenings from the October 28, 2011 Policy and Implementation meeting:

The Committee adopted the minutes of the September 23, 2011 Committee meeting (open and closed sessions).

The Committee recommended that the Commission approve:

Shamong Township Ordinance 2011-8 and T-Mobile Northeast LLC's August 2011 Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands.

The Committee discussed environmental standards in the CMP and some possible approaches to the 4<sup>th</sup> Plan Review.

#### Executive Director's Report

Ms. Wittenberg advised the Commissioners that she felt a good first step in the Plan Review process would be to hear from staff. A staff meeting is scheduled for November 14.

A Forestry Advisory Committee meeting has been scheduled for December 20. A new Chair will need to be identified during that meeting. The Southern Pine Beetle and the Committee's future will also be discussed.

The 2013 Fiscal Budget process has started. The annual letter from OMB has arrived, our appropriation has remained the same as last year. We will be faced with another challenging budget this year. Some of our costs that we have no control over, such as insurance, will rise.

Union contract negotiations have started. The contract expired in June 2011. Follow up meetings have been scheduled. The Commission will be informed on the negotiations as they progress.

The New Jersey Builders Association came in for a meeting to discuss stormwater management.

Ms. Wittenberg advised the Commission that DEP has requested a deviation from the emergency agreement regarding Southern Pine Beetle suppression activities. As the process has advanced, DEP has found that the “cut and leave” method in certain instances will not work. One such instance is the Green Bank plantation in Wharton State Forest. The trees are very large and there is value in the wood, thus they would like to cut and remove. Secondly, they would like to revegetate this area as part of a pilot program. Having the remnants of the trees on the ground will prohibit the plantation from revegetating. Ms. Wittenberg recommended the revision to the agreement. The Commission concurred.

Larry Liggett updated the Commission on the following:

- ? He will be attending a presentation at the State Planning Commission on the new state strategic plan.
- ? We received a draft comprehensive plan from Hammonton regarding wastewater. This was a condition of the approval of their public water application.
- ? Staff will be meeting with the Richard Stockton College of New Jersey to address comments concerning their draft MOA.
- ? Two landfills are currently being discussed: Estell Manor and Winslow.

Chuck Horner updated the Commission on the following:

- ? The Commission received their first two Local Review Officer applications from Medford Township as part of a streamlining agreement that pertains to change of use applications in their downtown area.
- ? A condition of an amendment to an MOA with Ancora has been met. Public water has been installed and is operating.
- ? About six months ago, the Commission received an application for the installation of solar panels at a property that has both agricultural and commercial uses. The Commission had to determine if the power generated from the solar panels would be used strictly for the Agricultural use, for the commercial portion or both. With assistance from the Board of Public Utilities, it was concluded that based on the amount of power generated from the solar panels, the solar facility would be used solely for the agricultural use. Staff sent a letter stating that the solar panels would be exempt from Commission review.

Commissioner McGlinchey questioned which wells at Ancora would remain in place and if they had flow meters. He said if wells are not used after a one to two year time period, they do not produce much water, so it doesn't seem logical to keep them. Chuck Horner believes they were kept for emergency usage only but will check the MOA, which addresses the

need to keep the wells. He will also check to see if the MOA discusses well maintenance. Stacey Roth agreed that the wells were kept for public safety needs such as firefighting.

#### Public Development Projects and Other Permit Matters

Commissioner Haas moved the adoption of the Resolution Approving With Conditions Applications for Public Development (Application Numbers 1988-1099.006, 1989-1085.006, 2007-0084.005, 2011-0006.001 & 2011-0058.001) (See Resolution #PC4-11-36). Commissioner Ficcaglia seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0. (Commissioner McGlinchey was not present for the vote.)

#### Resolutions Relating to Municipal Ordinances

Commissioner Earlen moved the adoption of the Resolution Issuing an Order to Certify Ordinance 2011-8, Amending the Certified Zoning Map of Shamong Township (See Resolution #PC4-11-37). Commissioner Jackson seconded the motion.

Susan Grogan stated that this is a small management area change, which rezones 12 acres of land from the Agricultural Production Area to the Rural Development Area.

The Commission adopted the resolution by a vote of 9 to 0 (Commissioner McGlinchey remained out of the room during the vote).

#### Other Resolutions

Commissioner Haas moved the adoption of the Resolution Issuing an Order to Approve the Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast LLC (Doing Business as T-Mobile). Commissioner Earlen seconded the motion.

Paul Tyshchenko gave a presentation on the T-Mobile Amendment, which proposes 36 facilities, of which 5 will co-locate at previously approved sites; 6 will be attached to existing structures; and 25 will require the construction of new towers (see attached slides).

A discussion took place concerning tower 69. Commissioner Ficcaglia wanted to ensure that tower 69 would undergo a heightened level of scrutiny, along with towers 77, 81, 83, 88, 91, 98 & 107. Mr. Tyshchenko replied that we can ensure a tower will not be developed on Heritage Minerals properties, although we cannot subject it to the alternatives analysis because it is consistent with CMP requirements.

Commissioner Rohan Green questioned what would happen if a proposed facility site could not meet the alternatives analysis set forth in the Pinelands Comprehensive Management Plan. Chairman Lohbauer asked Stacey Roth to explain. Ms Roth stated that The Telecommunications Act of 1996 requires that there be sufficient coverage to meet

telecommunication needs. As a result, if a cellular provider could not satisfy the alternatives analysis for a specific facility and that resulted in a significant gap in the area's wireless service, a conflict would arise between the Pinelands Comprehensive Management Plan and the Pinelands Protection Act, and the Telecommunications Act of 1996. The matter would likely be brought to the courts with the cellular provider arguing in favor of the preemption provisions of the Telecommunications Act and the Commission arguing for a harmonizing of the Telecommunications Act and the National Parks and Recreation Act of 1978 (Federal Act) and the Pinelands CMP, the comprehensive management plan required by the Federal Act.

The Commission adopted the resolution by a vote of 10 to 0.

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

Ms. Theresa Lettman, with the Pinelands Preservation Alliance, expressed her frustration and confusion with the Public Development Application status report on the Commission's website. Her specific concern had to do with the public notice publication date. Mr. Horner stated that he will look into this matter and report back at next month's Commission meeting.

Mr. Carleton Montgomery, with the Pinelands Preservation Alliance, commented on Application #1993-0341.005-Black Run Preserve. PPA has been involved with marking trails at the Preserve, with cooperation from the Township. Although it is on the edge of the Pinelands, it is very pristine land. He said the watershed happens to be entirely undeveloped. PPA would like the Commission to ensure that any plantings associated with the development of the path be minimized and anything that is planted be native.

Mr. Montgomery expressed his dissatisfaction with the Commission's approval of the T-Mobile plan amendment. He felt it was a mistake and reminded the Commission that it had the authority to also approve a cell plan amendment with conditions or disapprove it entirely. He expressed his disappointment with the wording of the resolution as well.

Ms. Amy Karpati, with the Pinelands Preservation Alliance, commented on the Green Bank Plantation and the infestation of the Southern Pine Beetle. She wanted to emphasize that the "cut and remove" method is a forestry strategy, not an ecological strategy. By removing trees, we are removing the nutrients that would normally cycle back into the soil through decomposition.

#### Miscellaneous Resolutions

Commissioner Ficcaglia moved the Resolution To Authorize the Executive Director to Accept a Grant from the U.S. Environmental Protection Agency to Conduct a Study titled "Assessing the Ecological Integrity of Intermittent Ponds and Their Vulnerability to Land-use Impacts" and to Revise the FY 2012 Pinelands Conservation Fund Budget (See Resolution #PC4-11- 39). Commissioner Rohan Green seconded the motion.

John Bunnell made a presentation on intermittent ponds which are great habitat for toads, frogs and rare plant species. During the next 4 ½ years, science staff will be assessing the ponds, using funding from the EPA grant and the Pinelands Conservation Fund (see attached slides).

Commissioner Haas questioned if Science staff had been to any of these ponds. John Bunnell replied there are thousands of them and staff had been to about 50. He also said he expects there will be Pine Barren treefrogs in most of them.

The Commission adopted the resolution by a vote of 9 to 0.

Ms. Wittenberg described the last resolution before the Commission as creating a “junior level” category in the Commission’s salary structure.

Commissioner McGlinchey moved the Resolution To Revise the Pinelands Commission Personnel Policies (See Resolution #PC4-11- 40). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0.

(Commissioner Witt left the meeting after the EPA Grants presentation and did not vote on the last two resolutions.)

#### Ordinances Not Requiring Commission Action

The following three ordinances required no action:

- ✍ Berlin Township Ordinance 2011-21
- ✍ Hamilton Township Ordinance 1699-2011
- ✍ Woodbine Borough Ordinance 526-2011

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

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, is a supporter of the vernal pond project. He reported that there are fish ladders at Batsto Lake and Lake Lenape, which are used to promote the migration of migratory fish, in particular River Herring and American Eel. Right now, the National Oceanic and Atmospheric Administration (NOAA) is working on an analysis which would list the River Herring as a threatened species. The River Herring population and the American Eel population have crashed. The Menhaden population is also at stake. Prior to yesterday there was no cap on fishing Menhaden. Mr. Akers is concerned that we are taking out the bottom of the food chain, which ultimately affects water quality.

Carlton Montgomery, with the Pinelands Preservation Alliance commented on the reference in the Management Report that Ocean County was looking to acquire and preserve lands not located on Robert J. Miller Airpark to provide an offset for the

Memorandum of Agreement. He stated that he does not care for offsets because they do not compensate for what is lost and do not provide a genuine addition to conserved land. He stated that even if the Commission were to entertain a different offset, it must still address what will happen to the rest of the lands surrounding the airport. Additionally, any lands provided as an offset should constitute a genuine addition to conserved lands and should be acquired with new funds. Lastly, he stated that the only way to ensure that the lands remain conserved is if a private land trust has an interest in the acquisition.

There was no need for a closed session.

#### Adjournment

Commissioner Jackson moved to adjourn the meeting. Commissioner Earlen seconded. The Commission agreed to adjourn at 11:25 a.m.

Certified as true and correct:

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Jessica Noble, Executive Assistant

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