

**NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF OCTOBER 18, 2007**

PRESENT

JOHN WEINGART)	CHAIRMAN
TRACY CARLUCCIO)	COUNCIL MEMBERS
BILL COGGER)	
TIM DILLINGHAM)	
MIMI LETTS)	
ERIK PETERSON)	
JACK SCHRIER)	
GLEN VETRANO)	
TAHESHA WAY)	

ABSENT

KURT ALSTEDE)
ELIABETH CALABRESE)
JANICE KOVACH)
DEBBIE PASQUARELLI)
SCOTT WHITENACK)

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 56th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:15 am.

ROLL CALL

The members of the Council 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 OCTOBER 4, 2007

Mr. Schrier introduced a motion to approve the October 4, 2007 minutes. Mr. Peterson seconded it. Initially, Mr. Vetrano abstained, but Mr. Borden advised that he could vote based on his belief that the minutes were representative of the meeting. The minutes were APPROVED by all members present.

CHAIRMAN'S REPORT

Chairman Weingart announced that Item #10 on the agenda – Consideration of Proposed Water Quality Management Plan Amendment for the applicant Heritage 55 would be

discussed at a future meeting at the request of the applicant's attorney. Council had been advised that the applicant would be submitting a letter responding to the staff recommendation discussed at the Natural Resources Committee on September 20th.

Chairman Weingart then reiterated the process for Council Members to make additional changes to the current draft Regional Master Plan. The Council is receiving proposed draft elements that respond to comments received on the Nov 2006 release and additional information. There are three opportunities for additional comment by Council Members: 1) discussion at meetings, if there is a straw vote and a majority of members support change then staff will make those changes otherwise staff continue as proposed; 2) at the November 19th meeting when there will be a motion introduced to release the plan for public comment, there will be an opportunity for members to introduce motions for formal amendments; and 3) after the public comment period there will be an opportunity to make additional changes.

Mr. Schrier asked that the Council consider that the public comment period be set to include a 60 day comment period rather than a 30 day period given the holiday season. Chairman Weingart asked that the discussion of establishing the public comment period be tabled for a future meeting.

Council Member Way joined the meeting.

Mr. Vetrano raised the issue of the Ballot Question #3 as to whether the Council could do anything more to support the proposed \$200 million of funding for open space preservation. Mr. Vetrano introduced a motion that the Council issue a press release in support of Ballot Question #3. Ms. Carluccio seconded it. All members present voted affirmatively and the motion was APPROVED. Staff will prepare a press release. Mr. Dillingham commented that Council members should be able to participate in press conferences on the subject.

Chairman Weingart announced that Mr. Whitenack was absent today due to an urgent project on the Prudential Center and he would not be giving the TDR Committee report and that the discussion on that meeting will be part of the discussion on the TDR topic.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan gave a summary update on the continuing work on the next generation of the Regional Master Plan. Programs are being advanced to Council for review and Goals, Policies and Objectives are being reviewed to be sure that they are consistent. Capacity analysis work is continuing and will be presented November 1st meeting and septic density will be continuing as well. She then addressed the analysis of exemptions. The analysis reveals that there are **20,914** undeveloped parcels throughout the Highlands Region that have the potential to exercise one of the exemptions for the construction of a single-family dwelling. Significantly, those parcels that are currently zoned residential may be able to exercise the single family dwelling exemptions without having to seek either a zoning change or use variance. Region wide there are **17,900** such parcels comprising **108,198** acres in the Highlands Region. This analysis does not take into account local zoning or specific site conditions that would have to be taken into account to judge if the site were developable or not. The staff will continue the work on the spatial analysis of exemptions.

She also commented that the TDR Committee had met on October 11th and that there had been a request for a workshop which she suggested would be held in December or January.

The LANDS model has been rerun and she noted that it will be discussed on November 1st. The GIS staff and Planning and Science have been working very diligently to complete the LANDS model.

The MOU with the Office of Smart Growth, the State Planning Commission (SPC), and the Highlands Council has been included in Council's packet and is available on the website on the calendar under the Agency Coordination meeting. There has been additional work on the MOU and is slated to be discussed on October 24th meeting of the SPC's Plan Implementation Committee. This matter is not on Council's agenda and will not be until after it has been discussed by the Plan Implementation Committee of the SPC. Ms. Swan anticipated that it would be considered after release of Draft Plan.

Ms Swan report that Greg Della Pia, the recently retained Financial Consultant to the Council, has been in several times and has met with staff and with Bill Cogger.

She introduced Lindsey Interlante as the new Manager of Grants Administration. Lindsey has a Master of Public Administration and a Bachelor of Science in Business Administration. She has valuable experience to add to the Highlands staff. Other new staff include Laura Forrest as a part-time administrative assistant and on Monday, Nancy Benecki will begin as the new Manager of Communications.

The Highlands Council will be presenting at two sessions at the New Jersey League of Municipalities in November, a NJ Future event in December, and the New Jersey Builders Association Convention in April 2008. Tomorrow, Jeff LeJava will represent the Council at the Metro New Jersey Appraisal Institute.

Ms. Swan then described ongoing outreach efforts.

Municipal and County Outreach:

October 9 – Union Twp - Council staff provided an overview of the draft RMP (Council staff Swan and Borden)

October 16 – Somerset County – Council staff provided an overview to 5 municipalities and the county on the progress of the RMP. (Council staff Swan and Borden)

Constituent Outreach

October 10 – Givaudan Fragrances Corp - Council staff (Swan and Borden) met with representatives of Givaudan Fragrances Corp in Mount Olive and the Morris County Economic Development Corporation to discuss the Highlands redevelopment process.

October 15 – Hercules - Council staff met with representatives of Hercules and Roxbury Twp. officials to discuss the Highlands redevelopment process. (Council staff Swan, Borden and Van Abs)

October 19 – Office of Smart Growth Retreat (Swan attending)

Chairman Weingart announced the schedule for the upcoming meetings: November 1st at 4 pm, November 8th at 10 am and November 19th (Monday) at 4 pm. He asked if there were any Council Members on the phone. There were none. Mr. Weingart asked that Ms. Swan and Mr. Siemon initiate the discussion of the Regional Master Plan.

DISCUSSION OF THE REGIONAL MASTER PLAN

Mr. Siemon provided an introduction for the Regional Master Plan Issues. He offered that the next generation plan is organized in six elements: I. Introduction; II. Data and Analysis, III. Vision and Needs Assessment; IV. Goals, Policies and Objectives; V. Programs; and VI. Implementation.

Mr. Siemon clarified that the Programs will be primarily organized around substantive areas and Implementation will be organized around implementing authorities e.g. Highlands Council, State Agencies, Counties, and Municipalities. He reiterated that organizing the plan this way creates a more coherent approach. Mr. Siemon introduced policies on carbonate rock.

Subpart 6

Carbonate Rock (Karst) Topography

Mr. Siemon discussed that Karst is a geophysical characteristic of the Highlands Region not called out previously and was identified in response to public comment as one of the subjects that needed additional attention. There are a series of policies and accompanying actions to protect those resources. Ms. Swan commented that in the previous Policies and Issues discussion with the Council, the staff made a commitment to address both issues of Karst and Lake Management to respond to public comments. Mr. Schrier asked why it was called Karst. Ms. Swan asked staff member Chris Ross to provide an explanation. Ms. Ross discussed the issues regarding carbonate rock which is known as Karst and has two major concerns: the direct impact on groundwater water quality; and safety concerns where carbonate rock fractures and sinkholes can damage structures. Dr. Van Abs added that he believed the word to be German after the man who had studied this type of landscape.

Mr. Siemon then discussed the new subpart for Lake Management addressing the special concerns and said that programs are being developed to support these goals, policies and objectives.

Subpart 7

Lake Management

The management of lands surrounding lakes is an important issue for the Highlands Region. Overdeveloped, damaged and poorly managed shoreland areas can result in the degradation of water quality, harm to the lake ecosystem, a decrease of natural aesthetic values, and an overall loss of property values for lake communities. Lakes can be harmed by pollutant sources in the watershed area draining to them. Polluted lakes can, in turn, damage downstream streams and rivers. Most existing lake communities are fully built out, predate modern environmental protection requirements, and have limited potential for major land use changes. Some have sewer systems, but many rely on septic systems (or even cesspools)

on inadequately sized lots, where direct contamination of the lakes is possible. Past NJDEP studies indicate that nearly every public lake (privately-owned lakes were not evaluated) is experiencing unacceptable contamination, often including excessive bacteria and nutrients. In addition, many lake communities have been evolving from summer communities to year-round communities, and many are experiencing greatly intensified land uses as the original buildings are torn down and replaced by much larger structures. Addressing land uses within lake communities allows for potential opportunities to improve community value, to both protect natural resources and to enhance and restore the quality of lake environments in the Region, and in some cases to allow for in-fill development where appropriate.

He continued that management of the water quality of the lakes would be best done on a drainage basis and that the LiDAR data under development for the Council by the United States Army Corps will provide more detailed drainage data to analyze lake communities. He summarized the following goals:

- GOAL 1.7.1 PROTECTION OF HIGHLANDS REGION LAKES FROM THE IMPACTS OF PRESENT AND FUTURE DEVELOPMENT**
- GOAL 1.7.2 PROTECT THE UNIQUE CHARACTER OF HIGHLANDS LAKE COMMUNITIES**
- GOAL 1.7.3 MAINTAIN PUBLIC AND PRIVATE LAKES, OR RESTORE LAKE BEDS AND DOWNSTREAM AREAS WHEN LAKES ARE DRAINED**

Ms. Letts asked about management of dams and it was located in the text.

Mr. Dillingham asked about recognition of lakes being headwaters to river systems. He also asked about restoration plans only applying to public not private lakes. There was a discussion from Mr. Siemon about the jurisdictional issues of ownership in public vs. private lakes. The policies are not intended to preclude management of private lakes and the language will be clarified. Mr. Dillingham asked how to work toward restoration of water quality that is within the private lakes. Dr. Van Abs commented that DEP's TMDL requirements apply on all lands including private lake communities. There was additional discussion regarding the promotion of restoration regardless of private vs. public ownership and the water quality issues. Dr. Van Abs spoke about the different abilities of municipalities to affect private lake communities. There was agreement to clarify the language in Goal 1.7.2 and 1.7.3.

Highlands Transfer of Development Rights Program

Ms. Swan introduced the Highlands Transfer of Development Rights Program (TDR). Mr. Siemon described the agreed upon format for the programs. The suggestion was to go through the format for this program as it is the first time the Council are seeing this approach. He noted that the Highlands Act sets out the structure for the TDR program and that this is a key part of the Act guiding development in appropriate places and also providing a mechanism to provide a measure of compensation for landowners willing to sell development rights. The presentation was a summary of the TDR bank, its creation and function. He continued that there is a handbook underway by the TDR Committee that will be available by plan adoption. Mr. Siemon described that the allocation process is necessarily robust and complex in order to account for the wide variation of land value across the Region.

Mr. Cogger asked if there was a feature that would allow one to reverse these credits. Mr. Siemon said that a covenant should be recorded and that judicial action should be the only vehicle for negating this instrument. He is in favor of creating as many opportunities as possible for use of credits. Mr. Siemon noted that given the voluntary nature of the program that establishing the bank would be an incentive for municipalities. He believes that an essential element to ensure the success of the TDR program is the capitalization of the TDR bank early in the process. Mr. Vetrano asked absent a capitalized credit bank how long the process would take? Mr. Siemon responded that he strongly encourages the bank be funded immediately to be able to initiate transactions and that it could take 2-3 years to have the voluntary private market portion of the program fully functional.

Ms. Letts asked if the formula for TDR credits needed to be tested. Mr. Siemon noted that nothing was final in what was being presented in the TDR committee and anticipated workshops. Mr. LeJava commented that the issue of bonus credits needs further discussion and that the base factor equation is appropriate to include. The specific market and end use factors will continue to be worked on. He noted that the description of the market and end use factors will be in the TDR handbook. Ms. Letts spoke in support of the work that had been done.

Mr. Schrier asked who the members of the TDR bank were. Mr. LeJava commented that the staff is working on a recommendation for the number of members of the bank and what type of person should fill what type of role. That will be provided within a matter of weeks to the Council.

There was a Council discussion about a conforming municipality restricting its TDR sites and whether a community not seeking Plan Conformance should be given an opportunity to establish receiving zones. There was additional discussion with respect to the relationship of exemptions, no build areas, and TDR bonus credits. Mr. Siemon commented that allowing limited transfer of exemptions would be a better policy because it would encourage preservation on large lots. Mr. LeJava stated that an undeveloped property may be entitled to one single family home exemption per lot and that property owners will wait to see how the TDR funding will be working. Mr. Dillingham commented that the landowner would want to know how to maximize his investment.

Ms. Carluccio asked that there be a straw vote on the Designation of Receiving Zones asking that Paragraph #5 that deals with non-conforming municipalities be deleted. There was not a majority of Council members in favor of this change and the language will remain.

Ms. Carluccio asked that there be another straw vote on the Designation of Receiving Zones asking that Paragraph #1 and #4 be removed. There was not a majority who indicated that the change should be made and the language will remain.

Mr. Siemon spoke in support of having landowners have as many opportunities as possible and the municipal conformance process will deal with specific situations.

RMP Program: The Efficient Use of Water

Ms. Swan introduced and provided an overview of the topic. Water is a driving force behind many of the goals and policies of the Highlands Act, and protection of water supplies is a critical focus of the Regional Master Plan. Many Highlands Region subwatersheds presently face shortages of water, as current demands exceed estimated water availability for human and ecological purposes and therefore stresses aquatic ecosystems and puts human needs in jeopardy during droughts. In addition, municipalities served by Highlands reservoirs and some Highlands municipalities face future constraints on their ability to serve customers as water demands increase through redevelopment and development.

Therefore, it is important that New Jersey obtain the maximum benefit from its Highlands water resources through efficient use and, where feasible and appropriate, beneficial reuse and recycling of water. Water use efficiency has been increasing over the last 20 years, as State and Federal requirements for water conserving plumbing fixtures, appliances and irrigation systems affect a greater proportion of total development. Farmers are also becoming more efficient in water use, moving to drip irrigation and other conserving systems instead of high-pressure broadcast spray systems.

However, both the public utility customer base and irrigated farm acreage are increasing, creating more demands that offset improved water use efficiency. For this reason, while some urban areas have seen declining water sales over time (due to both water conservation and the loss of water-intensive industries), other municipalities have seen significant increases in total water use. Further progress in water use efficiency is needed. Many RMP policies and objectives address this need by encouraging general efficiency in water use, providing higher priority to agricultural water uses that employ best management practices, and calling for the use of water conservation, recycling and reuse (among other techniques) to both reduce and eliminate current and future water deficits.

She continued discussing the topic areas: Analysis of Water Use Efficiency for Agriculture and Irrigation, Identification of Water Use Efficiency Metrics and Targets, Implementation of Water Use Efficiency Measures: General and Deficit Areas and Deficit Utilities. Mr. Schrier asked if the recommendations would result in higher water rates. Dr. Van Abs said that today there is an inclining block rate structure so that the rates are tied to additional use; for example, the rates will rise for people who water their lawns when it is raining. These approaches are already in place for the State. Ms. Swan explained that private wells are not included in these fees. Ms. Letts asked that municipal lawn watering restrictions be implemented. Ms. Swan commented that in the conformance process there would be educational outreach on issues such as this..

Ms. Swan commented that the Highlands restoration deficit program is addressed separately from the discussion of deficit areas and deficit utilities. She then went on to introduce the program for Implementation of water use efficiency measures for deficit areas and deficit utilities

Where deficit areas exist, the RMP calls for development of a Water Management Plan to determine how the deficit can be eliminated. Where a water supply utility faces constraints on its ability to supply consumers due to inadequate transmission mains, treatment facilities

or supply sources, the most effective method of avoiding major capital costs is water use efficiency. The same efficiency methods are applicable to both situations.

The following enhanced water use efficiency measures shall be considered, and where feasible, included in Water Management Plans or utility water supply plans to eliminate water availability or utility supply deficits, to the extent that they do not cause or exacerbate other environmental harm. Implementation or a firm commitment for implementation of the selected methods shall be required prior to approval of additional consumptive or depletive water uses or new water supply sources:

1. Incentive programs, up to and including full payment, for replacement of residential and commercial plumbing fixtures, water-using appliances and lawn irrigation systems with water conservation devices;
2. Incentive programs, up to and including full payment, for modification of residential landscaping to forms that require minimal if any artificial irrigation;
3. Incentive programs, up to and including full payment, for retrofitting of existing development with systems that allow for the beneficial reuse of water within the development;
4. Incentive and cost-share programs for replacement of agricultural irrigation and other water uses with water conservation devices;
5. Reduction of water losses within water utility systems to the maximum extent that is technologically feasible;
6. Modification of water rates to enhance financial incentives for water conservation by end users;

In order to ensure implementation of Water Management Plans the following would apply:

1. All implementation measures shall be completed within one year of approval if the amount is less than 100,000 gallons per day in the Planning Area or 50,000 gallons per day in the Preservation Area, on average. Implementation may occur within a longer time period for larger amounts, up to five years from approval;
2. If the implementing entity is a public agency, the commitment must be in the form of a binding resolution or ordinance of the governing body, and the cost of implementation must be bonded to ensure sufficient resources;

If the implementing entity is a private corporation or individual, they must establish either an escrow account or provide bonding to ensure that the commitments are met. A public entity must be named as recipient of the escrow account or bonds in the event of default by the implementing entity, to be used by the public entity to complete implementation.

Mr. Dillingham reiterated his view that continual withdrawal from deficit areas should not be allowed until mitigation is in place. Dr. Van Abs will provide examples of this practice of viability of 125% at a future meeting. He commented that without detailed hydrological models for each site which is very expensive to obtain that it is hard to prove scientifically. Ms. Carluccio asked about the water quality implications of allowing the 125% practice. She also asked about withdrawals affecting ecological systems. There was also discussion about golf courses and Ms. Swan noted that there had been discussions about that issue and that some recommendations would be developed. Dr. Van Abs noted that there is a recommendation for permits to include improvements over time. Mr. Vetrano noted that there is abuse of water for golf courses but also hydrants that are left open in the cities as well. Mr. Siemon commented that water conservation is a key element of the plan. Ms.

Carluccio advocated prohibiting water use from areas that were in deficit. There was no decision to remove that language.

Ms. Swan introduced the next topic.

RMP Program: Wastewater System Maintenance

She reviewed the issue of upgrading and replacement of residential cesspools and other inadequate systems. The replacement of these at the time of system failure was reviewed as well as upgrading to avoid pollution threats. She noted that replacement systems were not intended to encourage development. The specific program for routine maintenance of residential septic systems is as follows:

Municipalities shall, as a requirement of Plan Conformance, adopt municipal or Board of Health programs and ordinances (or participate in regional Board of Health programs) to improve the maintenance of existing and new residential septic systems, based on the most appropriate management model as discussed in RMP Water Resources Technical Report, Watershed and Water Quality, Management of Septic Systems and Other Decentralized Treatment Facilities.

The following maintenance standards apply:

1. Municipalities shall, at a minimum, implement the programs required under the Water Quality Management Planning rules, N.J.A.C. 7:15;
2. Where septic systems exist at a density equal to or lower than the LUCM Zone target, and are not within a Wellhead Protection Area or Highlands Open Water Buffer area, proper O&M shall be encouraged through the annual provision of information to the landowner regarding O&M responsibilities;

For septic systems other than those in Step 2, proper operation shall be encouraged through annual information to the landowner regarding operation responsibilities, and maintenance shall be ensured through a regulatory system requiring proof of proper maintenance, including but not limited to septic system pump-out, methods to prevent solids and grease migration into the distribution system, and no evidence of chemical disposal that disrupts the biological treatment of wastes.

Dr. Van Abs said that some of the approaches are not currently in practice at the State level for example the small system approach for requiring co-permittees was struck down in court. He noted that the Highlands Council has the ability to implement new systems to be managed by someone who is competent as opposed to a homeowner's association.

Concerns were raised about cost to municipalities and homeowner's to replace systems. Ms. Swan responded that establishing funding with entities like NJEIT would help to manage costs. Also that routine maintenance before the problem arises saves money in the long term. Dr. Van Abs noted that trying to amortize these costs over time is important. Dr. Van Abs also commented that in alternative approaches to have a management contract to manage cradle to grave that this was an experimental part of the program. There was also discussion about upgrading septic systems at failure when a zone is identified as very polluted as well as model ordinances being developed.

Mr. Dillingham asked that in Objective 2.4.3.3.3. there be a public health threat added there as well in upgrading of Septic Systems to Address Pollution Threats. Dr. Van Abs noted that the concern ground water pollution if 100 septic on 1/3 acre lots is by definition a problem even if every one is working. The process is similar to the TMDL standards beginning with assessment. Ms. Letts asked that municipal government is not always well financed and that language be removed. It was agreed to do so.

Ms. Swan explained that the technical report addendum on the Management of Septic Systems and Other Decentralized Wastewater Treatment Facilities is a background and basis document for the matter just discussed and therefore not necessary for discussion at the meeting. Council agreed.

There was a break at 12:50pm and the meeting resumed at 1:15 pm.

Ms. Swan introduced the next topic: Vernal Pool Habitat Protection

Vernal Pool Habitat Protection

The Highlands Council received public comments expressing both support for and strong objections to the Draft Regional Master Plan (RMP) policy and mapping methodology of 1,000-foot buffers around NJDEP-confirmed vernal pools in the Highlands Region. The following addendum provides additional analysis of the appropriate resource protection area for these sensitive habitats.

Vernal pools are unique ecosystems that:

- Provide critical breeding habitat for a variety of amphibian and invertebrate species;
- Contribute significantly to local biodiversity by supporting plants, animals, and invertebrates that would otherwise not occur in the landscape; and
- Contribute significant amounts of food to adjacent habitats.

Protecting vernal pools and adjacent habitat are important for maintaining ecological integrity and providing amphibian and invertebrate breeding habitat (Semlitsch 1998, Gibbons 2003). For pool-breeding amphibian species, studies indicate amphibian species travel distances ranging from 400 to 4,000 feet from vernal pools to surrounding terrestrial habitat (Faccio 2003; Petranka 1998; Calhoun and deMaynadier, 2004).

Ms. Swan noted that there will be joint effort with DEP and Highlands Council to examine the buffer requirements if it were determined that the vernal pool was no longer being used for habitat. She also noted that Erin Lynam had done the research. Ms. Swan reviewed several visuals on vernal pools. Slides were shown with vernal pools in varying conditions from pristine pools to those that had buffers that were disturbed by development such as agriculture, residential and recreational. Discussion followed on the merits of considering modified buffers in each case.

Ms. Swan commented that the modification of the buffers using BMPs is one of the recommendations. There was a discussion of suitable habitat for these species reliant on vernal pools. Ms. Carluccio asked whether “new uses” was a Highlands development.. Mr.

Borden said that in the Preservation Area agricultural activities are not subject to the DEP rules. What activities are subject to this section will be clarified. Ms. Swan discussed the coordinated effort necessary in processing modified buffer applications with DEP.

Mr. Dillingham spoke in support of habitat restoration and of having an affirmative program to support that effort. Erin Lynam will be preparing a critical habitat program that will address some of these issues.

Modified buffer and best management practices should be clarified in the document pg. 8 - 2nd paragraph and that language will be added. Additional vernal pools can be nominated to DEP but must be certified by them. Ms. Swan noted that the existing DEP certified vernal pools have been mapped.

Mr. Schrier commented that the 1,000 foot buffer is not being reduced, but the area itself is being modified and his comment was confirmed by Ms. Swan. The actual diameter of the buffer would only change after a species analysis had been performed.

Septic Systems

Ms. Swan reviewed that the report on Septic densities is a draft document and that the numbers included in the Council's packets are examples the LANDS model is being completed and thus when zones are completed the septic numbers will change. She continued with the staff recommendation as follows:

Allowable septic system densities for new development should be tailored to each LUCM zone and recognize the legislative distinction between the Preservation and Planning Areas, and address issues such as lakes communities, brownfields and redevelopment sites where a combination of restoration and alternative treatment technology may be appropriate.

The nitrate target for the Conservation Zone in the Planning Area should recognize that existing nitrate concentrations are elevated in significant part by agricultural practices. There is an opportunity for water quality enhancement through more thorough implementation of agricultural best management practices (BMPs).

In the Conservation and Protection Zone, the RMP will provide septic system yields by zone in each HUC14 sub watershed; municipalities will be able to direct the appropriate locations for such development through the Plan Conformance process, within the constraints of other RMP policies.

The New Jersey Department of Environmental Protection's (NJDEP) Preservation Area rules at N.J.A.C. 7:38-1 et seq. for septic system density would be used within that area.

Within the Planning Area, the NJDEP nitrate dilution model should be used using 2002 drought ground water recharge for each HUC14 sub watershed. The Planning Area median is approximately 9.4 inches per year.

She noted that this approach is more conservative than DEP's approach.

Ms. Swan commented that the critical piece to be received on November 1st is the septic system yield by zone in the HUC 14s. She explained that at a meeting with Somerset County on Wastewater Planning the Highlands staff had been informed that DEP had given the county advice that preserved lands could be included in the analysis for carrying capacity and municipalities could make a choice as to whether or not they included these lands. Thus the Council staff would deliver the analysis to the Council with the results of both approaches. This would be for consideration at the November 1st meeting.

Ms. Swan continued with the following recommended nitrate targets:

Planned Community Zone – 2 mg/L (NJDEP proposed Statewide threshold

Conservation Zone – 1.88 mg/L

Protection Zone – 0.81 mg/L

Clustered Development – 10.0 mg/L). She also commented that this will not exceed the target for the zone.

Mr. Dillingham stated that he does not support allowing degradation of water supply, particularly in higher quality parts of the watershed in the Protection Zone.. Ms. Swan said that the calculations will be available November 1st and Dr. Van Abs clarified that the total yield for the HUC14 would be allocated according to the developable land in each municipality. DEP rules will apply in the Preservation Area and the Regional Master Plan allocation will apply in the Planning Area.

Ms. Carluccio raised additional issues with respect to the approach of the GSR32. She believes this methodology overestimates the water availability. Ms. Swan mentioned that the Council's consultant Demicco stated in a draft letter that was forwarded that this method has limitations, but further research is not currently available and agreed that this was the best method for now.

The median September based flows were discussed in the letter from Demicco by Ms. Carluccio. She asked that the staff compare the use of median September based flow and the drought flow for the impact of that indicator and that the drought flow early years be subtracted. Ms. Swan expressed concern at the consideration of a new approach as staff had invested much time into consideration and testing to find the best approach. Dr. Van Abs noted that time would not allow for that analysis to provide a different approach and that the loading number 10 lbs. per person based on 4 people per household is a conservative approach for usage as it is above the census. He also commented that the September base flows are not in use elsewhere in the State.

Ms. Carluccio spoke about other concerns regarding an additional factor for lawns that are not currently being used in the nitrate model. She asked for other sources of nitrate to be added to the model. She also raised the issue of monitoring of nitrates in wells for new development and a defined management plan that would feed that data back to the Council. She noted her concern about clusters and where they were placed in HUC14. Dr. Van Abs commented that a nitrate dilution model will not answer all questions, but configuration of development in the Goals, Policies and Objectives will address these issues. Ms. Letts spoke regarding clustering with respect to smart growth initiatives. Ms. Carluccio supports the previous staff recommendation not to include preserved lands in the model and to stick to developable lands.

Mr. Dillingham supported Ms. Carluccio's comments on nitrate dilution. Ms. Swan reviewed the issues of considerable study that have brought the issue before the Council. She noted that the science supports these methods and the inputs used that there is a basis and background for this approach. She commented that new ideas can be proposed, but if they have not been used, there will be additional time required to research and develop those. She believes that the model presented is conservative. Dr. Van Abs was asked to take one HUC14 and do the analysis and asked how the drought flow was calculated. He will report on the calculation.

Ms. Way left the meeting. Chairman Weingart announced the next Council Meeting would be held on November 1 at 4 pm and opened the floor to public comments

PUBLIC COMMENT

Robin O'Hearn Skylands Clean

She commented that the Lake Communities were not addressed and was concerned if the Lake Communities were in the planned community zone. She is concerned about the TDR receiving areas and thought they were supposed to be in the Planning Area only. She spoke against splitting the credits. She had other concerns about TDR. She also noted that she thought that TDR receiving zones should not be driving the plan. She asked that vigilance on sprinklers and swimming pools be added to the urban issues raised regarding waste of water.

Julia Somers, NJ Highlands Coalition

She will submit additional comments separately. She supported the exclusion of preservation lands for calculations for nitrate dilution. She recommended that the Council look at nitrate dilution on a zone basis or perhaps on a HUC 14 would be preferable. She also spoke to 10 mg/day for septic in clusters when clusters will be put next to existing sewer service. She believes agricultural use and 10 mg/day will worsen the nitrate problem. She believes that cluster development and sustainable agriculture are mixed together and should be addressed separately.

David Shope, Long Valley

He asked for the Demicco letter and he was advised it will be provided when the issue is finalized after November 1st. He commented on the lack of efficiency of the Elizabethtown Water and that its pipes be fixed according to a DEP permit that he examined. He raised issues about the additional 25% of the 125% and where it comes from. He does not support the HUC14 approach. He said that NJWSA sells 960 million gallons a day to golf courses in the summer. He commented about the practice in Scotland of no irrigation. Best Management Practices should include an economic calculation. He asked which references support the public health benefit of nitrate modeling and asked that it be provided to him. He also noted that having attended TDR meetings that he did not believe that the approach would be easy to deal with.

Monique Purcell, Department of Agriculture

She commended Jeff LeJava, the staff and Integra on the job that was done on the TDR analysis. She asked the Council to keep an open mind in making this program work. She

believes that the TDR program is critical and providing incentives instead of restrictions is an important point. Under the Designation of Receiving Zones, she wants the designation of a municipality to be voluntary.

Amy Hansen, New Jersey Conservation Foundation

She spoke in support of the work on TDR. She reviewed Agricultural Resources policies that were submitted for the record. She expressed concern about non agricultural cluster development being allowed on agricultural lands. She suggested that the TDR from Agricultural lands to receiving areas approved by the Council to ensure that the receiving areas not degrade natural resources. She also spoke in support of farmland preservation be used as well as housing for farm employees should be allowed in cluster development. She asked about the 5% impervious cover limitation and whether it was left out. She wants to encourage forest stewardship not agro forestry.

Scott Olson, Byram Township

He supported Ms. Carluccio's comments on not having Planned Community Zones and TDR receiving zones in Preservation Area. He advocated that private lake communities should also be subject to the same rules and regulations as public lakes. He is disappointed that there are only three zones. He also spoke about the widening of Rt. 206 and the exemption granted by DEP on the basis of safety and the concerns he had with that action.

Mr. Cogger left the meeting.

Helen Heinrich, New Jersey Farm Bureau

She asked about her comments to the TDR Committee. They will be distributed to the Council when the Chair Report is completed. She spoke to the issue of clustering as another way to provide opportunities for landowners. She also spoke to compensating landowners no matter how small or big their property is. She said that exemption is one way to provide compensation. She noted that leaving landowners out is not going to increase open space preservation, it will increase development. She will provide examples used in the Pinelands and elsewhere. She also spoke to the issue of forest landowners needing to have a vehicle to have easements purchased and does not believe that public access is an incentive. She noted that a landowner who does not qualify for farmland preservation and does not want government to acquire their land has no alternatives.

Dave Peifer, ANJEC

He commented that the sale and use of HDCs needs to be clarified. He also asked if the land is acquired in fee that should be addressed – as to whether the credits run with the land. He also raised what the status is of a HDC with respect to a donation. He also commented that a monitoring and enforcement system should be addressed in the RMP and funding that system should be possible.

He spoke in favor of the restrictions being perpetual. He also noted in the designation of receiving zones that there be a definition of brownfields and a list of them. He also raised whether an HDC could be sold if the property is heavily mortgaged and in that case there would be a subordination agreement. He thanked the Council for the section on Karst.

In the Lakes Communities he asked why the Council chose a 10 acre size. He also noted that water efficiency on golf courses begins with the design of the course. He believes that we need an attitude adjustment on the player's part to be on a non-irrigated landscape. Ms. Letts asked about the issue raised of donation of credits. Mr. Peifer commented that perhaps the credits could be donated elsewhere such as a non-profit.

Wilma Frey, New Jersey Conservation Foundation

She spoke in support of Julia Somers' comments on nitrate dilution. She asked that the Council keep in mind that it is important to protect groundwater and surface water. She spoke against using water in deficit situations. She also spoke against the overall median of the zone and advocated for a more conservative approach. On the issue of Vernal pools, she noted that the chart of individual species be removed on page three. She advocated for a 1,000 foot buffer.

The meeting was adjourned at 2:50 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

PUBLIC COMMENTS SUBMITTED

Part 3. Agricultural Resources

Introduction

Agriculture and farmland, especially preserved farmland, is an important part of the essential character of the Highlands Region's culture, landscape, and economy. Farmland is also an important scenic resource in the region. It provides important economic benefits to the Highlands Region in the form of agricultural production and agrie-tourism, provides food to area residents using less energy than would be required to import produce from other regions and helps maintain the Highland's rural character. Residential development pressure has resulted in the loss of farmland and prime agricultural soils, as well as the erosion of the rural character in some parts of the Highlands. Preserving farmland in the Highlands is a top priority.

GOAL 3.1 PROTECTION AND ENHANCEMENT OF THE AGRICULTURAL RESOURCES OF THE HIGHLANDS REGION.

Policy 3.1.1. To create and maintain an inventory of agricultural lands which includes lands which are used for agricultural purposes or which contain soils which are highly suitable for agricultural use and to prioritize these lands for permanent preservation.

Policy 3.1.2. To maintain an inventory of farmland assessed lands in the Highlands Region.

Policy 3.1.3 Within the Agricultural Resource Area, to treat Prime, Statewide Importance, Unique, and Locally Important soils as Important Farmland Soils which are critical agricultural resources of the Highlands Region that should be permanently protected.

Objective 3.1.3.1 Implementation of regulations that prohibit non-agricultural development on agricultural soils so that critical soils are permanently protected in order to ensure the continued viability of Highlands agriculture and local food production.

Policy 3.1.4. To identify Important Farmland Soils as a critical factor in delineating Agricultural Resource Areas in the Highlands Region.

Policy 3.1.5. To promote farmland preservation within the Agricultural Resource Areas and accord priority to the preservation of agricultural lands within Agricultural Priority Areas, through less than fee acquisition, TDR, and other agricultural land conservation techniques.

Policy 3.1.6. To prohibit non-agricultural development on agricultural soils.

Objective 3.1.6.1 Implementation of regulations that prohibit non-agricultural development on farmland so that the essential character of the Highlands Region is permanently preserved.

Policy 3.1.6.2. To ensure land uses within an Agricultural Resource Area are compatible with and support sustainable agriculture or are compatible with cluster development.

Objective 3.1.6.2.1 Implementation of regulations which limit non-agricultural uses within an Agricultural Resource Area to those uses that support the preservation of farmland and the continued viability of the agricultural industry or are compatible with cluster development.

Policy 3.1.7.8. To permit human development, including for family and farm worker housing in Agricultural Resource Areas which are accessory to and/or supportive of sustainable agriculture, subject to compliance with the resource management programs of the Highlands Regional Master Plan.

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Objective 3.1.78.1. Implementation of regulations which allow for construction of ancillary structures and housing for family and farm workers that are necessary to support farm operations, upon a demonstration that the proposed development is consistent with the resource protection goals of the Plan.

Policy 3.1.9. To establish and implement resource management programs which protect agricultural resources during site plan or subdivision review and approval for construction of ancillary structures and housing for family and farm workers that are necessary to support farm operations.

Objective 3.1.9.1. Implementation of regulations which ensure farm family and agricultural labor land development within an Agricultural Resource Area is compatible with the protection and enhancement of agricultural production, protection of important farmland soils, or other natural resource management and protection requirements.

Objective 3.1.9.2. Implementation of regulations which provide that all farm family and agricultural labor development which is proposed in an Agricultural Resource Area comply with open space design requirements to avoid conflicts between such development and agricultural activities and protect farmland and sensitive environmental resources.

Objective 3.1.9.3. Implementation of regulations which require mandatory clustering for farm family and agricultural labor development in an Agricultural Resource Area such that at least 80% of the parcel proposed for farm family and agricultural labor development is preserved as farmland or natural resource area.

Objective 3.1.9.4. Implementation of regulations which require that all land preserved as farmland or natural resource area as a result of clustering be subject to a conservation easement enforceable by the appropriate municipality and the Highlands Council.

Policy 3.1.10. To preserve farmland by designating it as a Sending Area in the Transfer of Development Rights Program (TDR).

Objective 3.1.10.1. Implementation of TDR that allows farmland to be designated as Sending Areas while those areas that have existing infrastructure and sewer and are deemed appropriate for development by the NJ Highlands Council will be designated as Receiving Areas.

Policy 3.1.811. To encourage the use of agro-forestry-best management, forest stewardship practices and techniques on cultivated farmland located within the Agricultural Resource Area and the Forest Resource Area.

Objective 3.1.811.1. Implementation of agro-forestry-best management/forest stewardship practices for cultivated farmland in Agricultural Resource Areas and Forest Resource Area.

Policy 3.1.9-12 To implement programs which encourage owners and operators of farmland with woodlots within Agricultural Resource Areas to prepare and implement approved Forest Management -Stewardship Plans that conform to the resource protection standards of this Plan.

Objective 3.1.9/2.1. Coordinate with the State Forester and conservationists to provide guidance for the development of Forest Management Stewardship Plans that improve maintenance of ecosystem and water resource values of the Highlands Region.

~~Policy 3.1.10. To establish and implement resource management programs which protect agricultural resources during site plan or subdivision review and approval.~~

~~Objective 3.1.10.1. Implementation of regulations which ensure non-agricultural land development within an Agricultural Resource Area is compatible with the protection and enhancement of agricultural production, protection of important farmland soils, or other natural resource management and protection requirements.~~

~~Objective 3.1.10.2. Implementation of regulations which provide that all non-agricultural development which is proposed in an Agricultural Resource Area comply with open space design requirements to avoid conflicts between such development and agricultural activities and protect farmland and sensitive environmental resources.~~

~~Objective 3.1.10.3. Implementation of regulations which require mandatory clustering for residential development in a Agricultural Resource Area such that at least 80% of the parcel proposed for residential development is preserved as farmland or natural resource area.~~

~~Objective 3.1.10.4. Implementation of regulations which require that all land preserved as farmland or natural resource area as a result of clustering be subject to a conservation easement enforceable by the appropriate municipality and the Highlands Council.~~

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Policy 3.1.413. To require agricultural activities-operations which involve incur agricultural impervious surfaces of greater than 3% but less than 9%, to prepare and obtain approval for a Farm Conservation Plan from the USDA Natural Resource Conservation Service.

Policy 3.1.424. To require agricultural activities which involve agricultural impervious surfaces of 9% or greater to prepare and obtain approval of a Resource Management System Plan from the USDA Natural Resource Conservation Service in the Planning Area.

Policy 3.1.45. To establish an incentive program for any landowner in the Highlands Region seeking to preserve land under the farmland preservation program who would agree to permanently restrict the amount of impervious coverage, including agricultural impervious surfaces, to a maximum of five percent of the farm's total land area, as called for by the Highlands Act.

Policy 3.1.46. To advocate for the amendment of the Farmland Assessment Act to permit the inclusion of credits for the control of invasive species, white-tailed deer reduction programs, and the water value of a well-managed agricultural lands.

GOAL 3.2. PROTECTION AND ENHANCEMENT OF AGRICULTURAL VIABILITY WITHIN THE HIGHLANDS REGION.

Policy 3.2.1. To encourage private and public owners of lands within an Agricultural Resource Area in the Conservation Zones to lease open lands to farmers and/or to manage open space lands in a manner which is compatible with adjoining agricultural uses.

Policy 3.2.2. To promote research and study, and support proposals to enhance the long-term viability of the agriculture industry in the Highlands Region through innovative programs with regard to health care, banking practices, housing, and labor.

Policy 3.2.3. To support proposals to enhance the long-term viability of the agriculture industry in the Highlands Region through innovative programs with regard to sustainable and organic agriculture.

Policy 3.2.34. To seek additional funding from any and all state and federal funding programs for agriculture within the Highlands Region.

Policy 3.2.45. To coordinate with other municipal, County, state, and federal agencies to ensure to the maximum extent practicable that other agency programs are coordinated with the resource protection requirements of the Highlands Regional Master Plan.

Policy 3.2.5-6 To promote and enhance innovative agricultural practices including direct marketing, farmers markets, community commercial kitchens for value-added products, road side stands, agro-tourism and community supported agriculture.

GOAL 3.3. LIMITATION OF CONSTRUCTION OF NON-AGRICULTURAL DEVELOPMENT-INDUCING WATER AND WASTE WATER INFRASTRUCTURE IN AGRICULTURAL RESOURCE AREAS.

Policy 3.3.1. To prohibit the development of additional water and wastewater infrastructure in a Agricultural Resource Area within the Protection Zone and the Preservation Area, except where such additional infrastructure is necessary to address an existing public health concern, a redevelopment waiver, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP.

Policy 3.3.2. To prohibit the development of additional water and wastewater infrastructure in a Agricultural Resource Area in a Conservation Zone, except where such additional

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infrastructure is necessary to address the needs of an existing public health concern, mandatory clustering, or open space design development for family and farm labor housing or limited agricultural infrastructure, as subject to approved approval by the Highlands Council.

GOAL 3.4. PROTECTION AND ENHANCEMENT OF SURFACE AND GROUND WATER QUALITY IN AGRICULTURAL RESOURCE AREAS.

Policy 3.4.1. To promote the use of appropriate alternative and innovative wastewater treatment systems to provide enhanced protection of surface and ground water quality in the Conservation Zone.

Policy 3.4.2. To promote efforts to increase Integrated Pest Management and Integrated Crop Management programs and other innovative management techniques that reduce pesticide and fertilizer use in conjunction with agricultural activities.

Policy 3.4.3. To identify subwatersheds with elevated nitrate levels, develop management plans for enhancing water quality, and implementing those plans in ways that enhance agricultural viability wherever feasible.

GOAL 3.5. CONFORMING MUNICIPALITIES AND COUNTIES INCLUDE FARMLAND PRESERVATION PLAN ELEMENTS IN THEIR MASTER PLANS AND DEVELOPMENT REGULATIONS.

Policy 3.5.1. To prepare technical guidelines for the preparation of a Farmland Preservation Plan Element for inclusion municipal and county master plans and development regulations.

Policy 3.5.2. To require conforming municipalities and counties to include a Farmland Preservation Plan Element in municipal and county master plans and development regulations.

Policy 3.5.3. To require conforming municipalities and counties to incorporate Right to Farm provisions in their master plans and development regulations.

Notes: 3.1.6. Cluster development does not enhance agricultural resources-should be deleted from this section.

Objective 3.1.7.1. Cluster development is not an agricultural use, nor does it protect the essential character of the Highlands as mandated by the Act-should be deleted.

Amy Hansen
Oct 18, 2007
Council Meeting
5 5 PAGES