

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
NATURAL RESOURCES COMMITTEE**

**CHAIR REPORT
FOR THE MEETING OF DECEMBER 6, 2007**

On December 6, 2007, the Natural Resources Committee held a meeting at the New Jersey Highlands Council office in Chester, New Jersey. Notice of the meeting was provided on the Highlands Council's website. Council members present included the Committee Chair Tim Dillingham, Tracy Carluccio and Scott Whitenack. The Highlands Council staff included Eileen Swan, Tom Borden, Dan Van Abs, Jim Hutzelmann, Erin Lynam and Chris Ross. The meeting was called to order at 10:15 am.

Mr. Dillingham provided an overview of the agenda items which included discussion of staff reviews of two specific Water Quality Management Plan ("WQMP")/Wastewater Management Plan ("WMP") amendment proposals (Heritage 55 and Huntington Knolls), and discussion of the technical methods and examples for Redevelopment Site Designations.

Water Quality Management Plan Amendment Reviews

Heritage Village 55

Mr. Dillingham requested that Tom Borden provide an overview of the legal analysis for the Heritage 55 WQMP with respect to the following issues:

1. Whether this project should be deemed exempt from the Highlands Water Protection and Planning Act (Highlands Act); and
2. Whether the New Jersey Department of Environmental Protection's (NJDEP) determination that the project is exempt from the 300 foot buffer requirements under N.J.A.C. 7:8-1.1 et seq. limits the Highlands Council's recommendation on this project.

With regard to Issue #1, Mr. Borden noted that the Heritage Village 55 project is not exempt from the Highlands Act because Exemption #3 (those projects which received local approvals and State permits prior to March 29, 2004 and started construction beyond site preparation before August 10, 2007) is limited to projects in the Preservation Area and this project is located in the Planning Area. Two of the Highlands Act exemptions (#3 and #17) are premised upon the definition of what constitutes a major Highlands Development and this definition includes projects in the Preservation Area. He went on to recommend that the Council should, at a later date, discuss the general policy issue of how the Council should review projects in the Planning Area that received specific local approvals and State permits prior to March 29, 2004.

He further stated that even though the project is not exempt, the staff did review the prior permits for the project and determined that the project did receive local approvals and a State water supply permit prior to March 29, 2004 and initiated construction beyond site preparation prior to August 10, 2007. Accordingly, the staff recommendation was to review the project against the Final Draft Regional Master Plan (RMP) and advise the Council that it may wish to consider these prior approvals in its deliberation on the matter.

In regard to Issue #2, Mr. Borden explained that while the project review identified Final Draft RMP inconsistencies regarding the 300 foot buffer from Highlands Open Waters and Riparian

Areas, the NJDEP determination that the project is exempt from the 300 foot buffer requirements under NJDEP's Stormwater Rules at N.J.A.C. 7:8-1.1. Given this, the Council staff recommended that the Council should specifically identify the Final Draft RMP inconsistencies and should recommend that NJDEP strongly encourage the applicant to address the inconsistencies through redesign of the project.

Mr. Dillingham noted that the Heritage Village 55 proposed amendment was discussed at the September 20, 2007 Natural Resources Committee meeting and since that time, staff conducted additional analysis and a field reconnaissance. He asked that staff provide an overview of that effort. Jim Hutzelmann began the overview by noting that at the September 20, 2007 Committee meeting and in correspondence dated October 17, 2007, representatives of the applicant provided updated information on the project including the description of extensive site preparation activities and installation of improvements, including poured dwelling foundations for several units, and construction of water and wastewater infrastructure at the site. On November 1, 2007, Council staff met representatives of the applicant at the project site and during the site visit was able to document the extent of prior construction activities at the site, including those activities mentioned by the applicant. Mr. Hutzelmann also noted that the latest staff review was conducted against the 2007 Final Draft RMP's Goals, Policies and Objectives, and Land Use Capability Map Series.

Mr. Hutzelmann stated that during the review of the proposed service area and development footprint, the Highlands Council staff identified Highlands Open Water Protection Areas and Riparian Areas within the development footprint. Most of these environmentally sensitive areas (particularly hydric soils) have been disturbed, graded and filled by previous construction. Mr. Borden noted that NJDEP has previously determined that that the project is exempt from the 300 foot buffer requirements under N.J.A.C. 7:8-1.1. Recognizing this, the Council staff recommended that that the Council provide a recommendation to NJDEP that NJDEP strongly encourage that the current development layout be modified to protect the Highlands Open Water protection areas and Riparian Areas. Mr. Dillingham asked how much of the Highlands Open Waters buffer protection area would be encroached upon. Mr. Hutzelmann estimated that the outer 50-feet or so of the buffer would be encroached upon.

Tracy Carluccio pointed out the other environmental constraint identified by the Council staff, which is the utility capacity limitation for the proposed development. Ms. Carluccio referred to the staff memo where it is noted that the WQMP amendment includes extension of an adjacent public water utility owned by the Randolph Township Municipal Utilities Authority (MUA). The Randolph Township MUA is solely supplied by water from the Morris County Municipal Utilities Authority (MCMUA). The MCMUA's wells are located in two HUC14 subwatersheds with deficits of net water availability. Any proposed exacerbation of that deficit is inconsistent with the Final Draft RMP unless 125% mitigation is provided in the deficit subwatershed. Dan Van Abs noted that the extension of the public water utility line has already been completed based on NJDEP permits. Mr. Hutzelmann added that the proposed water use is within the NJDEP water allocation permit limit. Mr. Dillingham acknowledged that point but noted that the source wells are in two deficit HUC 14 subwatersheds, which is not consistent with the policies of the Final Draft RMP. Ms. Carluccio agreed, noting that the Council must apply the policies of the Final Draft RMP. Mr. Dillingham invited representatives of the applicant to speak.

The Town Manager, Mr. John Lovell spoke. He noted that the project dates back seven years. It includes a deed restriction of 155 acres of open space. He also noted a Superfund project across the

street on Calais Road and that the Heritage 55 applicant paid for the remediation efforts of that site in an overall concept to improve environmental conditions for the entire area. The applicant's attorney, Mr. Richard Sweeney, also spoke of the remediation effort on Calais Road and how it benefited all the citizens of the State. His opinion was that it would not have taken place without the applicant's funding and commitment. Mr. Sweeney also spoke of the encroachment into the Highlands Open Water buffers. He noted that there are residences already in existence within the buffer area, on the adjacent property. He also noted that only the back parts of the proposed lots are within the 300-foot buffer and that there would be no roadways within the buffer. Mr. Sweeney indicated that the applicant would be willing to deed restrict the remaining portion of the buffer (the approximately 250-feet remaining of the buffer).

Mr. Dillingham invited members of the public to comment. Ms. Julia Somers of the Highlands Coalition noted that with respect to the applicant proposing to deed restrict the 250-foot buffer behind the houses, that fence construction and/or concrete monuments often facilitate the maintenance of buffers.

Mr. Dillingham inquired about future opportunities for on-site ground water recharge. Dr. Van Abs spoke of rooftop drainage and other mechanisms to return as much water back into the ground as possible. The on-site discharge to ground water will also create recharge using imported water. Mr. Hutzelmann noted that the applicant had submitted modified stormwater management plans at the request of NJDEP, which is intended to provide more recharge than predevelopment.

Ms. Carluccio reiterated her concern that the proposed project entails water withdrawals from two HUC 14 subwatersheds that are in deficit and that she therefore, could not support this project as it is not consistent with the policies of the Final Draft RMP. Mr. Dillingham suggested that a solution to the deficit be found in the source watersheds, and asked whether some response could be implemented in conjunction with this approval. Dr. Van Abs noted that municipalities, in essence, are requesting on behalf of project applicants that NJDEP approve WMP amendments so that the legal burden should perhaps be imposed on the municipalities. Mr. Dillingham suggested that in the recommendation letter to NJDEP, the Highlands Council should recommend that NJDEP require the municipality to investigate measures to recharge ground water. Mr. Whitenack and Mr. Dillingham both noted that the language in the recommendation letter needs to be strong.

Mr. Dillingham instructed staff to meet with the applicant to craft language and delineate the boundaries of the deed restricted area of the Highlands Open Water protection area buffers. He also indicated that staff should craft language regarding the recommendation letter to NJDEP that they require the municipality to investigate measures to recharge ground water in the deficit HUC14s. With these conditions, the Committee would recommend that NJDEP approve the WQMP amendment. These issues will be items for the Council's consideration at the upcoming December 13th Council meeting.

Huntington Knolls

Mr. Hutzelmann directed the Committee members to the Huntington Knolls recommendation memo and review checklist contained in their meeting packet. He provided a synopsis of the proposed project and noted that the Council staff was not provided with a site plan for the project. Thus, the entire parcel was reviewed as a potential sewer service area. Mr. Dillingham noted that staff should indicate to NJDEP that they must provide site plans to the Council for WQMP reviews.

Mr. Hutzelmann explained that the site contains numerous sensitive environmental resources including Steep Slopes, Highlands Open Waters Protection Areas, Riparian Areas, Critical Habitats, Forests, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and Agricultural Resources. He visually presented each of the environmental constraints using the Council's GIS layers. He noted that the staff recommendation is that these areas should be excluded from the sewer service area and development activities should avoid these areas. Mr. Hutzelmann also noted that to be consistent with the Final Draft Plan, extension of utilities to the site requires a cluster development at the appropriate densities and 80% preservation of the site's agriculture or natural resources. Mitigation of the additional consumptive water use at 125% should be required as a condition of approval and incorporated on-site to the maximum extent feasible to ensure that the mitigation occurs at the same time as the development.

Mr. Dillingham indicated that the Council staff recommendation should be strengthened to be more direct with the inconsistencies. He instructed the staff to redraft the recommendation to state that the Council recommends denial of the WQMP amendment as it sees that the site has very little potential for development. Dr. Van Abs indicated that staff will indicate that it is a highly constrained site and that the Council recommends denial unless the applicant can demonstrate that the project, through a point-by-point analysis, is consistent with the goals, policies, and objectives of the Final Draft RMP. This issue will be an item for the Council's consideration at the upcoming December 13th Council meeting.

Mr. Dillingham invited members of the public to comment. The following is a summary of the comments received:

- Strongly supports the Committee's recommendations regarding Huntington Knolls
- Council should consider assisting the municipality to find another site for the proposed project to assist the municipality in meeting its Council on Affordable Housing (COAH) obligations.

Ms. Swan indicated that the Council will work with municipalities regarding their COAH obligations during the Conformance process, including informing them of the Council's COAH grant program.

Redevelopment Site Designations – Discussion of Technical Methods and Examples

Dr. Van Abs indicated that the staff is presenting a new concept for simplifying the 70 percent impervious surface criteria for considering proposed Redevelopment Sites in the Preservation Area. He noted that the staff is not requesting a decision at this time, but simply a consideration of the pros and cons of the proposed concept. Following discussion, the staff would wish to provide a written methodology for public review and comment.

Mr. Hutzelmann conducted a PowerPoint presentation that outlined the proposed approach to delineating Highlands Redevelopment Areas in the Preservation Area. Highlands Redevelopment Areas are limited to redevelopment sites and brownfield sites as designated by the Highlands Council, which are then eligible for waivers from the NJDEP's rules for the Preservation Area. Highlands Council must approve the designation of a redevelopment site and the Highlands Act limits sites to those that sites "at which at least 70% of the area thereof is covered with impervious surface." Moreover, the Highlands Act includes the following definition of "impervious surface" as "any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements."

The Council staff proposed an overview of a recommended default approach to determining sites where at least 70% of the redevelopment areas is covered with impervious surface. The approach uses an analysis of hardscape surfaces, the use of the TR-55 model to determine the runoff from the water quality design storm for that hardscape area, and then the use of TR-55 to determine the area of non-hardscape developed surfaces that would generate an additional runoff equivalent to 1% of the hardscape runoff, using on-site soil types. This area would be deemed “impervious surface”, but only when adjacent and hydrologically connected to the hardscape surfaces. Ms. Carluccio expressed concerns about TR-55 run-off curves. Dr. Van Abs explained that this is an efficient way for applicants and the Council to determine the 70% impervious criteria, but that site designs in the actual development process would comply with NJDEP’s stormwater management rules. Ms. Swan indicated that if an applicant desires to refute the Council’s determination utilizing this method, they can conduct their own analysis using detailed soil analyses. Dr. Van Abs indicated that the staff will be using a “complicated” real world test case to demonstrate the new concept – the Heath Village proposed redevelopment project.

An aerial view of the Heath Village property was presented. The applicant delineated and Council staff confirmed the hardscape surface at this site. The proposed new method utilizes the commonly used TR-55 curves that are readily available. Staff reiterated that this method is only used for the 70% impervious designation which is simply the beginning of the longer process to conduct a review to determine if a specific proposed redevelopment project is appropriate (consideration of the presence of sensitive environmental resources, etc.). The committee indicated that they want to see the concept in writing before this is released to the public.

Ms. Swan indicated that a representative from Heath Village, Mr. Ed Bogan (project engineer) was in the audience and he was invited to speak. Mr. Bogan provided an overview Heath Village and of the proposed redevelopment. He indicated that the aerial shown only shows the developed portion of the property and that there are extensive undeveloped areas of the property that would be deed restricted.

Mr. Dillingham invited member of the public to comment. Following is a summary of the comments:

- Concerned about the use of TR-55 run-off curves.
- Questioned if the proposed method takes into account the potential of properties being underlain by karst and/or encroached by other environmental features.
- Regarding the ability of applicants to refute the findings of the proposed method, the Council should dictate the alternate method for refuting the findings (commenter suggests the bulk density field testing method or a soil penetrometer).

Mr. Dillingham requested that staff provide to the Committee a written proposal of the proposed methodology. Subsequent to Committee’s decision to release, the draft methodology will be made available for public comment.

Mr. Dillingham adjourned the Natural Resource Committee meeting at 12:15 p.m.