

**HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
PUBLIC AVAILABILITY SESSION – OCTOBER 5, 2006**

At 3:55 p.m. on October 5, 2006, immediately following the meeting of the Highlands Water Protection and Planning Council, Chairman John Weingart convened a public availability session. Joining him were Ms. Debbie Pasquarelli, Ms. Tracy Carluccio, and Mr. Tim Dillingham, and Mr. Erik Peterson for a portion of the session. Mr. Weingart noted that an audio recording was being made of the comment session, and that summaries of the comments would be distributed to all Council members before its next meeting.

James Tripp, General Counsel of Environmental Defense. Mr. Tripp noted that he and Mr. David Greenblatt have been working on a GIS based TDR model for the New Jersey Highlands. He stated the model identifies potential receiving areas as to physical resources and proximity to infrastructure. The model also compiles parameters and values and depicts them in a map on a municipal and county level. Mr. Tripp said it also provides information as to acreage in receiving areas, as well as the number of units within the Planning Area, and within the Highlands counties. The model can also indicate a dollar number representing what a developer may pay for the right to use the density provided in the model. He advised that the economic value is based on real estate data obtained from 6 out of the 7 counties.

Mr. Tripp said the potential exists to generate significant dollars from high value receiving areas throughout the counties. The model does not address the equity standard applied to sending area property owners. Mr. Tripp said he believes the Highlands Act does not address that question clearly, however a TDR program could transfer equity to sending area property owners. There is a large amount of undeveloped privately owned land in both the Preservation and Planning Areas. He noted that funding can be identified over the next 5 years through public acquisition programs. TDR can be a tool to convert private dollars from developers for extra density in suitable areas to conserve additional lands.

Mr. Tripp said one scenario explored is a TDR program for the Highlands which is intra-municipal in operation, and noted that approximately two-thirds of the municipalities in the Highlands Region have both Preservation and Planning Area lands, with land of critical resource use in both. Mr. Tripp said the model addresses an allocation credit formula and analyzes the complexities of a regional unified program which is fair and equitable and efficient. Mr. Tripp thought that the diversity of the values in the seven counties is great, and that the presentation by Mr. Jeff LeJava indicated that factors would need to be adjusted and refined to address market factors as to credits. He noted that it will be very complicated but it could work.

A simplified scheme could be to have a bank conduct the business of selling development credits to developers based on a variety of market and appraisal mechanisms, and that the revenues developed are used to buy land for conservation easements in the manner that Green Acres does. Mr. Tripp said the question about incentives for municipalities has

been considered as well, and that a means for linking public acquisition funds to the TDR program could be made. TDR is meant to allow for more efficient use of public acquisition dollars. For municipalities wishing to conserve land, some portion of State funds, possibly a match, for land acquisition dollars could go into the TDR bank, for municipalities that develop good receiving area programs. There are ways to encourage municipalities to use the TDR program to conserve and protect resources.

Ms. Pasquarelli said that she is not certain of the feasibility of an acquisition bank, but thought that if State agencies were willing to change the rules to require a lower-than-usual municipal match for Green Acres and other state grants for municipalities participating in a Highlands TDR program, it could be a meaningful incentive. Mr. Tripp agreed and added that the incentive could be increased for municipalities willing to participate in a regional program in contrast to municipal programs.

Monique Purcell, Department of Agriculture. Ms. Purcell stated she wished to follow up on a comment made during the water capacity discussion about whether the Department of Agriculture had standards for irrigation. She thought it was important for the Highlands Council members to have some additional facts about agricultural water use. Ms. Purcell advised that currently agriculture uses approximately 5% of the state's water, and that as of 2006 there are 1,100 agricultural certifications and registrations statewide issued by the DEP Bureau of Water Allocation covering 100,000 acres of the 830,000 acres of agricultural land in the state.

She noted that 67 agricultural certifications are in the Highlands region, both Planning and Preservation Areas. Ms. Purcell said that she brought copies of a definition of what a certification and registration is. (Copies attached) She advised that 500 acres of irrigated land is converted to water conserving technology which includes low volume and low pressure drip irrigation statewide each year utilizing state and federal cost share funds. Ms. Purcell noted that over 75% of the funds allocated from the USDA's environmental quality incentives program and the state conservation cost share program since 1999, were for three conservation practices – animal waste storage, integrated crop management, and irrigation practices.

Ms. Purcell said farmers monitor water use through metering, water management plans, and irrigation scheduling to conserve resources and reduce costs associated with irrigating fields. She noted that water re-use includes tail water recovery systems, and the use of effluent on non-food crops is encouraged in water management plans. Ms. Purcell said that the DEP has published for readoption their Agricultural Water Use rules in July 2006 which incorporate new provisions including water reuse and water diversions that utilize the lowest quality water appropriate for the intended use.

David Shope, Long Valley. Mr. Shope provided recent pictures that he took of dilapidated barns in Bethlehem, Lebanon, Washington Township and Mansfield Township, and noted that their condition suggests the economic viability of farming in New Jersey. He asked what redevelopment opportunities exist for the owners of farms in bad condition since they cannot afford to fix them.

Mr. Shope commented about the cash flow timetable the Council had discussed, and said that he inquired at a previous meeting what portion of the realty transfer tax revenue would be available for the Highlands after the funds dedicated to beach replenishment were allocated, and asked if that was considered in the analysis because it is not indicated and thought that remains an open issue. Chairman Weingart confirmed that the Council needed to address that issue and owed him a response.

Mr. Shope commented as to TDR, that the Highlands Act requires the Council to establish an open market value, and suggested that the Council let the free market take over to establish the true value of TDR credits as soon as possible.

As to the date chosen to freeze the values of land, Mr. Shope thought that values had begun suffering depreciation even before the Highlands Act was adopted because of the anticipated effects of the Act as far back as December 2003, and asked the Council to try to find some way to recognize that point.

Robin O’Hearn, Skylands Clean. Ms. O’Hearn said she had a question and comment regarding page 9 of the TDR document, where it is stated that the Council will work with municipalities and the State Planning Commission to identify centers designated by the State Planning Commission as voluntary receiving zones for TDR. She asked if the Land Use Capability Map would supersede on a parcel that is environmentally sensitive in an existing center. As an example, Ms. O’Hearn mentioned Federal Hill which is 180 acres with steep slopes, flood plains, and she asked if the centers would automatically become receiving zones whether or not there was a parcel worthy of protection within them. Mr. Weingart responded that the Highlands Council would be considering that issue.

Ms. O’Hearn said she was pleased to see exempted projects being considered for sending areas, because there are many exempted projects to be addressed and prioritized as sending areas.

As to critical habitat, Ms. O’Hearn said staff mentioned municipalities obtaining hydro-geologists and planning experts to work on site plan levels to determine whether critical habitat was present. She noted that she believed this was unrealistic and unworkable because towns don’t do this now, and probably will not do so even if they are paid for by the developers. She thought if enforcement is left at the local level it will not occur.

Eric Stiles, New Jersey Audubon, Vice-President of Conservation. Mr. Stiles said he gives the Council and staff an “A+” for its development of solid science on critical habitat. He noted that between 1993 and 2001 he worked on the State’s Endangered Non-Game Species Program, and developed a lot of the species models which informed the analysis. Mr. Stiles said that the Council should be accredited for using contemporary and solid science.

Mr. Stiles said with regard to various discussions the Council had on critical habitat that day, that policy issue number 11 pertaining to resource protection standards stresses that

regardless of which zone you are in, for all critical habitat and any species that meets the criteria of rare and endangered species, that projects are prohibited from clearing of vegetation or disturbance of soils within the area designated as critical habitat. Mr. Stiles said that a single standard protective of the resource is the best approach regardless of which zone it is in. He noted his appreciation for the regional approach being taken since it is better than the parcel by parcel basis as to protection of riparian areas.

Mr. Stiles said that Mr. Dillingham was correct when he suggested the two tier standards of 1000 feet for vernal pools outside of riparian areas and 300 feet for pools within those areas was ecologically unsound. He advised that he was the director of the State's vernal pool project and said that it makes sense to have a single standard from the point of the vernal pool regardless of the matrix of habitat in which it is located.

Joy Farber. Ms. Farber advised that she is a concerned citizen and was on the Technical Advisory Committee for TDR. She stated that policy decisions should be made in the context of the reality of the situation. Ms. Farber said that by designing policy without clearly presented data, the Council is attempting "to hit a bulls-eye with a blindfold on." Ms. Farber said the Highlands Council needs to state up front what the scope of the program is. She said that the first consideration should be what the number of undeveloped acres is in the Preservation Area, which is the universe of the sending area.

Ms. Farber said the second consideration should be the number of acres of undeveloped or land otherwise available for growth in the Planning Area and other communities in the seven counties, which is the whole number of receiving areas in your universe. Ms. Farber said that number is not indicated. Ms. Farber said the third consideration is the rate of consumption of land in the Planning Area and seven Highlands counties. She thought this number could be the average number of acres per month being consumed. The fourth consideration Ms. Farber suggested was what the timetable for implementation is, whether it is months or years. The fifth consideration is the expected remaining acres at time of implementation after accounting for a certain number of acres per month being consumed, multiplied by the number of months to implement which will indicate how many acres are no longer available in the receiving zone. She said that number would have to be subtracted from number 2 indicating what is left, and the longer it takes to implement the program, the less land that will be available to accept density.

Ms. Farber also said it needs to be considered how realistic the TDR program is. She thought the Council needs to present the data first before making policy decisions so people can understand what its assessments are based upon. Ms. Farber said that it may become clear that there are very few viable receiving areas left when the program is implemented, and the sending areas may have to be limited to only the no development zones. She asked how the Council will make a policy decision without facts presented on a timetable. Ms. Farber noted that it is difficult for the public to follow as well.

Elizabeth George-Chenaria, New Jersey Builders Association. Ms. George-Chenaria said that she would reiterate some points made in prior letters to the Council.

- 1) She asked when the real estate analysis being prepared by Integra would be completed and available for public review. She stated it was necessary for establishing the real estate market factor and end use factor for the HDC allocation process being considered.
- 2) She asked what the benefit was of the Office of Smart Growth pilot TDR program, and its efforts in coordinating state infrastructure, capital investment, community development and financial assessment in the planning areas.
- 3) Ms. George-Chenaria commented as to the potential TDR voluntary receiving zones and suggests considering the regional conservation zone as well. Prior work sessions indicate that zone would be the middle ground and may be suitable for some development.
- 4) She encouraged the Council to utilize the TDR program as a tool to address the housing need of the Highlands Region. Ms. George-Chenaria stated that NJBA points to Section 13 of the Highlands Act which sets a specific goal to have 4% of the Planning Area land be set aside as receiving zones.
- 5) She also emphasized that Section 8 of the Highlands Act precludes adoption of the RMP until the Council recommends receiving zones in the Planning Area with associated capacity. She urged the Council to identify the receiving zones.

Courtenay Mercer, Planning Director for the New Jersey Office of Smart Growth.

Ms. Mercer commended Mr. LeJava and the staff for its work on the TDR program and offered her support for their effort. She advised there were students from the Bloustein School who accompanied her in the audience earlier, who are studying what incentives exist to promote receiving areas particularly outside of the Highlands Region but within the seven counties. She noted that Mr. LeJava spent time with them earlier that morning to talk about these areas and she thanked him for taking time to address their interest.

Ms. Mercer noted that as a matter of clarification as to towns outside the Highlands Region but within the seven counties, and the question whether they need plan endorsement to have TDR, and whether towns in the Planning Area had to have plan endorsement to do TDR, she noted that the TDR Act does require that plan endorsement be achieved to implement TDR. She also noted that the Highlands Act states that Plan Conformance is equivalent to Plan Endorsement.

Ms. Mercer said that she was satisfied with the value factor versus basing them on densities and zoning in units versus a value because it will be costly and time consuming to do appraisals on all possible parcels for TDR sending units. She noted that considering inflation and deflation and all the effects it would be very difficult to achieve on a value basis. Ms. Mercer said the State TDR Act does allow for this type of equalization and that is the direction to point the policy. Ms. Mercer said regarding the question of someone who would now receive more value on a ten acre proposal, she noted that it depends on whether the goal is conservation or if it is equity and if the goal is conservation, she stated that where parcels are important from a resource value it should be allocated credit. Ms. Mercer said it might help to identify a minimum lot size but stated she had no suggestion as to what that size would be.

Regarding questions over exemptions for single family units and whether they should participate, Ms. Mercer stated precedent has been reached in the Chesterfield case, and that it was determined one credit had to be retained for the house on the property.

With regard to special planning areas in the preservation area, Ms. Mercer noted that if the RMP allows density in the area, even if the municipality might be zoned lower at the present time there is nothing to preclude them from upzoning. She stated that public input needs to happen early and often as to TDR.

Julia Somers, Highlands Coalition. Ms. Somers stated that the Coalition had prepared a paper last spring and that she brought copies to distribute to any members who may not have already seen it. (Copy attached) She noted that she had an item to add for the Council's consideration which is when preserving farmland through the TDR program, that it also consider implementing a mandatory limit on impervious coverage on those preserved lands.

Nancy Chambellan, Warren County Environmental Commission. Ms. Chambellan said that she had concerns about the fact that previous designations of PA1, PA2 and town center were not established in consideration of natural resources for the LUCM. She noted that the RMP is also being developed as blind to the line with regard to established growth patterns that have not considered land capability realities in the past. Ms. Chambellan stated as to page 10 of the TDR paper, in seeking receiving areas in the non-Highlands PA1, PA2 and designated centers, she asked that the Council be true to the land capability principles wherever the TDR receiving areas are established.

Ms. Chambellan stated as to page 12 regarding allowing Highlands municipalities who do not opt-in to the RMP to be a Highlands TDR receiving area, she thought the Council should guard against creating a policy dilemma complicit in jeopardizing resources where municipalities fail to opt-in and conform to land capabilities. Ms. Chambellan urged the Council to retain TDR as an incentive for conformance to the RMP.

Wilma Frey, New Jersey Conservation Foundation. Ms. Frey pointed to page 12 of the TDR paper and the issue over allowing a Planning Area municipality to participate in TDR without conforming to the RMP, that they should be required to conform. Ms. Frey suggested that the TDR program should not amount to "the tail wagging the dog" and that protection of the Highlands is the reason for the Highlands Act, Highlands Council and the RMP. She added that she thought that section should be removed from the document.

Ms. Frey said that as to purposes of the TDR program, she believed they should be broadened and offered that it should be mentioned this is a potential conservation mechanism to preserve sites with existing development approvals. She noted that it should address sensitive sites currently exempted from the Highlands Act because it is in the planning area or town center and that it should be stated that a landscape of unfragmented forests, watersheds and farmland are the goal of the Act. Ms. Frey said this would be a basis for legal support for the Council's utilization of its no development

zone. The conservation purposes of the TDR program should be clearly stated. On page 3 as to goals, the impact of the TDR receiving areas on the surrounding areas should be stated. She believed that impact was the concern Ms. Carluccio was pointing out. Ms. Frey said it is difficult to gauge the impact without mapping indications as to specially planned areas, and the number of areas is a significant factor. Ms. Frey said the desire is not to have the Highlands area pock-marked with intense developments in the planning area. She noted the Highlands resource area was the whole Highlands and not the Preservation Area versus the Planning Area. Allowing development in the Preservation Area is to be very restricted and very carefully considered. Ms. Frey said that a planning structure which is too complex requiring oversight over every site plan would create enormous amounts of work and noted that the conservation goals have to be clearly stated and followed in the RMP.

Candace Ashmun, Pinelands Commission and PDC Bank Board. Ms. Ashmun complimented the staff and Council on the difficult work it has done on TDR in particular and stated that she knows from her long experience on the Pinelands Commission how hard it is and offered to commiserate. Ms. Ashmun stated that it is worth the work. She stated that at about 60,000 acres have been protected in the Pinelands with deed restrictions without spending any money. She noted many have been retired without being used in the receiving areas for many reasons. Ms. Ashmun stated her program is totally market driven which is different from the Highlands. She asked the Council to remember to look long term, perhaps 20 years from now, the value that was lost 20 years before on a piece of property. She stated that the owners may be cheating themselves by saying the value has to be set in 2006 or before the Act was passed. Ms. Ashmun said the Council needs to consider what the effect is going to be on landowners.

She also stressed that this work is terribly staff intensive and the work necessary to establish the number of Highlands credits determined is hugely intensive. Staff members have to go on site and search the deeds, and find out what is really developable land on a property and then it is turned over to a bank and it becomes equally intensive and the amount of paperwork involved is horrendous. She thought the Council should keep in mind the expense of running a TDR program. Ms. Ashmun said she couldn't understand from the paper whether the initial number of HDCs established for a piece of land sunsets or not and noted that Pinelands do sunset every two years because people change what they do to their land. She noted that fact also intensifies the labor involved, and stated she would leave the Council to its struggles.

David Piefer, Association of New Jersey Environmental Commissions. Mr. Piefer said the cash flow timetable needs to be carefully considered if the Council wants to encourage the private donations of land. He noted the IRS does not recognize previous appraisal and that any deduction claimed under the IRS rules by a landowner would be disallowed if that basis was used in the appraisal. Mr. Piefer said the point is to encourage as much private donation as possible, and the Council would not want someone to be caught thinking they will have a tax deduction when they don't. Mr. Piefer also suggested extending the appraisal period beyond the statutory limit and echoed what Ms.

Ashmun said as to thinking long term. He noted that leveraging private support is substantial related to TDRs because if someone wants to donate development rights, they would need the value in order to claim a tax deduction acceptable to the IRS, and based on an old date, they are blown out. He asked the Council not to encourage people to do so, and suggested it also be careful of extending the date. He asked if the Council had a giant data base of all the zoning and DEP regulatory programs in place for seven counties and 88 towns. Mr. Borden said it did.

As to the stewardship responsibility and the funding needs for the purpose of enforcement, Mr. Piefer stated the Council should not leave it up to the municipalities and suggested guaranteeing it in perpetuity on an endowed basis and not an annual allocation. As to bonuses for resource values, he noted it could be said that we paying for what we already have and that water is a trust resource. In specially planned areas, Mr. Piefer reminded that one of the uses for brownfields is conversion to greenfields and said the matrix in which the brownfield sits should be examined to determine if it could become greenfield. Mr. Piefer noted as an example the Combe Fill South Landfill, a Superfund site, which is on the headwaters of Trout Brook draining into Hacklebarney State Park and the Black River. The specially planned areas are not just to be developed, but more for restoration of a region.

Helen Heinrich, Farm Bureau. Ms. Heinrich said she would like to follow up on a comment she made one week ago about the transportation studies being conducted, and said since agricultural viability is mandated in the plan, the Council's transportation consultants should examine the plan made as part of the Route 206 farm belt study in Burlington County. She said that DDR received a transportation study and met with farmers to find out what problems existed as to intersections and roads as to weight limits on bridges. She noted this type of approach should be taken in the Highlands as well, so that the movement of farm goods to market can proceed better. Ms. Heinrich stated that two important issues for farmers were discussed at the meeting, one is that TDR is a major concern since it is a tool to preserve equity and conservation of land. She stated it is important because there is no funding source to count on. Ms. Heinrich stated the Farm Bureau would provide future comments and suggestions.

As to the critical habitat she stated that the landscape project maps are not accurate because an insufficient amount of ground truthing has been done. She also stated that there are too many critical resource stewardship management plans and said they might be named better in order to help people tell them apart.

Since no other members of the public wished to comment, Mr. Weingart offered thanks for the comments received, and the public session ended at 4:55 p.m.

New Jersey Department of Agriculture

Memo

To: Highlands Water Protection & Planning Council

From: Monique Purcell

Date: October 3, 2006

Re: Agricultural Irrigation Water Use

The NJDA offers the Council the following information regarding water used for irrigation purposes by the agricultural industry in New Jersey.

- Agriculture uses approximately 5% of the state's water.
- As of 2006, there are 1,100 agricultural certifications/registrations statewide issued by the DEP Bureau of Water Allocation, covering approximately 100,000 acres of agricultural land, out of the 830,000 acres of land in agricultural use.
- There are approximately 67 agricultural certifications/registrations in the Highlands Region.
 - A **certification** is issued to grant a person the privilege to divert 100,000 gallons or more of water per day from ground and surface water sources for agricultural, aquacultural or horticultural purposes for a 5-year period.
 - A **registration** is issued if a person has the capability to divert 100,000 gallons of water per day from a source or combination of sources, but whose usage is less than 100,000 gallons per day for agricultural, aquacultural or horticultural purposes.
- 500 acres of irrigated land is converted to water conserving technology (low volume/low pressure, drip irrigation) statewide each year utilizing state and federal cost-share funds.
- Over 75% of the funds allocated from the Environmental Quality Incentives Program and state Conservation Cost-Share Program (\$2.5 M since 1999) were for 3 conservation practices, including animal waste storage facilities, integrated crop management and irrigation practices.
- Farmers monitor their water use through metering, water management plans and irrigation scheduling to conserve the resource and reduce costs associated with irrigating fields.

- Water reuse, including tailwater recovery systems and the use of effluent on non-food crops is encouraged in water management plans.
- The DEP's proposed amendments to the Ag Water Use Certification rules (N.J.A.C. 7:20A) that were published in the July 17, 2006 New Jersey Register incorporate new provisions including water reuse and water diversions that utilize the lowest quality water that is appropriate for the intended use.



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JOHN R. WEINGART
Chairman

DANTE DI PIRRO
Executive Director

JON S. CORZINE
Governor

Regional Master Plan Development Council Work Session – October 5, 2006

PUBLIC COMMENT SHEET

The Highlands Council welcomes public comment. Members of the public are invited to comment here or electronically by e-mailing the Council at rmppcomments@highlands.state.nj.us.

Name: ANDREW DRYSDALE Phone: 908-234-1079
Title: PROPERTY OWNER - PRESERVATION AREA
Address: 32 E. FOX CHASE RD, CHESTER, NJ
Location of Property (if different from above):

My comments relate to:

Transfer of Development Rights Program Cash Flow Time Table
 Critical Habitat Other _____

Comments:

VERNAL POOLS - WE ONCE HAD A
METAL HORSE TROUGH WHERE WATER
WAS LEFT IN IT FOR A FEW SUMMER
MONTHS - POLY WOGS HATCHED OUT IN
THAT TANK AS DID MOSQUITOES. ANY
LOW PLACE THAT IS IMPERVIOUS CAN
BECOME A VERNAL POOL! PLEASE
STOP THIS NONSENSE!



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Regional Master Plan Development Council Work Session - October 5, 2006

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Address: 32 E. FOX CHASE RO., CHESTER, NJ 07930
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My comments relate to:

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Comments:

PRE-HIGHLANDS ACT LAND VALUES ARE
THE ONLY VALUES THAT SHOULD BE
CONSIDERED. ANY OTHERS ARE EITHER
TOTALLY UN-REAL OR ARE MARKET
VALUES THAT HAVE BEEN SEVERELY
AFFECTED BY THE ACT!

New Jersey Highlands Coalition Principles for TDR

Summary. A Transfer of Development Rights ("TDR") program is a potentially useful land use mechanism to help achieve the goals of the Highlands Water Protection and Planning Act ("the Act") when used appropriately and in conjunction with other tools. The overall success of the TDR program will be judged by its ability to provide maximum environmental protection for all sending and receiving parcels, with minimum environmental cost to receiving parcels. Therefore, the designation of potential sending and receiving areas must be based on the Resource Assessment, the capacity analysis and the Land Use Capability Map that are integral parts of the Regional Master Plan (RMP). Prior to implementing a TDR program, in order to understand its potential scope and utility and what range of transferable credits and economic values it should consider, the Council must undertake an analysis of potential build-out in the preservation area and critical resource areas, based both on pre-Act capacity as well as conditions established under the Regional Master Plan.

Potential Utility. A NJ Highlands TDR program has the potential to assist in achieving the goals of the Act in a number of ways. These include:

- Providing a potential conservation mechanism for sites with existing development approvals within the Preservation Area currently grandfathered under the Act.
- Providing a potential conservation mechanism for environmentally sensitive sites on which projects are currently exempted from the Act because they are within the Planning Area or a designated Town Center;
- Furthering the goals of the Act by helping to achieve a landscape of unfragmented forests, watersheds and farmland, fostering connectivity among networks of preserved land and minimizing sprawl development by focusing developing in receiving areas that are most appropriate for growth as defined by the RMP's resource assessment and capacity analysis;
- Helping to achieve land preservation and farmland protection by providing equity and enhanced marketing opportunities to property owners in the sending areas and no development zones;
- Providing a legal basis for severe restrictions on the use of property; one objective of the TDR program should be to provide legal support for the Council's utilization of its no development zone as well as sending area authority.

Basic Principles. A NJ Highlands TDR program must:

- Designate potential sending zones in the Preservation and Planning Areas, and receiving zones in the Planning Area and Highlands Counties, based on the findings of the Resource Assessment, capacity analysis and Land Use Capability elements of the Regional Master Plan, and thus help to achieve the forest land preservation, farmland protection and water resource protection goals of the Act;
- Include a capacity analysis of the natural and built infrastructure of potential receiving areas in the Highlands Counties outside the Highlands area.

- Designate exempt or grandfathered project areas within the preservation area or critical resource areas as sending areas with appropriate incentives;
- Designate areas of significant natural resource value within the Planning Area, especially lands adjacent and contiguous with the Preservation Area, as sending areas;
- Prioritize potential receiving areas that already are developed and that have sufficient existing sewer, water supply and other necessary built and natural infrastructure to support and sustain development and/or redevelopment at additional densities;
- Use incentives to encourage municipalities to explore TDR ordinances consistent with the Statewide TDR program that would transfer development to municipalities outside the Highlands counties;
- Maximize opportunities for receiving zones in appropriate areas outside of the Highlands Region in Highlands Counties;
- Designated potential receiving areas must demonstrate that new or existing infrastructure necessary to support its higher densities, including ground and surface water supply and wastewater infrastructure and transportation, will be sustainable and have minimal environmental impacts outside of those areas;
- Require that the only means of increasing pre-Highlands Act densities in Planning Area municipalities, or other growth/redevelopment areas will be through opting-in to the RMP, and the increased density be achieved solely through transfer of development rights from Highlands sending areas.
- Ensure that receiving areas are designed to the highest possible standards to ensure negligible impact on natural resources while generating economic values that will support the effective use of no development zone authority and sending area designations;
- Ensure that when development rights are severed in a sending area, all remaining rights in the subject property should be conditioned in perpetuity to ensure, *at a minimum*, conformance with the Highlands Water Protection and Planning Act, DEP Rules developed pursuant to the Act, and the Regional Master Plan, or stricter requirements of the governing municipality.
- Designate no development zones as sending areas recognizing however that a mechanism must be established to facilitate fee simple acquisition for priority parcels including but not limited to those parcels appropriate for park expansion, public access or recreation purposes.
- Require that any new sewer construction or extensions in the Highlands region and adjacent areas to require the purchase of TDR credits.

June 21, 2006

Pequannock River Coalition

P.O. Box 392, Newfoundland, NJ 07435 (973) 492-3212

www.pequannockriver.org

October 3, 2006

Mr. Dante DiPirro, Executive Director
New Jersey Highlands Council
100 North Road
Chester, NJ 07930

Dear Mr. DiPirro,

We have reviewed the Policy Considerations for Water Availability, dated September 26, 2006 and released to the Council on September 28th. Our comments and concerns are outlined below:

In Staff Policy Recommendation #1 the rationale describes adjustment of the Low Flow Margin of Safety through multiplying this figure by 1.02. There is no basis provided for this adjustment and no information on how this new concept was developed. The staff must provide additional information and justification.

Staff Policy Recommendation #2 provides a table showing thresholds for Ground Water Availability based on characteristics of the watersheds. With no mapping provided of the various zones it is difficult to comment on this approach. However, we must underline the overriding imperative to restore Highlands water quality and quantity. For this reason any waterway currently listed as "impaired" by the NJDEP must be placed in the most restrictive category regardless of its physical location. There are few (if any) water quality impairments that are not worsened by reduction in base flow. Waterways with documented water quality problems cannot sustain any reduction in flow without negative consequences, and therefore cannot be expected to provide additional groundwater while meeting the tenets of the Highlands Act. As a conservative measure these waterways should receive the highest level of protection.

Staff Policy Recommendation #3 describes the calculation of Net Ground Water Availability by subtracting consumptive water uses. This calculation ignores the issue of water diversions from reservoir systems, stating that this issue is covered through the placement of waterways draining to surface water intakes or reservoirs in the most restrictive Ground Water Capability category. We strongly recommend that an additional analysis be performed using actual gauged base flows for waterways affected by reservoir diversions wherever they are available. Examples include Wanaque River at the Wanaque Reservoir outlet, Pequannock River at Macopin, and the Rockaway River below Jersey City Reservoir. This analysis would enlighten the Council by emphasizing the enormous degradation of base flows occurring in these waterways and will help to discourage inappropriate growth in contributing watersheds.

Finally, discussion of two vital issues has been relegated to the "Technical Basis" section of the document. These are 1) incorporation of the impacts of impervious cover on recharge, and 2) employing a method such as R2Cross in establishing minimum flows. Although we recognize the Council's time and staff limitations in producing the current RMP, these items absolutely must be included in the "5-year Resource, Protection and Planning Goals."

Please contact me if I can provide any additional information.

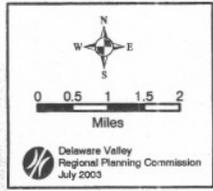
Sincerely,

Ross Kushner
Executive Director

cc: E. Filippone, PRC
L. Jackson, NJDEP
D. Pringle, NJEF
J. Somers, NJ Highlands Coalition
E. Stiles, NJAS
J. Tittel, NJ Sierra Club
J. Weingart, NJ Highlands Council

US 130/ Delaware River Corridor Extension US 206/ Farmbelt Corridor Transportation and Circulation Study

*Map 8:
Preserved
Farmland and
Agricultural
Route*



- | | |
|-----------------------|---|
| Permanently Preserved | Regional |
| Pending Acquisition | Eight-Year Program Farm |
| Current Application | Project Incentive Grant Southampton Current Application |
| Priority Farm | Current Pinelands Application |
| Alternate | State Agricultural Dev. Committee Curr. Application |
| | Potential Agricultural Route |

Source: Burlington County Office of Land Use Planning, DVRPC.

