

Disclaimer

These minutes reflect the actions taken by the Commission during its August 10, 2018 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 27, 2018.

PINELANDS COMMISSION MEETING

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

MINUTES

August 10, 2018

Commissioners Present

Alan W. Avery Jr., Bob Barr, Giuseppe Chila, Jordan P. Howell, Ed Lloyd, Mark Lohbauer, William Pikolycky, Richard Prickett and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Craig Ambrose and Deputy Attorney General (DAG) Bruce Velzy.

Commissioners Participating by Phone

Candace Ashmun, Jane Jannarone and Paul E. Galletta.

Commissioners Absent

D'Arcy Rohan Green and Gary Quinn.

Chairman Earlen called the meeting to order at 9:34 a.m.

DAG Velzy read the Open Public Meetings Act Statement.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 12 Commissioners who participated in the meeting.)

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

Election of the Vice-Chairman

Chairman Earlen said at this time the Commission needs to nominate and elect a Vice Chairman.

Vice Chair Galletta said that based on issues in his personal life, he will be stepping down as Vice Chair. He said it been a pleasure to serve and appreciated the opportunity. He nominated Commissioner Avery to serve as Vice Chairman. Commissioner Ashmun seconded the motion.

Commissioner Avery thanked Commissioner Galletta for serving as Vice Chair and said he would accept the nomination.

The Commission all voted in favor of Commissioner Avery serving as Vice Chair.

Committee Assignments

Chairman Earlen announced that Committee assignments would remain the same.

Minutes

Chairman Earlen presented minutes from the July 13, 2018 Commission meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Barr seconded the motion.

The July 13, 2018 Commission meeting minutes were adopted by a vote of 11 to 0. Commissioner Avery abstained from the vote.

Committee Chairs' Reports

Chairman Earlen provided an update on the July 27, 2018 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the May 18, 2018 meeting. The Committee recommended Commission certification of Egg Harbor Township Ordinances 12-2018 and 19-2018.

The Committee received a presentation on the Pinelands Infrastructure Trust Fund. Staff will be seeking input from the counties/ municipalities with sufficient remaining development potential in their Regional Growth Areas (RGA) as to their needs and will consider expanding funding projects beyond wastewater, refining the ranking criteria and developing a funding formula.

The Committee received an update on the 2004 Memorandum of Agreement (MOA) with the South Jersey Transportation Authority (SJTA) in preparation for a presentation by SJTA next month. During the next P&I meeting, SJTA will discuss its proposal to relocate critical bird habitat at the Atlantic City Airport away from the runway.

Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- Staff met with the Communication Workers of America Local 1040 regarding contract negotiations.
- The joint site visit to inspect existing bird habitat at the Atlantic City Airport is scheduled for August 15, 2018. The following agencies will be participating in that site visit: the Federal Aviation Association (FAA), South Jersey Transportation Authority (SJTA), the New Jersey Department of Environmental Protection (NJDEP), Fish and Wildlife and the Pinelands Commission. SJTA will be attending the August 24th Policy and Implementation Committee meeting.

ED Wittenberg introduced new Commission employee Dane Ward, who joined the Science office in late July.

Director Larry Liggett updated the Commission on the following matters:

- Staff sent a letter out to counties and municipalities that outlined information about the Pinelands Infrastructure Trust Fund. Monies are only available for projects in Pinelands Regional Growth Areas. Because the letter did not generate much interest, staff has been contacting certain counties and municipalities by telephone. Staff spoke with the Atlantic County Utilities Authority and Egg Harbor Township which has a large Regional Growth Area. Egg Harbor Township has a number of road improvements projects that it would like to undertake.
- Staff met with Tabernacle Township officials to discuss a property owner's proposal to install a solar field at the former Haas mining site. The parcel is located in an infill area in the Preservation Area District. Staff has made suggestions about ordinance adjustments to the Township's infill area.

Director Chuck Horner provided information on the following Regulatory matters:

- Staff met with Woodland Township representatives on July 25, 2018, including its threatened and endangered species consultant, to discuss the town's interest in developing a site on Route 72. The parcel is located in an infill area that permits both residential and/or commercial development.

Chairman Earlen asked Director Horner to explain infill areas.

Director Horner said within the Preservation Area District are infill areas that were created to acknowledge pockets of existing development that were too small to be Pinelands Villages. He added an infill area is a zoning district that permits specific uses.

Chief Planner Susan Grogan added that three Pinelands municipalities have designated infill areas: Woodland, Shamong and Tabernacle townships. She said that most of the infill

areas are small, with the exception of the Haas pit that Director Liggett mentioned and the Route 72 site in Woodland Township that Director Horner noted.

Director Horner continued his update:

Staff met with Mullica Township officials on August 8, 2018 to discuss a violation matter stemming from the construction of a structure along the Mullica River. He said the development is in violation of the wetland and wetland buffers standards of the Comprehensive Management Plan and the Mullica Township Ordinance.

- Mullica Township is interested in placing a solar facility on a landfill.
- Staff has been receiving inquiries about growing marijuana and whether it is permitted in the Pinelands.
- Staff is currently reviewing the Heritage Minerals application, which is located in the Pinelands Nation Reserve and outside of the state-designated Pinelands Area in Manchester Township. The Commission has a Memorandum of Agreement (MOA) with the NJDEP through which the Commission staff provides comments regarding consistency of the development as related to the CMP. The NJDEP uses the Commission's comments as part of its review process.

Commissioner Avery asked about the status of the settlement for Heritage Minerals.

Ms. Stacey Roth said the settlement is still in effect, however the matter is currently with a magistrate judge in federal court. She said the Commission moved forward with rezoning a Forest Area to a Regional Growth Area as part of that settlement agreement. The applicant submitted a new application for the site proposing a great number of residential units. After many extensions to the settlement agreement, the NJDEP refused to extend the settlement agreement any further. The property was never deed restricted as required by the original settlement agreement. She added that she believes the magistrate judge is waiting for a decision to be made on the pending CAFRA (Coastal Area Facilities Review Act) permit.

Commissioner Avery said that Ocean County was required to amend its Water Quality Master Plan to designate the Heritage Minerals site as a sewered area. He asked if Manchester Township adopted an ordinance change consistent with the settlement agreement.

Chief Planner Grogan said the Township adopted an ordinance many years ago to recognize the settlement agreement. She added that more recently, Manchester Township asked the Commission to review and certify its Master Plan for the Pinelands National Reserve which is an optional process in the CMP.

Ms. Roth added that Manchester Township is not part of the litigation.

Communications Officer Paul Leakan updated the Commission on the following:

- The 2018 Summer Pinelands Short Course was a success with over 100 attendees. The tour of the Atlantic Blueberry Company's farm in Hammonton was very well received.

- The Pinelands Orientation for Newly Elected Officials held in combination with the Pinelands Municipal Council meeting had over 30 attendees.
- Staff has been working with Split Rock Studios, the exhibit fabricator, to ensure that the various interactive exhibits will function properly.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval of an application to clear 16.4 acres at the Bass River State Forest to improve the visibility from the fire tower.

DAG Velzy said three Commissioners circulated a memo by email on July 26, 2018. The memo presents a conflict with the Open Public Meeting Act and could not be included in the Commission packet because at the time it was circulated, the record for Application # 1990-0868.029 was closed. A copy of the email and memo will be attached to these minutes.

Commissioner Lohbauer made a motion to table Application # 1990-0868.029 until staff can meet with the NJDEP to discuss the alternatives to cutting down trees to restore visibility to the fire tower.

Chairman Earlen asked ED Wittenberg what would happen if the Commission chooses not to take action on the application.

ED Wittenberg said she has spoken to the NJDEP about delaying the application and they are not willing to request an extension. She said that if the Commission chooses not to take action or the resolution fails to have enough votes to carry the motion the application will be transmitted the Office of Administrative Law (OAL).

DAG Velzy said the CMP states that if the Commission fails to take an action the Executive Director's recommendation shall be referred to OAL for a hearing. He said its unclear how the litigation would proceed.

Commissioner Lohbauer said he is requesting that the application be put on hold to give staff and the applicant time to research alternate firefighting technologies that were raised by the public. He said he and two other Commissioner raised questions in two memos which were shared with this Commission. He said he believes there is a technology that can assist the Forest Fire Service that has not been addressed

Chairman Earlen said he understands Commissioner Lohbauer's position but this Commission needs to make a decision on the application today. He said its unfair to the applicant to not vote on the matter.

Commissioner Lohbauer said the Commission is an autonomous body and he is not going to be railroaded into making a decision.

ED Wittenberg said she had spoken with the NJDEP about the memos and the department does not agree with the suggestions outlined in the memos.

Commissioner Lloyd said he believes Application # 1990-0868.029 violates the CMP. He read a portion of the CMP related to tree clearing. He said the Forest Fire Service can do their job without clearing the trees surrounding the fire tower. He said he would prefer to table the application so additional work on the application can be done. He noted that 23 years ago the Forest Fire Service made a very similar application to clear 4.6 acres and that application did go to OAL. He said at OAL a settlement permitted the clearing of 2.7 acres.

Chairman Earlen asked for a second on the motion to table Application # 1990-0868.029. Commissioner Ashmun seconded the motion to table the application.

Before ED Wittenberg called the roll, Director Horner discussed how the staff administers the CMP forest clearing requirement. Director Horner indicated that when the staff reviews an application, the staff ensures that the proposed development meets all CMP standards and that any proposed forest clearing is the minimum necessary to accommodate the proposed development. If an application meets all CMP standards, the Commission staff does not require that an applicant further evaluate whether there are other feasible alternate to the proposed development that will require less forest clearing.

Commissioner Lloyd said staff is interpreting the CMP incorrectly. He said this Commission is here to protect the Pinelands. He supports tabling the application.

ED Wittenberg said she is frustrated by the process. She said she had extensive conversations with the NJDEP and cannot share that information with the Commission. She said that an op-ed ran this morning about this very matter.

Commissioner Lohbauer said he believes tabling the application makes sense. He said he needs more information regarding the questions raised by the public, the alternative technologies to firefighting, the recent reduction to tree clearing and the cost analysis of the fire tower replacements compared to the tree cutting.

ED Wittenberg said that the reduction in acreage stemmed from a stakeholder process initiated by the NJDEP.

Commissioner Jannarone said she had to get off the call but agreed with Commissioner Lohbauer.

Ms. Stacey Roth reminded Commissioners that per Roberts rules tabling actually means to continue to another day. She added that the CMP states if the Commission fails to approve the Executive Directors report the matter is sent to OAL.

Commissioner Lohbauer amended his motion to table the application to a motion to continue discussion on Application # 1990-0868.029. Commissioner Ashmun seconded the motion.

ED Wittenberg called the roll.

Commissioner Ashmun yes
Commissioner Avery no
Commissioner Barr no
Commissioner Chila no
Commissioner Galletta no
Commissioner Howell yes
Commissioner Lloyd yes
Commissioner Lohbauer yes
Commissioner Pikolycky no
Commissioner Prickett yes
Chairman Earlen no

The motion to continue the application did not pass.

Chairman asked for a motion on Application # # 1990-0868.029

Commissioner Avery moved the adoption of a resolution Approving With Conditions an Application for Public Development and Certificate of Appropriateness (Application Number 1990-0868.029) (See Resolution # PC4-18-22A). Commissioner Barr seconded the motion.

Commissioner Avery said it was his understanding that both the detection of fire and command center activities happen at the Bass River State Forest Fire Tower.

Director Horner confirmed that fire spotting and coordination efforts of the forest fire service take place at the Bass River State Forest Fire Tower.

Director Horner suggested adding language to the resolution that recognizes the Commission's request for Commission staff to meet with NJDEP staff to address questions raised during the discussion of this application related to forest fire fighting efforts and directs staff to report back with answers.

Commissioner Lloyd said he doesn't think that is necessary today but he is interested in meeting with the forest fire service to discuss how they plan to meet their firefighting needs while remaining consistent with the CMP. He said he believes the use of cameras will solve the command center activities in addition to 24/7 monitoring of the forest

Commissioner Avery said there is value in camera technology in terms of fire detection, however the forest should be cleared for the command aspect associated with the Bass River fire tower. He said the area in question is a heavily forested and the trees to be removed are non-native. He said he does not want to put the first responders fighting the fire or the public in danger. He said this application does meet the standards of the plan.

Commissioner Lohbauer said he supports the forest fire service and all he is requesting is additional information regarding the use of camera technology. He said the public raised the same concerns now as they did back in 1995.

ED Wittenberg said she spoke with the Assistant Commissioner of Natural and Historic Resources about the cameras in Monmouth and Ocean Counties. She said they were installed a water tower was built in front of fire tower which prohibited views. She said she was told that the cameras have not been successful. She added the forest fire service directs firefighting activities from the Bass River fire tower.

DAG Velzy reminded Commissioners that although the conversation related to this application is helpful the decision needs to be limited to the June 22, 2018 Executive Director's report.

Commissioner Lloyd said its hard not to factor in the discussion that has taken place.

Chairman Earlen said its unfair to the applicant to require different information at this point, not just this applicant, but any applicant. If this Commission wants to require that an applicant submit different information we need to change the rules. He said we preserve and protect the Pinelands by enforcing the CMP. He added that he agrees with Vice Chairman Avery's points. He said the forest fire service is the expert and they determined that trees need to be cleared surrounding the fire tower.

Commissioner Ashmun said this application needs additional work before its approved.

Commissioner Lloyd said the CMP is very clear related to protecting the forest. He added that just because the CMP was interpreted a certain way in the past does not mean the Commission needs to continue doing it that way.

Commissioner Prickett said he would like to see a long term plan to manage the forested area around the fire tower developed in conjunction with the NJDEP and the forest fire service. He said he would also like to see rotational clear cutting so the landscape does not suffer from a dramatic change. He said rotational cutting would be beneficial to species living in the forest. He suggested that a survey be undertaken for old growth trees.

The Chairman requested that the ED call the Roll

Commissioner Ashmun no
Commissioner Avery yes
Commissioner Barr yes
Commissioner Chila yes
Commissioner Galletta yes
Commissioner Howell abstain
Commissioner Lloyd abstain
Commissioner Lohbauer abstain
Commissioner Pikolycky yes
Commissioner Prickett abstain
Chairman Earlen yes

The Commission failed to adopt the resolution.

Chairman Earlen asked about the next steps.

DAG Velzy said this is an unprecedented action which will need to be sorted out.

Commissioner Galletta said he could no longer participate in the meeting.

Chairman Earlen presented a resolution recommending approval of three public development applications (demolition of the Grist Mill Lean-to at Batsto Village, installation of an elevated solar panel canopy on a parking area at Joint Base McGuire-Dix-Lakehurst and the reconstruction of the Carol Ida Dam in Medford.)

Commissioner Lohbauer said he was pleased that the solar application is being proposed over a parking lot.

Commissioner Prickett said he hopes that the Lean-to at the Grist Mill can be restored in the future.

Commissioner Ashmun suggested that each Public Development application be acted on separately rather than grouped together.

Commissioner Lloyd said the applications are grouped together to be more efficient.

Commissioner Lohbauer moved the adoption of a resolution Approving With Conditions Applications for Public Development (Application Numbers 1985-0160.011, 1985-1053.008 & 1989-0781.005) (See Resolution # PC4-18-23). Commissioner Lloyd seconded the motion.

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

Chairman Earlen presented a resolution approving two Waivers of Strict Compliance, both for the construction of single family dwellings.

Commissioner Lloyd moved the adoption of a resolution Approving With Conditions Applications for Waivers of Strict Compliance (Application Numbers 2003-0456.001 & 2004-0352.001) (See Resolution # PC4-18-24). Commissioner Lohbauer seconded the motion.

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

Chairman Earlen presented a resolution denying an application for a Waiver of Strict Compliance.

Commissioner Lloyd moved the adoption of a resolution Denying an Application for a Waiver of Strict Compliance (Application Number 2007-0398.001)(See Resolution # PC4-18-25). Commissioner Ashmun seconded the motion.

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

Planning Matters

Chairman Earlen presented a resolution to certify Egg Harbor Township Ordinances 12-2018 and 19-2018.

Commissioner Lloyd moved the adoption of a resolution Issuing an Order to Certify Ordinances 12-2018 and 19-2018, Amending Chapter 225 (Zoning) of the Code of Egg Harbor Township (See Resolution # PC4-18- 26). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0. Commissioner Howell abstained from the vote.

Public Comment on Public Development Applications and Items where the record is open
No one from the public spoke.

Ordinances Not Requiring Commission Action

Chairman Earlen asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Berkeley Township Ordinance 18-22-OAB
- Egg Harbor Township Ordinance 34-2018
- Hamilton Township Ordinance 1879-2018
- Lacey Township Ordinance 2018-20
- Waterford Township Ordinance 2018-13
- Weymouth Township Ordinance 563-201
- Woodbine Borough Ordinance 574-2018

No members of the Commission had questions.

Other Resolutions

Chairman Earlen presented a resolution recommending approval of the Fiscal Year (FY) 2019 Budgets.

Commissioner Ashmun moved the adoption of a resolution To Adopt the Pinelands Commission's Fiscal Year 2019 Budgets for the Operating Fund, the Kirkwood Cohansey Aquifer Assessment Study Fund, Katie Trust Fund and the Pinelands Conservation Fund (See Resolution # PC4-18-27). Commissioner Lohbauer seconded the motion.

ED Wittenberg said the FY 2019 consists of four budgets, and the state appropriation increased by 150,000. She said the state supplemental fund has remained the same this

year and does not cover the fringe benefit costs that continue to increase. She said application fees were consistent with the budgeted amount last year. Applications fees are already strong this fiscal year. She added that the grants line item is higher because of two grants the Commission will be participating in. She proceeded to review the Kirkwood Cohansey Budget, which may be depleted this fiscal year. She reviewed the goals of the Katie Trust Fund. She reviewed the Pinelands Conservation Fund. Lastly, she reviewed initiatives for FY 19. See the budget presentation slides attached to the minutes for further details.

Commissioner Avery said the Personnel and Budget Committee was briefed on the FY 19 budget in June and offered its full support.

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

Chairman Earlen presented a resolution recommending approval of the 2017 Annual Report.

Commissioner Lohbauer moved the adoption of a resolution To Approve the New Jersey Pinelands Commission's 2017 Annual Report (See Resolution # PC4-18-28).
Commissioner Prickett seconded the motion.

Commissioner Prickett asked about the distribution of the Annual Report.
Mr. Leakan said the report is posted to the website and will be shared with the Pinelands Municipal Council.

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

General Public Comment

Carol Bitzberger of Bass River Township questioned if the public was allowed to be involved in the Office of Administrative Law process. She said she was able to view a link of the Oregon forest utilizing camera technology.

DAG Velzy said his office will look into the role of the public as the next steps are determined regarding Application # 1990-0868.029.

Rose Sweeney of Bass River Township said she appreciated the conversation between the Commissioners about the Bass River Forest fire tower application and hopes the delay will allow for discussions of other fire prevention measures.

Commissioner Ashmun signed off at 11:27 a.m.

Jeff Tittel of the Sierra Club said thermal imaging can detect hot spots in a forest better than a human eye can spot smoke. He said the Commission should have worked out a compromise on Application # 1990-0868.029. He said growing marijuana in greenhouses has a number of negative environmental impacts, including: the use of water and energy

and production of air and ground pollution. He suggested the Commission create a sub-committee to look at marijuana growing facilities. He asked about the Commission's efforts to reduce the effects of climate control.

Katie Smith of the Pinelands Preservation Alliance distributed a letter dated August 2, 2018 (see attached) regarding the Woodmansie resource extraction application. She said the Commission should require a threatened and endangered species survey regardless of the deed restriction. She also said the mine is not in compliance with the CMP's restoration standards based on aerials she viewed. As for the Heritage Minerals site, she said the NJDEP recently issued a letter to the applicant raising the following concerns: threatened and endangered species, impervious coverage and wet borrow pit regulations.

Emile DeVito of the New Jersey Conservation Foundation said he appreciates the Commission's efforts to find the best outcome for the Woodmansie mine site but he said a deed restriction will not work. He said he was shocked to learn that years after the Heritage Minerals settlement agreement the land has still not been deed restricted. He said the property on Route 72 owned by Woodland Township is almost entirely threatened and endangered bird habitat and the parcel should be purchased by the New Jersey Natural Lands Trust.

Margit Meissner-Jackson, Acting Chair of Ocean County Sierra Club, said when trees are cut in the Pinelands it loosens the soil and the soil eventually washes down into the Barnegat Bay. She said it is causing problems for Viking Yacht in New Gretna. She raised concerns about running out of water. She said it is unknown how many gallons are currently in the Kirkwood Cohansey aquifer.

Jay Mounier of Franklin Township said he has been attending meetings at the Commission for quite a while. He said over 10 years ago the Commission started allowing Commissioners who could not attend a meeting to participate by phone. He noted that Commissioner Ashmun said she could not hear several times today. He recommended that the Commission either fix the phone system or not permit Commissioners to participate by telephone.

Other matters

Chairman Earlen agreed with Mr. Mounier's assessment of the phone system.

Commissioner Lloyd said he also agreed with Mr. Mounier, and agreed it is difficult to hear while participating by phone. He asked if watching the live stream of the meeting would help.

Commissioner Howell said he tried the live stream while participating by phone during the July Commission meeting and there is a two to three second delay.

Commissioner Lloyd asked ED Wittenberg for an update on the Woodmansie mine application. He added that only the Commissioners who attended the July P&I Committee meeting heard the information.

ED Wittenberg said there is no new information to report regarding the Woodmansie mine application since the P&I Committee Meeting. She said she would provide an overview of the application for the benefit of all Commissioners. She said an application was submitted to mine a 40-acre portion of the Woodmansie site in Woodland Township. She said the applicant is required to meet the environmental standards of the CMP in order to continue to mine the site. The applicant surveyed the 40 acres and found no threatened and endangered species. She said rather than have the applicant continue to apply piece by piece and rather than use a habitat conservation plan, staff opted to offer a larger piece for the applicant to mine and a permanent deed restriction on the remainder of the parcel.

Chairman Earlen said if staff needs assistance related to resource extraction including deed language, Commissioners can offer guidance.

Commissioner Prickett said he has been conducting his own research on the loblolly pine tree. He said he found a very old article that stated the loblolly reaches its northern limit in Cape May County. He also said the loblolly pine establishes diversity in the forest.

Commissioner Avery said years ago there were hours of debate that spanned months, over whether the loblolly should be considered a native species. The Commission ultimately voted that loblolly pines were not native to the Pinelands.

Commissioner Earlen said the Commission will be meeting in closed session but will not be taking any action.

Resolution to Retire into Closed Session

DAG Velzy read a resolution to enter into closed session to discuss a personnel matter and to provide advice on anticipated litigation.

Commission Barr made a motion to enter into closed session. Commissioner Avery seconded the motion. The Commission agreed to retire into closed session by a vote of 9 to 0, beginning at 12:02 p.m.

Return to Open Session

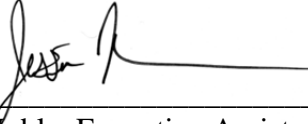
The Commission entered back into open session at 1:46 p.m.

DAG Velzy said that in closed session the Commission discussed litigation with an employee and compliance with the OPMA. No action was taken.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Prickett seconded the motion. The Commission agreed to adjourn at 1:48 p.m.

Certified as true and correct:

A handwritten signature in black ink, appearing to read "Jessica Noble", is written over a horizontal line.

Jessica Noble, Executive Assistant

Date: August 23, 2018