

NEW JERSEY HIGHLANDS WATER PROTECTION  
AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF NOVEMBER 8, 2007

**PRESENT**

JOHN WEINGART	)	CHAIRMAN
ELIZABETH CALABRESE	)	COUNCIL MEMBERS
TRACY CARLUCCIO	)	
BILL COGGER	)	
JANICE KOVACH	)	
DEBBIE PASQUARELLI	)	
ERIK PETERSON	)	
JACK SCHRIER	)	
SCOTT WHITENACK	)	

**ABSENT**

KURT ALSTEDE	)
TIM DILLINGHAM	)
MIMI LETTS	)
GLEN VETRANO	)
TAHESHA WAY	)

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 58<sup>th</sup> meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:19 am.

**ROLL CALL**

The members introduced themselves.

**OPEN PUBLIC MEETINGS ACT**

Chairman Weingart announced that the meeting was called in accordance with the Open Public meetings Act, N.J.S.A. 10:4-6 and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

**PLEDGE OF ALLEGIANCE** was then recited.

**APPROVAL OF MINUTES OF NOVEMBER 1, 2007**

Chairman Weingart deferred the approval of the minutes until later in the meeting.

**CHAIRMAN'S REPORT**

Chairman Weingart congratulated Council Members Calabrese, Cogger and Schrier on their re-election to office. He noted that this meeting would be a work session and that Item #10 on the Agenda – the review of the proposed water quality management plan for Heritage 55 was postponed and that confirmation to postpone had been received by the applicant. He indicated that this matter would be reviewed at the December meeting. He announced that

the next meeting is November 19<sup>th</sup> at 4 pm and thanked the staff for the preparation of materials with one week between meetings. He asked Ms. Swan to give her report.

## **EXECUTIVE DIRECTOR'S REPORT**

Ms. Swan asked that she begin the review of the Regional Master Plan programs in lieu of her Executive Director's report.

## **REVIEW OF REGIONAL MASTER PLAN PROGRAMS**

### **LAND USE CAPABILITY MAP**

She noted that all maps had been shown in a previous power point except the Land Use Capability Zone map. She indicated that staff is working on the shape files for maps. She remarked that if the Council approved release of the draft the maps would be released in full form for reproduction after date of release. She reviewed the requirement in the Highlands Act that a Land Use Capability Map be prepared. To address that requirement, staff recommended that a series of maps be released as the Land Capability Map Series in order to capture all of the relevant data She commented that in 2006 draft, there was a Land Use Capability Map, but comments received noted that it did not fully address capability and capacity . It was for this reason that a series of maps were prepared and one of the results was the environmentally constrained sub zones. The maps in the series are currently displayed on the walls of the meeting room.

Ms. Swan showed graphic slides as follows: the Land Use Capability Zone Map showing three primary zones: Protection, Conservation and Existing Community and the sub-zones Lake Community, Conservation Constrained and Existing Community Constrained. The second map in the series is the Water Availability map that was reviewed at the last meeting showing the net water availability by HUC 14 and conditional net water availability – the 1 and 2 % that was discussed with the 125% mitigation. The third map is the Public Community Water Systems, the fourth is Domestic Sewerage Facilities map and the fifth shows the Septic System Yield for the Planning Area conservation and protection zones only. She mentioned that the purpose today was to show the full series. She completed this discussion with a slide prepared by the GIS staff that was animated to show the zones and sub zones progression and the conflict resolution of the map.

Ms. Carluccio asked what standards are being attached to the environmentally constrained sub zones. She asked if those standards were to be in one place in the plan. Ms. Swan commented that the sub zones are primarily designed to demonstrate that there are further constraints in these zones and that during Plan Conformance these constraints would have to be examined on the ground to determine what the actual features are and the best approach to protect them. She also commented that there are some areas where a specific program can be applied. Mr. Siemon also noted that what standards apply in the environmentally constrained areas on a subject by subject basis and on a geographic basis. He commented that after adoption there could be an informational summary as to how these issues interrelate. He clarified that the data sets in the 2007 maps were more accurate than the 2006 maps . He also cautioned viewing the removal of land from previous zones and he again emphasized that the refinements in this series of maps were based on reality. He reviewed the additional tools to inform the process of analyzing the environmentally constrained zones, for example, technical reports, manuals and additional program materials.

Another question was raised on the protection of forested areas, i.e. core forest. Dr. Van Abs commented the forest resource area was defined before the zones. There are policies written to the resource and policies written to the zone. Septic system density is written as a policy to the zone. Combination of resource and zone policies will be applied. He also noted that the Highlands Open Water buffers are what they are no matter what zone.

Ms. Pasquarelli asked about the growth potential based on water and sewerage capacity and whether that analysis had been done. Ms. Swan commented that at a minimum there would be a table that reflects that data and a narrative to describe it. She also noted that the growth enhancement and redevelopment tool that was presented at the last Council meeting provided additional information on this subject and that there would be further work in this area. Ms. Pasquarelli also asked if there would be additional material to review prior to the November 19<sup>th</sup> meeting and Ms. Swan indicated that there would be some new information for review prior to the meeting.

Ms. Swan commented that the programs being presented are reflective of the Goals, Policies and Objectives and that some of the programs need technical documents to support them. She introduced the first program: **Lake Management**. She noted that the RMP provides for the protection and enhancement of Highlands Lakes and their environs, including Highlands lake communities. There are three tiers:

The first tier is a Shoreline Protection Tier comprised of all land within 300 feet of the shoreline of a Highlands Lake. Standards covering alteration of the shorelines, preservation and restoration of wetlands species, protection and restoration of shoreland vegetation, restrictions on new structures within 50 ft. of shoreline, municipal development regulations on width and length of piers and docks and sharing of same, boat lifts to allow light to waters, protection buffers.

The second tier is a Water Quality Management Tier comprised of land within 1,000 feet of the shoreline of a Highlands Lake. Standards covering landscape elements to retain stormwater, runoff directed to landscape elements to retain and filter, encourage green roofs, impervious surfaces to drain away from shoreline, maximum use of natural swales, constructed wetlands etc., stormwater runoff designs to protect water quality, septic systems to comply with density requirements and with buffers from lake, clustering to be used where it provides a greater buffer from lake, community wastewater systems to eliminate pollution by septic discharge. Ms. Swan commented that through the use of Best Management Practices for new development and restoration projects for existing systems, there will be additional improvement expected. She also noted that the Highlands Council has a grant program and studies in support of Storm Water Improvement Program.

The third tier is a Scenic Resources Tier consisting of an area measured 300 to 1,000 feet from the shoreline. Standards governing building heights, natural screening of buildings from view from lake, design standards, regulations on building on slopes, clearing of trees limited to footprint of buildings, outdoor lighting directed away from shoreline and with cut-off fixtures

Ms. Swan noted that the Highlands Council will encourage municipalities to implement lake restoration plans to include: Delineation of the lake's watershed; Description of point and nonpoint pollution sources; Lake monitoring schedules; In-lake management techniques; and TMDLs adopted by the NJDEP to address known pollution problems.

She also discussed Lake and Dam Management and that measures would be implemented to encourage the maintenance of public and private lakes and the restoration of lake beds and downstream areas when lakes are drained. She then reviewed the Education and Awards Program which will be to develop a Lakes Landscape Handbook and awards program for waterfront restoration and environmentally friendly landscaping.

Mr. Schrier commented that it would be costly to address Lake Management and asked what the source of funding would be. Ms. Swan said that the cost would be shared between local property owners and municipalities and that although these measures would economically benefit the property owners, it would be difficult to accomplish without other funding sources like the NJ Environmental Infrastructure Trust. Mr. Siemon commented that using the word "encourage" where there are unfunded mandates. He also noted that some standards can be required where there are site review requirements and those improvements go to the value of the property. There was some additional discussion regarding funding including the possibility of the Council advocating for additional funding from the legislature and the issue of funding for achieving the goals, policies and objectives of the plan.

Ms. Swan introduced the next program – **Cluster Development**. She reviewed the fact that there had been a great deal of work in response to comments. Mr. Siemon continued with the summary of general provisions that staff are recommended by included in the plan. Environmentally sensitive site design standards would be a term if a land use regulatory system were being designed today.

Mr. Seimon discussed that clustering is a basic land management tool whereby new growth and development is guided away from lands with high resource value or limited capacity to support human development to locations which are most appropriate for development. He then addresses **the proposed Cluster Development Provisions:**

- The total area of all building sites in a cluster development shall not exceed 20 percent of the parcel proposed for development.
- Where any parcel of land proposed for clustered development is owned in common with any contiguous parcels of land, the contiguous parcels of land shall be aggregated. It was noted that the land would have to be in common ownership to accomplish this.
- All development shall be clustered on the portion of a parcel of land proposed for development which has the lowest relative level of natural resource value and minimizes the creation of impervious surfaces. Due consideration shall be given to access to and from the parcel proposed for development and the public road network, as well as other important linkages.
- The number of dwelling units in a cluster development shall be limited to the yield of the parcel proposed for development, if developed without use of clustering unless the use of Highlands Development Credits (HDCs) or other transfer of density is involved.

- Access roads to the building sites shall avoid lands used for continuing agricultural purposes and high value natural resources to the maximum extent possible. He noted that short road straight up the hill is not preferable to a slightly longer winding road that would, for example, avoid a wetland.
- Cluster development using septic systems must meet a nitrate dilution model target of no more than 10 mg/L nitrates for the developed area. He noted that the developed area could not be so compact as to exceed the 10mg/L standard.
- Cluster development utilizing new wastewater collection and treatment systems shall be permitted only where such development is not within or immediately adjacent to an Existing Area Served, where the system is designed and has capacity only for the cluster development, where the system does not create the potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served, and where adequate provision is made for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes with an impervious cover of less than 3 percent, and provided that the proposed development is otherwise consistent with the goals and requirements of the Plan. (*Objective 2K3f*)

Mr. Siemon commented that using the alternative technology to septic tanks in cluster development is preferable. He noted that in trying to strike a balance is the issue here. He also reviewed that there is a limit to impervious cover to ensure a positive outcome on overall nitrate dilution on the area left and it is recommended to be 3%.

Mr. Siemon clarified that a detention basin would be in the 20% and also there was discussion about the ownership of the open space. Mr. Siemon noted that recording the restrictions on the deed on a site by site basis would be accomplished. Ms. Swan also noted that under open space there could be separation of ownership and lot size averaging. Dr. Van Abs commented that the definition of clustering under MLUL, the ownership has to be government or the homeowner's association, but if lot size averaging is used, the ownership can remain in private ownership.

Ms. Pasquarelli asked if the policy being discussed was to extend sewer lines into the Protection Zone. Mr. Siemon said that the reality of the circumstance of extending a sewer into a cluster would involve a great deal of land being preserved and the balance would probably make sense. She asked about what alternative waste water and the safeguards. Mr. Siemon discussed the recommendation that there be a third party other than the Highlands Council who has the ability to enforce and the capacity constraints on the lines. He believes that as long as there is a legally enforceable method to ensure the safeguards, that this policy should be acceptable. Dr. Van Abs pointed out that one would start with the yield of the property without sewer and that is where you stop. This is not an intensification of use, according to Dr. Van Abs, but a layout issue. Chairman Weingart asked for examples of the covenants. Mr. Siemon commented that the covenants are enforceable by multiple agencies and sometimes third party beneficiaries like non profit organizations.

Scott Whitenack joined the meeting.

Ms. Carluccio asked about the density issue regarding the requirement of the 10 mg/L requirement and the models used and whether each well would be tested. Dr. Van Abs commented that there are policies with regard to cluster – the 10 mg./L and other design standards that would minimize the septic design within the development, then the private well testing act comes in after the wells are in and then with every change of ownership. She asked what happens when the initial test before anyone lives in the development exceeds 10 mg/L. Dr. Van Abs responded that previous use would most likely be the cause, e.g. agriculture. He said that regulations providing for treatment could be imposed. Ms. Carluccio advocated using a 2 mg/L standard for nitrate dilution. She will offer an amendment in terms of the calculation of septic density.

Ms. Swan noted that staff has been reviewing all the comments and bringing back to the Council when there is a policy issue. She reiterated that the staff recommendation is to take the number of development units that could be developed and clustering them, therefore, protecting a greater area. She also noted that using 4 people per unit taking a more conservative approach that would take into account other sources of nitrates.

Chairman Weingart asked Ms. Carluccio to clarify her concerns. She advocated for clustering only where it is adjacent to existing water and waste water infrastructure and asked that Policy 3C2 be amended. Mr. Schrier asked staff whether there was still a comfort level with the nitrate approach. Mr. Siemon responded yes and noted that the clustering tool was important for the agricultural viability of the region long term. Mr. Siemon continued the discussion with the following:

**Cluster Development in the Protection Zone**

- constrained by highly sensitive ecosystems and by the low allowable densities for development based on septic systems, and by limited water availability

**Cluster Development in the Conservation Zone**

- Strongly encouraged for the protection of agricultural lands and high value natural resources
- Presence of Prime Soils and lands used for active agriculture shall be considered to be high value resources in addition to natural resources
- The agricultural use shall be required to use best management practices to reduce nutrient and chemical loading rates.
- The portion of the parcel not developed as buildings sites shall be preserved in perpetuity for use in Highlands agriculture uses or natural resource preservation
- The standards and criteria applicable to cluster development may be adjusted during municipal conformance, provided that the Highlands Council finds that the adjustments are consistent with the goals, policies and objectives of the Highlands Regional Master Plan and that the adjustments provide comparable protection for the Highlands ecosystem.

He also commented that setting out clear standards and that ultimately the municipalities will have to administer the standards and that there should be a capability to modify. Where cluster development is adjacent to an existing hamlet, that setbacks would reflect that community. He also noted that in all zones there would be protection of natural landscape and setbacks from the road.

Mr. Siemon showed several examples developed by Lane Kendig showing cluster approach and a longer road avoiding environmental features. He also showed an agricultural example. Ms. Carluccio asked about a farm that was part of an agricultural area that is greater than 250 acres. She advocated for not allowing clustering in those areas as well as core forest and forest resource area. She will propose an amendment to this end.

The next program was introduced by Ms. Swan - **RMP Updates and Map Adjustments**. She reviewed the fact that the programs were in response to comments from the last meeting and also that these issues had been brought before the Council previously in the goals, policies and objectives. She noted that the specific program was in response to public comments as well. This process allows for a process to update maps and track changes. The update process is based on updated factual basis. She noted that submissions may come from conforming municipalities and counties, as well as non-conforming municipalities. The Map Adjustment process is based on policy decisions approved by the Highlands Council during Plan Conformance or upon the submission of a Map Adjustment Petition. Request must be supported by a demonstration that:

(1) comply with the intent of the RMP, (2) are based on municipal and county planning that results in a no net increase in land use intensity from the existing LUCM Series and RMP policies, (3) support both smart growth and resource preservation, and (4) provide no net loss of Highlands resources within the municipality or HUC14 such that all Map Adjustment protections are equal to or exceed, on a whole, the protection provided by the existing LUCM Series and RMP policies. In any case where the Map Adjustment involves a proposed adjustment to the Highlands Land Use Capability Zone Map designation from the Protection or Conservation Zone to Existing Community Zone, the demonstration must additionally meet at least five (5) of the following standards:

- creates a meaningful opportunity for the use of Highlands Development Credits;
- reduces the net impact on Highlands resources;
- eliminates substandard wastewater treatment facilities;
- contributes to the elimination of net water availability deficits in HUC14 subwatersheds;
- creates meaningful opportunities to provide affordable housing;
- creates meaningful employment opportunities for the residents of the Highlands Region in terms of the quantity and quality of jobs;• improves the balance of housing and employment in a manner which reduces the length of home/work trips within the Highlands Region;
- promotes the use of alternative modes of transportation, including transit; or
- provides uses and facilities which promote eco- and/or agro-tourism.

Ms. Carluccio spoke positively about the specifics presented in the context of last meeting's comments. She believes that the map adjustment process should not be allowed to be implemented in the Preservation Area. She also supported the no net loss approach. She advocated for not allowing the map adjustment process in the Protection Zone only from Conservation to Existing Community Zone. She also advocated for a 1:1 ratio swap, for example, if there is a high quality riparian area, it should be replaced by the same value of resource. Chairman Weingart asked how Ms. Carluccio's comments were different from no net loss and she responded that she would prefer additional specificity. Mr. Schrier spoke in support of the no net loss of Highlands resources and believes it is clear. He does not

necessarily agree that the replacement has to be the same resource exactly. There was additional discussion about these policies.

Mr. Siemon commented that the regional planning process where the goals policies and objectives are regional and are subjected to an ongoing process. It starts when the plan is adopted. He believes that for the plan to be successful, there needs to be professional technical advice and reasonable deliberate local deliberate officials to make what are subjective decisions. He continued that it was difficult to exact specific tradeoffs and asked that the council think not about zoning the highlands but about the management framework and that framework requires judgment and ongoing management.

Ms. Pasquarelli mentioned that her own local experience gave her concern about the issues that can be modified at the local level. Ms. Swan also noted that the municipality needs to develop a resolution and that is an additional protection. Mr. Siemon reiterated that the resources need to be protected on a regional basis. Ms. Carluccio asked about whether there would be a separate hearing for map revision so that in conformance, the request is not lost. Ms. Swan said that she would have staff address that issue. Ms. Carluccio also asked about a % cap for this process. Ms. Swan reiterated that the no net loss addresses that point.

Mr. Peterson followed up on a previous council member's comments about the Constitution that making changes and simple ways to do so are inherent in future success. He believes that simplicity is the best. He advocated for three instead of five additional tenets in the map revision process. Ms. Calabrese spoke in support of the no net loss, no net increase in land use intensity and thinks that is sufficient. Ms. Carluccio also suggested that there be a requirement for a specific amount of acreage for example an Agriculture Resource Area, there should be no map change allowed unless that acreage is replaced.

Ms. Swan introduced the next series of programs based on goals, policies and objectives. The first two are **Land Preservation** and **Agricultural Management and Sustainability**.

The Land Preservation program includes the focus on preservation of open space resources in order to protect and enhance ecosystem function, protect drinking water resources and preserve natural and recreational land. She commented that various analyses had been conducted by staff. and identified critical lands already preserved, the establishment of land preservation priorities to identify special areas, the implementation of strategies for land stewardship by maximizing current land stewardship funding programs, the establishment of alternative/new land preservation programs, the establishment of alternative/new stewardship programs, the development of open space/conservation design standards, and the identification of willing sellers.

She noted that the Highlands Council will establish a technical assistance program for land preservation and stewardship and will explore, in addition to existing funding sources, securing other stable, dedicated sources of funding as has been discussed previously such as:

- a reserve fund to capitalize the Highlands TDR Program;
- a Highlands water user fee; and
- a surcharge on public water supply systems rates that use Highlands water

She also noted the continuation of the dual appraisal method that is not included here, but has been previously discussed and advocated for by the Council. Ms. Schrier spoke in support of the description of a water user's fee.

Ms. Pasquarelli asked about the identification of land per the Act for lands for preservation. Ms. Swan explained that the list is confidential and will be given to NJDEP's Green Acres Program. Mr. Borden also reiterated that the tool for spatial analysis has been updated. Chairman Weingart asked what the plan would include. Mr. Borden said that the conservation priority tool would be used to develop that list.

Ms. Swan introduced the next program for Agricultural Management and Sustainability. She noted that the preservation of farmland and the promotion of agriculture in the Highlands Region are two essential objectives of the Highlands Act:

- Identification of Agricultural Lands
- Establishment of Agriculture Preservation Priorities
- Implementation of Strategies for Agriculture Preservation by Maximizing Current Agriculture Preservation and Stewardship Funding Programs looking at current programs
- Establishment of Alternative/New Agriculture Preservation and Stewardship (sustainability) Programs
- Establish Incentives for Voluntary Impervious Cover Limitations on Agricultural Lands. She noted the use of the FRPP and other federal programs.
- Development of Open Space/ Conservation Design Standards. These are similar to the previous program she discussed earlier.
- Additional Land Use Opportunities like B & B's according to Ms. Swan.
- Identification of Willing Sellers. She noted that some work had been done and programs like the FRPP program.
- Establishment of a Farmland Preservation and Stewardship Technical Assistance program
- Identification of Subwatersheds with Elevated Nitrate Levels & Development of Management Plans. Again she noted that there are programs to establish BMP's to address these issues.

Mr. Cogger asked about the Right to Farm Act. He asked that an ordinance approved by the local CADB be included. He also spoke about the ratio of woodland to farmland. He noted that Morris County has its own funds and he believes that the Council should be integrated into the process. Ms. Swan said that the CADB's are called out in the programs. Mr. Cogger spoke to helping farmers understand the various programs. Mr. Schrier said that Policy 3.4.5. needs to be reconciled with the current SADC policy. Dr. Van Abs said this was focused on an incentive program and is in addition to what is available under SADC program. Ms. Swan noted that there will be work with SADC on this matter. Mr. Borden clarified that the impervious cover limit is in the Highlands Act. Ms. Swan also commented that the farmer would be able to work through the existing programs and then the Council would work with FRPP in addition to SADC. She continued that the farmer has a choice.

Ms. Carluccio asked about Policy 3.4.1 and asked for a definition of alternative and wastewater treatment systems. Dr. Van Abs said that the state codes are minimum standards for anything that would occur here.

It was asked if Mr. Alstede had submitted comments and Ms. Swan said that he had not done so.

She introduced the next section - **Forest Resource Management and Sustainability**. She began by saying that forests provide essential ecosystem functions, including surface water filtration. Forests serve as habitat for plants and animals. In addition, when managed for sustainable use, forests can be as source of renewable wood products as well as alternative forest products. The following was a list of elements provided by Ms. Swan:

- Forest Sustainability - For long term sustainability of the forest resource in the Highlands, there must be proactive management of deer populations, non-native invasive species and reductions in the rate of forest fragmentation.
- She noted that the Council would work to develop a Model Municipal Tree Ordinance. She noted that there were many examples from municipalities and other like the Hunterdon County Environmental Tool Box.
- Develop Community Forestry Plans for Highlands Municipalities
- Develop Forest Conservation and Mitigation Plans
- Develop Forest Stewardship Plans for Preserved Lands
- “Green” or Third Party Certification for Highlands Forest Products

Ms. Carluccio asked about the regulating forest management through municipal tree ordinance. Mr. Borden noted that forest management activities are exempt. He also said that there will be a section in the plan where items will be identified for advocating for legislative changes to recommend. Chairman Weingart asked that those suggestions be held off until the adoption of the plan.

Ms. Carluccio also asked that for core forest and forest resource areas, the loss should be replanted in the same resource area and there should be restrictions on the size. Dr. Van Abs said there is one forest resource area in the region.

Ms. Swan began the next program for **Critical Habitat** and the protection of habitats that are critical to maintaining biodiversity contributes to the protection of rare, threatened, or endangered plant and animal species of the Highlands Region and is a mandate of the Act. She noted the following elements and said that close coordination with NJDEP would be important in this program area.

- Development of Municipal Conservation and Management Overlay District Ordinance
- Development of Critical Habitat Conservation and Management Guidance
  
- Ensuring Implementation of Critical Habitat Conservation and Management
- Implementation of Critical Habitat Conservation and Management Projects

The next topic discussed by Ms. Swan was **Water Quality Restoration**. She noted that this section is in response to the Act that calls for the protection, enhancement, and restoration of the Region's water and that there were two major issues - water quality and assessment throughout the region and the coordination with NJDEP regarding their responsibilities in developing TMDL's and incorporating management measures into the Regional Master Plan for TMDL implementation. She continued discussing the following elements:

- Watershed Restoration Plans identifying key HUC14 subwatersheds and either directly or in cooperation with other affected interests developing Watershed Restoration Plans for approval by NJDEP and incorporation, as appropriate, into the Regional Master Plan or its programs.
- Ground Water Restoration Plans
- Implementation of Water Quality Restoration Projects:
  1. Agricultural Best Management Practices
  2. Stormwater Management Plans
  3. Streambank and Riparian Restoration
  4. Wildlife
  5. Septic System Management
  6. Contaminated Site Remediation
- Education/ Outreach

Ms. Carluccio spoke to including another policy on tracing new sources of nitrates and non-point source as well as point source pollution. She also asked with respect to water quality assessment whether it had been addressed, namely, the assimilative capacity of streams with respect the NJDEP permitting. She would like to know what streams are at risk. Ms. Swan said that assessment tracking is addressed in the Science Agenda and is not site specific. She said that there is an intent to have a tracking system in conjunction with USGS for water, waste water and stream integrity. Mr. Siemon commented that this should be on a system not a project basis and the science agenda does that. Mr. Schrier asked about the Pinelands Commission and its addressing of various issues. Mr. Siemon explained that the situation was different because of the direct authorities that were granted to the Pinelands Commission. He added that specificity that could be added was done so and that the differences in the region dictated a balance between specificity and general guidelines. He continued saying that the comparison was hard to make on a specificity basis because the Pinelands had full authority until the municipalities took over.

Ms. Swan continued the presentation with the Smart Growth Manual. She described the elements to be included in the manual as:

- Location efficiency
- Resource efficiency
- Green building technology, including water conservation and energy efficient practices
- Innovative building practices and techniques
- Site layout and design techniques
- Cluster, lot-averaging and conservation development techniques
- Promoting a better 'jobs to housing balance'
- Redevelopment and revitalization techniques

- Addressing affordable housing and community facilities
- Connecting transportation, transit and land use planning
- List of state and national smart growth publications and resources

When this is developed, the Council will provide technical and planning assistance and planning grants and to use with communities during Plan Conformance. Chairman Weingart asked when the manual will be available and Ms. Swan said that not all the manuals would be finished by plan adoption. Mr. Siemon encouraged the Council to not have the manual prepared without an ongoing process to update as experience dictates.

Ms. Swan introduced the next program area for discussion the **Sustainable Regional Economy** again emphasizing that the Act seeks to encourage agricultural viability, redevelopment, smart growth strategies, improved land use efficiency, transit oriented development and shared service. She noted that:

1. The Council will conduct research with respect to existing and new economic development initiatives that can help promote and support the long-term integrity of the Region.
2. The Economic Tracking Program will monitor and evaluate the health of the Highlands economy for a set of regionally available economic indicators.
3. The fiscal monitoring component of the program includes the Cash Flow Timetable tracking mandated by the Highlands Act and the monitoring and tracking of municipal fiscal performance in support of conformance activities and regional shared service opportunities.

She also noted that the program will specifically focus on: tourism (agri-tourism and eco-tourism,) agricultural vitality and economic efficiency of land use.

The next program introduced by Ms. Swan was on **Transportation, Safety and Mobility**. She noted that the Act states that a primary goal is to promote a sound and balanced transportation system that is consistent with smart growth strategies and principles which preserve mobility. The first element is linking transportation and land use. Other elements include: circulation plans during Plan Conformance, Evaluate local transit scores (NJ Transit Score Program), Parking studies, evaluate and make recommendations on RSIS, evaluate and make recommendations on transit. She went on to discuss regional transportation safety and pedestrian security promoting transportation safety in coordination with other state agencies. Also the mobility of agriculture and freight access including coordinating safe travel routes for farmers with local governments and state agencies. She commented that much of this work would occur through the Plan Conformance process. Also, coordination with NJDOT on a new Comprehensive Statewide Freight Plan. She continued with several other elements that would be addressed: transportation and tourism economy, overview of transportation project review, and roadway capacity monitoring.

The next program that Ms. Swan reviewed was **Housing and Community Facilities**. She reviewed the fact that the goals and policies of the RMP seek to address a full range of housing needs for the Region within the context of resource protection needs and sustainable development patterns. She reviewed the different programs that would be included as: Housing Affordability - Municipal compliance with COAH; Highlands Build

out model; indicators as an assessment tool; partnerships for affordable housing; technical assistance and planning; Agricultural Workers Housing - seasonal and non-seasonal family and farm worker housing; Housing and Community Facilities - evaluation of the jobs to housing balance, transit enhancement, educational facilities, and recreation programs, opportunities for maximizing shared services and infrastructure investment; Smart Growth and Housing - appropriate development, redevelopment, economic growth, and a Transfer of Development Rights (TDR) program. Focusing on existing infrastructure and compact forms of development; Green and Energy Efficient Facilities; Housing and Employment - Coordinate with state agencies on initiatives such as Transit Villages, Main Street Programs and EDA and HMFA assistance programs.

The next program is **Local Participation** including such as elements as: Partnership Program, Technical Advisory Committees and The Network; Regular Public Meetings and Presentations. I update you on these as part of my Executive Director's report. There is ongoing individual outreach and constituent services. There are also special stakeholder events, web access and data sharing. She noted the website would be updated. She concluded this section by discussing training and education for Municipal Officials and their staff and that this will be very important during conformance.

She continued with Regional Master Plan Monitoring necessary to ensure the vision of long-term sustainability in the Highlands Region. She noted the following indicators:

- Indicators relating to environmental, social, and economic health will be used to document changes in the Highlands Region.
- Indicators will be chosen based upon the usefulness of information they communicate and data availability throughout the Region over time.
- Indicators may be either quantitative or qualitative depending on the parameter to be measured.

She commented that the Monitoring Review Report will track changes to the indicators and report on Highlands Milestones achieved and not achieved.

The next program is **Project Review Process**. She explained that the purpose of this program is to establish administrative and procedural standards to facilitate accurate, comprehensive and timely reviews of applications submitted to the Highlands Council. Included in this program are: administrative procedures standard operating procedures regarding all project applications received; technical review procedures establish detailed technical review procedures for all project categories. She also reiterated that Council Review Determinations will set forth the process for Council determinations. She mentioned that that there had been an opportunity to do pilot work with projects that have come into the Council. Chairman Weingart asked if this section will apply to municipal and county conformance and it was clarified that this is only for the project review.

The next program introduced was **Federal, State, and Regional Agency Coordination**. Ms. Swan noted that the Highlands Act requires a coordination and consistency component which details the ways in which local, State, and Federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the RMP.

She noted that there had been a great deal of work to date with agencies, one would be the creation of interagency committees like the Office of Smart Growth's committee on Brownfields. Coordination with Regional and State Agencies, like the County Planner's meetings and on an as needed basis pulling together other agencies. There is ongoing work on the MOU with the Office of Smart Growth that has gone through the committee review and will come before the full Council.

Next on the agenda is the **Water Resources Science Agenda**. Ms. Swan reviewed that implementing the Goals, Policies and Objectives of the RMP will require programs to guide the ongoing research agenda after its adoption many of these components have already been started. They include:

- Ground Water Capacity Estimates And Ground Water Availability Thresholds
- Protection Of Downstream Water Source/ Safe Yields
- Expand Ambient Biological Monitoring Network In Highlands Region
- Digital Terrain Modeling And Hydrologic Unit Determinations
- Water Quality
- Water and Wastewater Tracking
- Water and Wastewater Use Data
- Regional Stream Integrity Model
- Ground Water Quality Management
- Models for Establishing Septic Density

Ms. Carluccio again reiterated that tracking nitrate levels from other sources need to be traced and wants a specific well monitoring programs and assimilative capacity. Dr. Van Abs discussed that the water quality component is where that is and cross references on water quality restoration.

Every one of these projects will need a work plan according to Dr. Van Abs. Ms. Carluccio also mentioned the Demicco letter asking about ground water capacity estimates and ground water availability. Dr. Van Abs mentioned the relationship between recharge and ground water availability are tied to the septic density analysis and further work will be done to look at other methodology for analyzing this data.

The final program addressed was **Plan Conformance**. Plan Conformance is intended to align municipal and county plans, regulations and programs with the goals, requirements and provisions of the RMP. The Highlands Council will then track progress of the municipality or county in meeting that schedule, and will monitor development reviews and capital projects for compliance with the conformance approval. The elements are:

- Plan Conformance Guidelines
- Planning and Technical Assistance
- Procedures for Municipal and County Plan Conformance
- Highlands Council Review, Evaluation and Decision Process
- Grants Programs - She wanted to highlight that communities can receive a grant for their professionals to assess how the plan affects their community.
- Compliance Component

Ms. Swan clarified that in 9-15 months the Council needs to work with towns that are designated to have to conform.

### **APPROVAL OF MINUTES OF NOVEMBER 1, 2007**

Mr. Schrier introduced a motion to approve the minutes. Ms. Kovach seconded it. All members present voted to approve with one abstention, Ms. Pasquarelli.

Chairman Weingart asked if there were any other questions from Council Members. Ms. Pasquarelli questioned the change in the indicators used for the Lands analysis and Ms. Swan mentioned that there had been a table that was handed out at the last meeting and would be emailed to Ms. Pasquarelli. Ms. Pasquarelli was concerned about the stream protection element not being analyzed in the newest version. Ms. Swan commented that the model had been simplified, but that streams within the region had been captured using other indicators. Both Dr. Van Abs and Ms. Swan reiterated that the latest model had more specifically called out protection for critical environmental resources.

### **PUBLIC COMMENT**

#### **Julia Somers, NJ Highlands Coalition**

She began by saying that she had spent six years trying to protect a sewer service area where NJDEP had every protection without resolution. She commented that it was difficult to keep politics out of sewer service areas without very specific guidelines. She spoke with respect to clusters that the discussion was not about either agriculture or cluster but increasing nitrates. She believes there should be areas that cluster is not appropriate like forested and high value agricultural areas. She would like a copy of the Demicco letter.

#### **Wilma Frey, NJCF**

She asked that the zone map have a distinction by color as the previous one for Preservation and Planning Areas. She spoke about her concern for clustering in the agricultural area and is against that practice where there is only agriculture permitted. She believes that the plan should protect agriculture not just the financial interests of farmers that want to develop. She was not pleased with the visuals showing development by taking out forests.

#### **Elliott Ruga, NJ Highlands Coalition**

He asked about water fees and whether they would apply to people who draw from private wells. He believes it should. With respect to forest resources, if mitigation is in place, he advocates that the size and species of trees be specified. He would also like to have heritage tourism mentioned where eco and agro tourism are mentioned.

#### **Monique Purcell, Department of Agriculture**

She spoke in support of the clustering discussion from the staff and consultants and said that TDR receiving zones need clustering to allow implementation of TDR. She urged the Council to adopt the staff recommendation.

#### **David Shope, Long Valley**

He spoke to the loss in developed assets in the Preservation Area and that land owners had lost billions of dollars of value. He would like a copy of the DeMicco letter. He commented that there were negative health effects from the 10 mg/L standard. He also did not agree with the water availability analysis by HUC 14. He also does not agree with agricultural viability.

**Helen Heinrich, NJ Farm Bureau**

She distributed material to the Council for the public record on rural character and clustering and also an analysis on TDR for Jeff LeJava and Ms. Swan. She advocated for the ability to cluster in all zones. She also advocated for natural resource land owners to be able to participate in TDR program.

**Dave Peifer, ANJEC**

He thanked staff for the materials distributed. He made several comments. 1) He posed the rhetorical question to the Council as to their comfort level in making no net loss decisions citing the difficulties that had ensued from the implementation of the Freshwater Wetlands legislation; 2) he spoke in support of limiting the scale of changes in the community; 3) limit the number and timing of map change requests; 4) wanted to know how far was adjacent thought apterinent was a better word; 5) cluster calculation of % of parcel, the commonly owned land, the same land around the municipality or the zone; 6) he believes that a planning standard is not a health standard; the groundwater should not be allowed to degrade to the health standard; 7) land preservation – he wants some form of information to landowners for tax donations at the federal and state levels and would like to see coordination of Council activities with non profit land trusts; 8) on water quality restoration he believes that monitoring conservation area for agricultural impacts in water quality – thermal, turbidity, nitrogen, phosphorus and pesticides; 9) in transportation section, air transport is not included and there are airports within and without the Highlands area; 10) Federal, State, and Agency Coordination – please add FERK, FAA and DOE. He would also like to see a section on climate change and believes that the Highlands can expect changes from climate and could play a role in it. He would also like a separate section on energy. Under conformance, he would like to have clarification of how the Highlands Conformance and Plan Endorsement relate and what materials will be available to help public understand the new RMP. He spoke about limestone areas again and their importance and complimented the computer visualizations.

**Susan Buck, Oxford**

She spoke against the structure of the current process. She was concerned about lighting with respect to lake management restrictions. She is also concerned about economic viability and meaningful employment. She believes everyone is a willing seller and that does not need to be addressed. She also did not believe that municipal tree ordinances should be in the forest plan. She also does not think the plan addresses property rights that have been granted through the constitution.

**Marion Harris, Morris County Trust for Historic Preservation**

She took issue with the characterization of her comments in the minutes about design review by the Council. She indicated that she had raised the issue of historic architectural design review with Mr. Borden and that currently under state law only SHPO or a municipal commission could now do that. She clarified that she was talking about design review where

a particular architectural design was appropriate in context not site plan review e.g. moving a driveway. She believes that the historic design is currently beyond the reach of the Council. She made the point on clustering that it is not just a planning concept, but it is also a design concept.

Chairman Weingart announced the next meeting November 19 at 4 pm.

Mr. Schrier introduced a motion to adjourn and Mr. Whitenack seconded it at 1: 42 pm.

### CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Dated: December 19, 2007

Paula M. Dees  
Paula M. Dees, Executive Assistant

**TRUE COPY**

**HELEN HENDRICKSON HEINRICH PP CLA**

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November 8, 2007

**TO: JEFF LAJAVA**

**FROM: HELEN H. HEINRICH PP, RESEARCH ASSOCIATE**



I have reviewed the language in the following documents dealing with TDR and the provisions for the Highlands TDR that, we believe, assure owners of land with natural resources worthy of preservation for the public good that they will be able to obtain TDR credits:

- The Highlands Water Protection and Planning Act
- The State TDR Act
- Resolution adopted at the HLC meeting 2 23 06
- 3-1-06 Meeting – NJ Farm Bureau powerpoint and notes
- 7-17-06 Technical Report: TDR Background and Program Development
- 7-17-06 Technical Report: TDR Sending and Receiving Zone Criteria
- 10-12-06 Consensus Revisions
- 11-30-06 Draft Regional Master Plan
- 10-4-07 Goals, Policies, and Objectives: Part 1: Natural Resources

The only document that could be interpreted as giving credits based solely on the development potential is the adoption of the TDR criteria on July 17, 2006. But the "Technical Report: TDR Background and Program Development" document discussed and released the same day contradicts this interpretation by adding language that seems to promise such participation in TDR.

Even after the TDR criteria were adopted, the HLC continued to assure landowners with natural resources that they could participate. In fact, even wording in the Goals, Policies, and Objectives for Natural Resources discussed and released Oct 4 2007 gives the same assurance.

There is no language anywhere until the TDR Program element discussed and released for the first time at the TDR Committee meeting on Oct. 11, 2007 connects obtaining natural resource bonus credits with forfeiting the right to build a single family residence on each parcel. Not only does this fly in the face of all the documented language that would assign credits for "the Natural Resource Factor", it eliminates TDR entirely as a tool to provide the "just compensation" required by the Highlands Act. The exemptions too were provided as the primary and immediate equity protection element. That has no connection with protection of natural resources and compensation for such protection.

A detailed method to prioritize natural resource lands and award credits is absolutely necessary. An extra bonus could be allocated if the landowner chooses to relinquish his/her exemptions.

There is still no effort by the HLC or staff to address the problem of providing an easement purchase program for owners of land that has natural resource features worthy of Highlands protection. Clearly the Legislature did not intend for all the natural resource lands to be acquired by the public to be protected. The Pinelands dealt with this by means of a Pinelands Valuation Formula making it possible for Pinelands landowners to sell their development easements at close to the value of their neighbors just outside the Pinelands boundary. I attach a copy of this in hopes the HLC will use this as a model in developing their own formula.

The financial future of hundreds of owners of farmland and woodland in the Highlands is dependent upon the tools to preserve equity in the Highlands Act. Please call on us to help in making them a reality instead of just a promise.

Cc: John Weingart  
Eileen Swan  
Rich Nieuwenhuis, President, NJ Farm Bureau  
Peter Furey, Executive Director NJ Farm Bureau

**EXAMPLES OF LANGUAGE THAT SUGGESTS DEVELOPMENT OF A FORMULA TO GIVE VALUE TO NATURAL RESOURCE LANDS WITH LITTLE OR NO DEVELOPMENT VALUE AS OF 8 9 04.**

Helen H. Heinrich PP 11 8 07

**THE HIGHLANDS WATER PROTECTION AND PLANNING ACT (N.J.S.A. 13:20-1 et seq.)**

Section 6n To identify and designate in the regional master plan special areas in the preservation area within which development shall not occur in order to protect WATER RESOURCES AND ENVIRONMENTALLY SENSITIVE while recognizing the need to provide JUST COMPENSATION to the owners of those lands when appropriate, whether through acquisition, TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS or other means or strategies.

Section 12 a. a preservation zone element that identifies zones within the preservation area where development shall not occur in order to protect WATER RESOURCES AND ENVIRONMENTALLY SENSITIVE LANDS and which shall be permanently preserved through use of a variety of tools, including but not limited to land acquisition and THE TRANSFER OF DEVELOPMENT RIGHTS.

**Section 13 – Transfer of Development Rights**

13a. The Council shall...establish a transfer of development rights program...consistent with the "State Transfer of Development Rights Act" P.L 2004, c.2(C40:55D-137) or any other applicable transfer of development rights program created otherwise by law, except as otherwise provided in this section.

Sections 13 b – m: No language excluding natural resource lands in the allocation of TDR credits in the Sending Zone.

**THE STATE TDR ACT (N.J.S.A. 40:55D-137 et seq.)**

Section 144.a: "sending zones shall be composed predominantly of land having one or more of the following characteristics:

- (1) agricultural land, WOODLAND, FLOODPLAIN, WETLANDS, THREATENED OR ENDANGERED SPECIES HABITAT, AQUIFER RECHARGE AREA, ...OR OTHER LANDS ON WHICH DEVELOPMENT ACTIVITIES ARE RESTRICTED OR PRECLUDED BY DULY ENACTED LOCAL LAWS OR ORDINANCES OR BY LAWS OR REGULATIONS ADOPTED BY FEDERAL OR STATE AGENCIES.

**2/23/06 HLC MEETING Attachment 1 to Resolution 2006-X Approval or Sending Zone and Receiving Zone Criteria**

It is important to note that all lands in the Preservation Area are eligible to participate in the TDR program provided they satisfy Sending Area criteria. Thus, any land types are eligible, including but not limited to agricultural lands, woodlands, environmentally sensitive lands or lands zoned for residential, commercial or industrial development.

**3 1 06 MEETING WITH NJ FARM BUREAU POWER POINT PRESENTATION BY LAJAVA, OTHERS**

Explore techniques for allocation of Highlands Development Credits powerpoint slide

- Investigate the use of other allocation techniques including the use of a parcel's natural resource attributes.

Notes: 1 "Strength of this proposed TDR program"

- Highlands natural resource areas are quantifiable.

**7 17 06 TECHNICAL REPORT: TDR BACKGROUND AND PROGRAM DEVELOPMENT**

P. 13 "It is important to note that all lands in the Preservation Area are eligible to participate in the TDR program provided they satisfy the sending zone criteria. Thus, ANY LAND TYPES ARE ELIGIBLE, INCLUDING BUT NOT LIMITED TO AGRICULTURAL LANDS, WOODLANDS, ENVIRONMENTALLY SENSITIVE LANDS OR LANDS ZONED FOR RESIDENTIAL, COMMERCIAL OR INDUSTRIAL DEVELOPMENT.

P. 28: A. Program Purposes

..three essential and equally important purposes must be achieved through the Highlands TDR program. First, the program must serve as ANOTHER LAND USE TOOL TO AID THE HIGHLANDS REGION...TO PROTECT THOSE RESOURCES THAT MAKE THIS REGION SO UNIQUE – ITS WATER, ITS FORESTS AND ITS FARMLAND.

Second, the program must provide AN ADDITIONAL MEANS FOR LANDOWNERS TO RECEIVE EQUITY OUT OF THEIR LANDS EVEN THOUGH THOSE LANDS MAY HAVE BEEN AFFECTED BY THE HIGHLANDS ACT AND RULES.

**7 17 06 TECHNICAL REPORT: TDR SENDING AND RECEIVING ZONE CRITERIA**

**Exec. Summary:**

p. 5 Sending zone Criteria : only land that could have been developed as of Aug 9 04 – NOTHING ABOUT CRITERIA IN THE TDR ACT.

## **10 12 06 CONSENSUS REVISIONS**

### **Establishment of a Highlands TDR program**

p. 8 The Highlands TDR program shall permit the use of a Resource Value Factor for use in allocating Highlands Development Credits ...to encourage the protection and stewardship of important resource lands in the Highlands Region.

...the Resource Value Factor awards a bonus to lots to be identified...as lands of exceptional resource value...either ecological value or exceptional agricultural value. ...a bonus factor is meant to encourage property owners to enroll their property in the Highlands TDR program and provide additional incentives to manage resources consistent with the goals of the RMP.

P. 23: Step: Establish Resource Value Factor: This factor awards bonus HDCs to a sending zone lot where important ecological or agricultural resources are present on-site.

## **11 30 06 DRAFT RMP**

### **TDR (p. 181)**

P. 185 POLICY: The Highlands TDR Program will establish a Highlands Development Credit (HDC) allocation method that recognizes and accounts for the significant real estate market variability in the Highlands region and the RELATIVE VALUE OF HIGHLANDS RESOURCES.

- Adjustments to the number of credits allocated to a sending zone lot shall be made based upon (a) the location in the Highlands Region (b) the end-use to which that lot could have been developed, and (c) THE RELATIVE VALUE OF Highlands resources on the lot.

P. 185 POLICY: The Highlands TDR program shall permit the use of a Resource Value Factor for use in allocating HDCs to encourage the protection and stewardship of important resources lands in the Highlands Region.

## **10 4 07 GOALS, POLICIES AND OBJECTIVES DRAFT**

### **Part 1 Natural Resources**

**Policy 1.1.1.4** To assign land within the Forest Resource Area a high priority for fee simple and easement and for the use of Highlands TDR.

**Objective 1.2.1.8.1:** Assign high priority to land acquisition, development restrictions and Highlands TDR credit bonuses for lands within both High Resource Value Watersheds and High Integrity Riparian Areas.

**Policy 1.4.1.3:** To assign land within Critical Wildlife Habitats, Significant Natural Areas, and within 1000 feet of Vernal Pools a high priority for (fee) simple and easement (purchase) and for the allocation of Highlands TDRs.

**Policy 1.5.1.6:** To promote the acquisition and protection of open space resources within the Highlands Region under existing local and state open space preservation and land stewardship programs.

**Intro to Landowner Fairness:** The Highlands Regional Master Plan also recognizes the need to set priorities for acquisition of purchase of conservation easements in those lands within the Region that have the most significant resource values. To this end, the Plan proposes numerous policies in Part 1, subpart 5 and Part 3 to address open space acquisition and farmland preservation.

**Goal 7.1:** Protection of lands that have limited OR NO CAPACITY TO SUPPORT HUMAN DEVELOPMENT WITHOUT COMPROMISING THE ECONOLOCAL INTEGRITY OF THE HIGHLANDS REGION, THROUGH MECHANISMS INCLUDING BUT NOT LIMITED TO A REGION-WIDE TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.

**Goal 7.2:** Provision for compensation to landowners in the preservation area whose properties have limited or no capacity to support additional development and who are disproportionately burdened by the provisions of the Highlands Act through a region-wide program of TDR.

**Policy 7.2.6.2:** Highlands TDR program elements which provide priority for the transfer and use of Highlands Development Credits for Sending Zone parcels based on their RELATIVE REGIONAL RESOURCE VALUE AND LIKELIHOOD OF DEVELOPMENT.

**Policy 7.2.8:** The allocation of Highlands Development Credits to individual Sending Zone parcels shall be adjusted according to the location of the parcel within the Highlands Region, the comparative development potential of the parcel, the resource value of the parcel.

**From:** Helen Heinrich [helenh2@earthlink.net]  
**Sent:** Monday, November 12, 2007 11:27 AM  
**To:** Eileen Swan; John Weingart  
**Cc:** P Furey (E-mail); Nicole Goger; Ed Wengryn  
**Subject:** Comments on the HLC meeting Nov. 8 and material released  
 November 12 2007

Public comments submitted by Helen Heinrich,  
 NJ Farm Bureau Nov. 8 2007 Council Meeting  
 Pg 1/2

**TO: JOHN WEINGART; EILEEN SWANN**

**FROM: HELEN H. HEINRICH, RESEARCH ASSOCIATE, NJ FARM BUREAU**

**SUBJ: COMMENTS ON THE HIGHLANDS COUNCIL MEETING NOV 8, 2007 AND MATERIAL RELEASED THAT DAY**

Thanks for the opportunity to participate in the RMP review and drafting. The NJ Farm Bureau urges you to maintain your position about encouraging clusters, open space development and agricultural clustering in all zones where appropriate. This is a necessity if the RMP is to be implemented. It is the best way to protect water quality (see the recent EPA study about the relationship between density and water quality), it is the only way the most productive farmland can remain intact with threats of heavy loss through large lot zoning, and it is essential to maintain the character of the Highlands as the draft RMP describes it.

I am attaching the paper I gave you showing how it will be up to the Council to make clustering a success. There are legal obstacles in NJ that have made density transfer and compact development difficult in addition to municipal opposition. These items need to be added to your To Do list especially a major effort to enlighten the vision of conforming municipalities.

We applaud your strong endorsement of alternative wastewater systems instead of the usual septics. If groundwater quality is at all an objective of the Highlands Act and RMP, you must push the towns and DEP towards this solution that is widely used already in NJ and around the US. Please maintain the 10 mg/L standard for the cluster so that they can happen. With a 2% standard, they would not be feasible at all.

Upon further review of the material released on **Cluster Development and Agricultural Management & Sustainability**, we are very concerned that you are giving with one hand - encouraging compact development in the Conservation Zone - and taking it away with the other - requiring agreement to limit impervious cover on the FARMLAND portion to 3%. This is in violation not only of the NJDA Ag Development rules but the process they establish that is important because it not only limits increased impervious cover but also puts the landowner into the farm conservation process, an additional plus for water quality. Have you used your sophisticated GIS system to determine how many properties would have their agricultural viability reduced because of such a limit? New impervious cover may be necessary for the farm operator to adapt to new markets or to sell the farm to a different type of farmer. With such a limit the farm value will be reduced, a blow to the basic farm assets, all that's left since the development value will have been used up in the cluster.

Since the innovative use of impervious cover on active farmland can improve water recharge, reduce soil erosion and stormwater discharges, this policy would effectively close the door on such additional water resource quality benefits.

About the **Agricultural Management & Sustainability** program, we also have concerns:

- Objective 3.1.10.4 - what is going to be in that conservation easement? It should mirror the deed used by the SADC, not contain restrictions developed by the municipality or the HLC. We have yet to see any language about what the Council is considering for these easements, including TDR.

- Policy 3.3.1 and 3.2 - This seems to prohibit any increase or improvement to wastewater systems to support the agricultural and nonagricultural activities allowed in the section on Additional Land Use Opportunities. Difficulty obtaining permits for water and wastewater treatment from DEP is what drove processors out of New Jersey in the recent past. Please add another policy to make those opportunities a reality. Again here you give **with one hand and take away with the other**.

- Establishment of Agriculture Preservation Priorities - a list of high-priority properties for easement purchase in conjunction with the SADC is fundamental. But this should not be interpreted as a "no growth" property list.

- Identification of Subwatersheds with Elevated Nitrate Levels & Development of Management Plans - what is your evidence that Highlands farmland nitrate levels are high? Is this merely a guess based on the assumption that farming is by definition a polluter or do you have soil and well tests that prove this? Until you do, we ask that you put this on your later To Do list and delete it in the program element where it negatively influences perceptions about farming without basis.

-We note there is no mention of requiring a conforming municipality to adopt and implement a Right to Farm ordinance that conforms to the model issued by the SADC. This is an essential legal protection about which the RMP and conformance efforts must inform local officials.

That said, there are many statements in this program element reflecting our past comments that will help the Council develop a more profitable and sustainable agricultural industry in the Highlands.

-The many ways described that the HLC will work with ongoing agencies and programs that have assisted agriculture for decades is a significant step.

-We strongly support making it possible for woodlands to be included in an easement purchase program but believe that you must fulfill your many promises to enable owners of important natural resource lands to participate in the TDR program.

-Please hold firmly to your support of the concept of clustering and onsite community wastewater systems in the language of this element as well.

-We welcome the Additional Land Use Opportunities but your other goals, policies, objectives and program elements must support this as you work with municipalities.