

**NEW JERSEY HIGHLANDS COUNCIL
NATURAL RESOURCES COMMITTEE**

**CHAIR REPORT
FOR THE MEETING OF MAY 7, 2007**

On May 7, 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 Erik Peterson. The Highlands Council staff included Eileen Swan, Tom Borden, Steve Balzano, Jim Hutzelmann, Chris Ross, and Erin Lynam. The meeting was called to order at 2:10 pm.

Mr. Dillingham provided an overview of the agenda items which included discussion of staff reviews of two specific Water Quality Management Plan ("WQMP") amendment proposals (Valley View Chapel and Virgin Spa at Natirar), continued discussion of review process for proposed WQMP Amendments, and discussion of revised procedures for review and approval of a Highlands Redevelopment Site.

Committee Chair Dillingham requested that Tom Borden provide an overview of the legal standard for review of WQMP. Mr. Borden explained that the amended Highlands Rules adopted by the New Jersey Department of Environmental Protection ("NJDEP") in December 2006 modified the framework of the review. The pre-existing Highlands Rules included a provision stating that NJDEP shall not approve a Water Quality Management Plan Amendment in the Planning Area without first obtaining from the Highlands Council a recommendation. The amended rules retain the requirement for a Highlands Council recommendation based upon the draft Regional Master Plan ("RMP") and require a consistency finding requirements upon the adoption of the RMP.

Steve Balzano presented an overview of the two specific WQMP Amendment proposals, which can serve as two distinct models for future level of reviews. Mr. Balzano referenced the proposed Resolution to Council contained within the meeting packet, which establishes the process for the review of WQMP and Plan Amendments until such time that the RMP is adopted. If the Committee recommends, the Resolution would be an agenda item for the Council's upcoming May 10, 2007 meeting.

Jim Hutzelmann provided an overview of the Valley View Chapel WQMP Amendment and described the staff review process, referencing the staff recommendation memo and the internal review checklist contained within the meeting packet. Tracy Carluccio indicated that she liked the checklist and felt that it should be attached to the staff recommendation memo. She also noted that more detail should be provided in the Remarks section for each resource component in the checklist to provide a more descriptive narrative (for example, if a riparian area is encroached note the area of the encroachment and what specific riparian features are affected).

Jim Hutzelmann pointed out that with respect to threatened and endangered ("T&E") species habitat, the Highlands Council used NJDEP's most up-to-date Landscape Project 3.0 data, which has not yet been released to the public. The Valley View Chapel applicant used

the older Landscape Project 2.0 data, from which they made the determination that the proposed project would not encroach into T&E habitat. Highlands Council staff determined that there would be encroachment into the habitat of the state threatened savannah sparrow (this habitat was not shown in the Landscape 2 data but was added to Landscape 3). Ms. Carluccio and Mr. Dillingham noted that the Highlands Council recommendation should be that the project should avoid the habitat. Mr. Peterson raised the concern that it would be unjust to place the hardship on the applicant in that they used the data that were publicly available and that the Landscape 3.0 data is still not available to the public. Considerable discussion on the issue ensued and Committee Chair Dillingham invited members of the public to comment. Following is a summary of the comments provided:

- This is another means for the Council to burden property owners
- The Council is in place to protect resources – it must disclose any information it uncovers about protected resources
- When sensitive habitat exists in the Highlands, it must be protected even if at the hardship of an applicant

Members of the Natural Resources Committee agreed that the Highlands Council should inform the public about the inconsistencies between Landscape 2 and 3 and should alert the public when Landscape 3 is made publicly available by NJDEP.

Mr. Dillingham asked why the recommendation calls for the mitigation plan to come back to the Council; why can't the loop be closed by recommending to NJDEP that a mitigation plan be prepared for NJDEP review. Mr. Balzano answered that the Council staff needs to ensure that any proposed mitigation is consistent with the regional habitat mitigation goals of the Council. Mr. Dillingham concluded this portion of the meeting (review of Valley View Chapel) by instructing staff to redraft the memo to include the following elements:

- Disclose the new information (Landscape 3 versus Landscape2) regarding the presence of savannah sparrow habitat. Include language that the applicant should explore avenues for avoiding the habitat. The Highlands Council shall be consulted on development of any mitigating conservation plan
- For all affected Highlands resource components, applicants shall seek to avoid, minimize, or mitigate impacts to affected resources

Mr. Balzano provided a brief history and overview of the Virgin Spa at Natirar ("Natirar") project. He noted that Anthony McCracken, Somerset County project representative, was in the audience. Mr. Balzano stated that staff is treating this as a redevelopment proposal and he noted the proposed deed restriction on 240 acres of the site for conservation. Mr. Hutzelmann provided an overview of the Natirar WQMP Amendment and described the staff review process, referencing the staff recommendation memo in the meeting packet. Mr. Hutzelmann noted that the review focused on impacts from wastewater generating facilities and he briefly summarized those resources where there are potential development conflicts.

Tracy Carluccio expressed concern that the receiving stream segment has been assigned a Total Maximum Daily Load ("TMDL") requirement for pathogens and asked if an assimilative capacity analysis should be required. Mr. Balzano indicated that an assimilative

capacity analysis would be appropriate for an area-wide amendment but not a site specific one. It was also noted that the proposed service area will generate 40,000 gallons per day, an insignificant increase in flow. Mr. McCracken indicated that Somerset County is preparing an area-wide amendment and NJDEP will be using it as model amendment.

With respect to the format of the staff recommendation memo, Ms. Carluccio indicated that there should be a box at the top of the document that indicates whether a project is in the Preservation or Planning Area. There should also be a box near the top of the document for wastewater capacity. If not applicable, the reason for it being non-applicable (i.e., system outside of our jurisdiction) should stand out.

Ms. Carluccio noted that the two key issues are encroachment into forest and into wood turtle (T&E) habitat. She also expressed concern that in Landscape 3, habitat that was identified on-site by Landscape 2 (red shouldered hawk and barred owl) had dropped out. She questioned if the applicant had conducted a survey for the habitat of these species. Mr. McCracken noted that the NJDEP had reviewed the consultant's report and was satisfied with its conclusion that impacts were not deemed significant.

With respect to the County's proposed deed restriction on the 240 acres for conservation, Mr. Peterson raised the concern that perhaps there should not be any deed restrictions placed on parcels within the Planning Area, particularly because municipalities have yet to opt in. Ms. Carluccio offered that the Council should make a recommendation on this specific application that the County intends to place deed restrictions for the purpose of conservation and that the Council supports and endorses the County's plan. Mr. Balzano noted that deed restrictions are necessary to avoid habitat fragmentation and to ensure conservation into perpetuity. Mr. Peterson stated that the Council needs to have a policy on when deed restrictions are appropriate; the Council needs to develop criteria for identifying how many acres and what areas need to be restricted to adequately protect the resource. Mr. Dillingham noted that deed restrictions need to come with details on allowable uses and prohibited uses. The Committee members agreed that it needs to be ensured that the Council's definition of conservation is the same as municipalities (e.g., an education center is not the same as conserving open space).

Ms. Carluccio offered specific text changes for the Conclusions and Recommendations section. The percentages in the first paragraph should be clarified. For point #3, instead of stating that there is adequate water capacity, it should be stated that water capacity was not reviewed because the facility is outside of the Highlands Region.

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

- In support of the RMP forest protection standards
- Even though the water facility is outside of the Highlands Region, the facility draws water from the Region
- Historic, scenic, and recreation resources should be part of analysis
- Consequences for impacting cultural resources should be established
- Council should figure out the source of the pathogen problem in receiving stream

- Council should weigh carefully the differences between deed restrictions and easements. Easements can expire, deed restrictions do not. Easements can be policed.

Ms. Carluccio indicated that the draft staff memo should have a recommendation to NJDEP to identify the source of the pathogens in the receiving stream. Mr. McCracken indicated that the treatment plant is not in violation of its NJPDES permit, though Ms. Carluccio indicated that perhaps the permit is not adequate. She said that our charge is to ensure that an applicant will not contribute to a TMDL problem. Mr. McCracken indicated that the County's update of its area-wide amendment will address TMDL impairments. Ms. Carluccio concluded this segment of the meeting (Natirar review) by instructing staff to attach the resource component checklist to the staff recommendation memo. She indicated that staff should add cultural resources and view sheds to the checklist.

Mr. McCracken indicated that for purposes of the WQMP amendment, the only change in the proposal that the County would consider is decreasing the size of the service area but his concern is that would trigger an additional NJDEP review. Mr. Balzano indicated that the dated site plan sheet for the WQMP amendment should be limited to wastewater generating uses.

Lastly, the Committee discussed the draft Resolution creating a process to delegate the review and recommendation of proposed WQMP amendments to the Executive Director and the Natural Resources Committee unless it was determined that a project should be subject to review by the full Council. As drafted, this delegation would be temporary until the RMP is adopted. At that time, the Highlands Rules authorize the Highlands Council to issue consistency determinations rather than recommendations. The Committee recommended that the Resolution be amended to require the Committee to expeditiously develop thresholds for review. With that amendment, the Committee recommended that the Resolution be brought before the Council for consideration.

Ms. Carluccio adjourned the Natural Resource Committee meeting at 4:35 p.m.