

NEW JERSEY HIGHLANDS WATER PROTECTION  
AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF June 5, 2008

**PRESENT**

JOHN WEINGART	)	CHAIRMAN
TRACY CARLUCCIO	)	COUNCIL MEMBERS
MIMI LETTS	)	
JACK SCHRIER	)	
TIM DILLINGHAM	)	
JANICE KOVACH	)	
SCOTT WHITENACK	)	
GLEN VETRANO	)	
KURT ALSTEDDE	)	
ERIK PETERSON	)	
BILL COGGER	)	
DEBBIE PASQUARELLI	)	
ELIZABETH CALABRESE	)	
TAHESHA WAY	)	

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 70<sup>th</sup> meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:14 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.

ERIK PETERSON JOINED VIA TELECONFERENCE AND ANNOUNCED HE WILL BE ARRIVING SHORTLY.

Ms. Swan noted that Ms. Pasquarelli was going to be late to the meeting as well.

**APPROVAL OF MINUTES OF May 15, 2008**

*Mr. Schrier introduced the motion to approve the minutes. Mr. Cogger seconded the motion. Ms. Way, Mr. Vetrano, and Mr. Dillingham abstained. Ms. Pasquarelli was absent. All other members present voted to approve. The minutes were APPROVED.*

Mr. Shope handed in some language that he wanted on the record in reference to his comments at the meeting of May 22, 2008. His submission is attached to these minutes of June 5, 2008.

## **CHAIRMAN'S REPORT**

Chairman Weingart announced that a meeting was held with Governor Corzine in which he and Ms. Swan briefed the Governor on the status of the RMP, the schedule for release, and also reviewed some of the items on today's agenda. Governor Corzine seemed supportive of the efforts of the staff and the Council.

Mr. Schrier brought attention to an article in the NJ State League of Municipalities written by Eileen Swan and how it discussed incentives for municipalities to conform to the RMP. He explained how Ms. Swan and Mr. Borden have been working with municipalities and encouraging them to conform with the plan – highlighting its benefits.

## **EXECUTIVE DIRECTOR'S REPORT**

Eileen Swan discussed recent rule making including DEP amendments to the WQMPs rules to update the wastewater management plan requirements and to encourage counties to do the WMP planning for willing municipalities, the WMP changes included a septic density threshold of 2mg/L. There were also amendments to Category One rules including amendments to the Surface Water Quality Rules to upgrade several Highlands waters as Category One. On May 19<sup>th</sup> there was an official notice that NJDEP has revised and updated the Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife. The current version, Version 2.0 of the Landscape Maps is being replaced with the Highlands Region Version 3.0.

Ms. Swan listed meetings that have taken place including a meeting with Franklin Borough (Sussex County) involving a brief overview of the RMP, a May 28<sup>th</sup> meeting with Senator Smith, a May 28<sup>th</sup> New Jersey Conservation Foundation Policy Board meeting, a May 30<sup>th</sup> meeting with PSEG regarding their application for an exemption for lines to upgrade the system and also permit needs, and lastly a May 30<sup>th</sup> meeting with Mt. Arlington about map updates and adjustments.

Chairman Weingart also mentioned that Governor Corzine acknowledged the need for more funding for acquisition in order to compensate landowners, and the need for funding for staff.

**MS. PASQUARELLI JOINED THE MEETING.**

Mr. Alstede questioned vacancies and reappointments.

Chairman Weingart stated that this was discussed with Governor Corzine and that most likely new members will be appointed after adoption in the fall.

## **COMMITTEE REPORTS**

Chairman Weingart noted that there was a written document with a summary of the TDR Committee report.

TDR Committee Chair Mr. Whitenack reported that the committee met and finalized the process of determining the highlands development credits, which is quite complicated. He thanked the staff, Jeff LeJava, and the consultants for all of their work regarding TDR. Work on establishing initial value had also been completed.

**MR. PETERSON JOINED THE MEETING.**

**CONSIDERATION OF RESOLUTION – *Approval of Contract for Printing Services for the Regional Master Plan***

Ms. Swan introduced the motion for approval of the contract for printing services for the RMP. She explained that after taking various bids from different firms, a printing firm was selected based on lowest bid and the expertise to handle the job. The total cost, \$27,560 (not to exceed this amount), includes a week for possible changes and will be for 1,000 copies on 100% recycled paper. Sufficient funds had not been allocated but there are additional funds available in the budget to cover the cost. Ms. Swan had conferred with Treasurer and Budget and Finance Chair Bill Cogger..

*Mr. Schrier moved the motion to approve the resolution. Ms. Letts seconded the motion. All present voted in favor. The resolution was APPROVED.*

**CONSIDERATION OF RESOLUTION – *Approval of Certain Planning Assistance Grants***

Ms. Swan introduced the motion for Initial Assessment grants in the amount not to exceed \$15,000 each for Bedminster and Ringwood. She explained that both municipalities received grants for COAH, Ringwood also received an MP3 grant, the latter grant deliverables are fully completed and upon submission of the final receipts grant will be paid out in full.*Mr. Schrier moved the motion to approve the resolution. Mr. Vetrano seconded the motion. All present voted in favor. The resolution was APPROVED.*

**REGIONAL MASTER PLAN DISCUSSION**

Chairman Weingart explained the schedule for the final RMP. All changes or revisions will be reviewed by the end of the June 12<sup>th</sup> meeting. June 26<sup>th</sup> he anticipates the Council should review and consider any changes the Council members would like to make to the RMP. Then the staff would revise the document to reflect any policy changes decided on by the Council. July 10<sup>th</sup> the Council will be presented with a full draft of the plan which incorporates all of the changes. Then on July 17<sup>th</sup> the Council would vote on the final plan.

Mr. Dillingham questioned the timing for the availability of documents. Chairman Weingart explained that the staff will draft versions of the Chapters over the next few weeks for the Council members to review. Mr. Dillingham expressed concern about having significant time to review the plan. Chairman Weingart and Ms. Swan noted that the Council will be receiving sections of the plan to review and should receive a draft of the entire plan by July 10<sup>th</sup>. Chairman Weingart said that Ms. Swan would provide a draft schedule of what would be discussed at future meetings up till adoption. Ms. Swan emphasized that the schedule is subject to change but that it would be sent to Council members and posted for the public.

Ms. Swan explained that the staff hopes to provide an unedited rough draft of the plan in sections prior to July 10<sup>th</sup>. This had been planned in order to make the process easier for members than it was in November for the Final Draft.

Mr. Alstede questioned when the map with the multiple overlays will be available. Ms. Swan stated that it is on the agenda for the June 26<sup>th</sup> meeting so the Council will be able to review it.

**A. Carbonate Rock Program**

Ms. Swan began her presentation with a review of the changes to the Carbonate Rock Program. She noted that this Program was amended to reflect changes made to the respective GPOs. There was clarification that karst is not strictly a surface condition and the functions and values of karst were also noted. New objectives were added for when specific karst features are identified, for instance prohibiting new uses that would constitute unacceptable risk and prioritizing upgrades or remedial actions for existing high risk land uses and facilities.

### **B. Lake Management Program**

The changes to the Lake Management Program were then described. Text was added to note the distinction in management objectives between developed lake areas in the Lake Community Sub-Zone and undeveloped lake areas. New standards were also added in response to public comments. These included permitting and encouraging the control and removal of algae and invasive aquatic weeds in the Lake Community Sub-Zone and encouraging the creation of a vegetated filter strip along the shoreline in areas where the shorelines have been hardscaped. It will also be required that septic systems and cesspools on small lots in close proximity to lakes be replaced and upgraded wherever feasible and cost-effective and that community wastewater treatments be utilized, when feasible, wherever the existing density of septic systems is known to be significantly contributing to lake pollution. (These community based systems shall not provide additional development capacity except for exempt lots or for areas that are otherwise permitted to have wastewater service.)

Ms. Letts asked for clarification that these policies were only for conforming municipalities. Ms. Swan confirmed that these will be for conforming municipalities.

### **C. Land Preservation Program**

Ms. Swan then presented the changes to the Land Preservation and Stewardship Program. This program was updated to reflect changes made to the respective GPOs and a cross-reference to the Historic, Cultural, Archaeological and Scenic Program was added since historic preservation can be an important element of land preservation. The Establishment of Land Preservation Priorities was amended to include a Special Environmental Zone in response to Section 12A of the Act. The Establishment of New/Alternative/Innovative Land Preservation Programs was also amended to include a representative list of programs and options to be examined for appropriateness in the region. Secondly, the Establishment of Dedicated Sources of Funding was amended to include a more extensive list of possible future dedicated funding sources for land preservation and stewardship. Lastly, the Establishment of Land Preservation Priorities was amended to include the Special Environmental Zone in accordance with the Highlands Act, section 12a.

Ms. Swan presented a table which summarized the amount of preserved lands and lands considered a priority for preservation in the Preservation Area.

The next slide presented showed a map with Special Environmental Zone and Preservation Area preserved Open Space.

### **D. Wastewater System Maintenance Program**

The clarifications and changes to the Wastewater System Maintenance Program were then outlined. Public information is required for all septic systems and mandatory inspection and maintenance is required for septic systems with the highest potential for pollution problems. In regards to upgrading septic systems, there was language added to clarify that the use of community systems should not create harmful effects, such as loss of water availability.

#### **E. Land Use Capability Zone Map Updates**

Ms. Swan continued her presentation reviewing the updates to the land use capability map. The proposed updates regarding preserved State and Federal wildlife lands, in response from public comment include a new Wildlife Management Sub-Zone including Federal Wildlife Refuges and State Wildlife Management Areas. The Protection Zone policies would apply in the Wildlife Management Sub-Zone. Ms. Swan explained that the last step of the model to create the zones is the step to recognize these areas. She then presented the totals for both the Federal Wildlife Refuges and the State Wildlife Management Areas with a supporting map. Staff set up large maps for the public to review. Ms. Swan explained that these changes simply clarify areas that are already protected.

Mr. Dillingham expressed concern that despite the fact that these areas are protected and restricted, there is the possibility of these lands to be transferred and possibly developed. Mr. Schrier stated that this is unlikely to occur as it is a lengthy and difficult process. Mr. Dillingham explained his experience with similar situations. Mr. Schrier stated that the final RMP will help to further protect these lands from such transfers. Mr. Dillingham explained that he would like there to be supporting language addressing these areas and their protection in perpetuity.

Mr. LeJava stated that language can be added in to the RMP to clarify that the Council expects these lands to remain protected in perpetuity consistent with enabling language for the respective Federal and State wildlife areas.

There was discussion on the limitations of these zones and whether there will be a process for applying for development such as campgrounds, birdblinds, etc. Mr. Schrier stated that the State already has regulations in place for these types of development. Mr. LeJava recommended that there be language regarding the fact that development only be consistent with the Federal and State laws that established these areas..

#### **F. Smart Growth and Community Design Handbook**

The next section of Ms. Swan's presentation described the changes to the Smart Growth and Community Design Handbook Program. The "Smart Growth Manual" and "Community Development Design Guidebook" were combined into one handbook and renamed "Smart Growth and Community Design Handbook".

#### **G. TDR Program**

Changes within the TDR Program which were discussed at the TDR Committee meetings were then outlined. Language was added to clarify which parcels in what zones may be eligible to submit an application for an HDC determination. Regarding Non-Residential Allocation Method, the following was added: method considers the size of parcel, zoning, and land use

regulations applicable to the parcel as of November 2005, and the underlying land values of different types of non-residential development to determine allocation of HDCs.

A section of this program was revised concerning Receiving Zone eligibility so that it will be consistent with the revised GPOs and to state that municipalities outside of the Highlands Region and non-conforming municipalities must receive Plan Endorsement in accordance with State Planning commission guidelines consistent with the State TDR Bill before a Receiving Zone may be established. Lastly, a new section was added regarding the Receiving Zone designation process which indicates that establishing a Receiving Zone is voluntary and triggered only by municipal action and subject to the resource protections of the RMP and a capacity analysis.

Ms. Swan noted that a GIS study was done on Receiving areas, and that is being refined and will be presented to the Council at a future meeting.

Ms. Letts asked about receiving zones outside of the Highlands. Ms. Swan stated that it will be recommended in the final RMP but that the Bill has not yet been considered out of Committee..

Ms. Carluccio asked, regarding eligibility in the lower intensity areas, does the Council see this being connected only to existing infrastructure. Mr. LeJava stated that it did involve septics but it will need to consistent with all other policies of the plan. Ms. Carluccio expressed concerns about receiving zones on septic systems and the difficulties regarding this possibility. She suggested the addition of “only where infrastructure exists”. Ms. Swan explained that this policy is written this way to encourage TDR, but all TDR areas will have to go through Council approval. Ms. Carluccio questioned whether areas can be considered for receiving zones even if they exist in a current deficit area. Ms. Swan explained that receiving zones cannot be put into deficit areas unless it can be shown that the deficit has been corrected.

Mr. Dillingham asked for language clarification that capacity is examined before designating an area.

Mr. LeJava clarified that the TDR receiving areas will be reviewed at the next meeting. Mr. Alstede asked for the Council to be shown the calculation for credits. There was discussion about the allocation method. Mr. Alstede asked for real life examples of how these policies will work. The Council discussed how to best show these examples and explain to the Council how the allocation method works. Ms. Swan said staff will put the matter on an agenda before adoption..

#### **H. Regional Build Out – Preliminary Results**

Ms. Swan continued her presentation by clarifying that Section 11(a) of the Highlands Act doesn't require a build out analysis but mandates that the Plan include a resource assessment to determine the amount of sustainable development the area can sustain while protecting the resource values and a smart growth component based on the resource assessment.. The model is also necessary for Plan Endorsement which is required. She explained how the Build Out Model provides estimates of the ultimate ability of a land area to support new development based on existing conditions, regulatory constraints and opportunities, as well as various assumptions regarding the relationship of available land and existing development to infrastructure and

environmental resources. The model is a management tool that uses spatial and technical data to examine potential development scenarios that may occur as a result of implementation of the RMP. She emphasized that this is a regional model and that local numbers as a result are not the same as a local build out. That would be the next step using the regional model.

Ms. Swan described the Highlands Build Out Model as being a GIS-based regional model that estimates the full build out of developable land based on RMP policies of environmental constraints, water availability, and wastewater utility capacity. Potential development lands are identified based on municipal zoning as of 2005 and undeveloped or underdeveloped parcels as of 2007 (excluding any preserved lands). Potential build out impacts from Highlands Act exemptions, redevelopment areas or TDR receiving zones will be covered through local build out during Plan Conformance and not under this report. Based on this model, there approximately 230,000 acres of developmental lands (123,000 acres in the Planning Area and 106,000 acres in the Preservation Area).

Ms. Swan explained that the voluntary nature of the Highlands Act for the Planning area triggered the need to develop multiple build out scenarios. The three primary scenarios are: an analysis assuming no Highlands Act, implementation of the Highlands Act only in the Preservation Area, and full implementation of the Act. She then described the details of the three different scenarios and how they were assessed, presenting a table outlining the three scenarios within the Preservation and Planning Areas. She presented a table giving a summary of the different types of developments which may occur as well as the wastewater and water constraints that exist for all three build out scenarios. The final table showed a summary of Highlands Build out regarding environmental impacts, additional impervious surface and water and waste demand.. Build out will be constrained by both the wastewater utility and water availability constraints.

Wastewater Capacity was then outlined regarding the 42 Highlands Domestic Sewerage Facilities (HDSF) within each of the three scenarios (Without Highlands, Preservation Area only conformance, and 100% RMP Conformance). The current capacity for those 42 facilities, currently shows that 8 of those facilities have no permitted capacity available and continue to represent an inability to serve additional capacity demands within the three scenarios. Under the Without Highlands Act and the Preservation only conformance scenarios a total of 11 HDSFs would exceed available capacity; while under 100% conformance 10 would exceed capacity. The projected demand within region-wide wastewater utilities under the three scenarios was described, showing approximately 3.5 MGD needed Without the Highlands Act and approximately 1.1 MGD under 100% RMP Conformance.

Ms. Swan stated that all three scenarios would generate water demands that exceed net or conditional water availability in a number of subwatersheds and therefore water availability will be a constraint on achieving full build out. Under Without the Highlands Act 71 subwatersheds would have insufficient net or conditional water availability and under the 100% RMP Conformance scenario 5 subwatersheds would have insufficient net or conditional water availability. Therefore, land based development within such watersheds may only reach full build out if conditions for water availability have been met.

Sustainable Capacity was then described regarding both water availability and wastewater capacity. A figure was shown which depicted where there were areas that have both available sewerage capacity as well as HUC14 subwatersheds with some available water, in order to visualize potential growth opportunities.

Ms. Swan then discussed the discretionary growth policy as the smart growth component within the RMP which allows municipalities to have additional growth, if they desire, after an examination of infrastructure capacity and resource protections. The most significant result is the approximately 111,000 jobs on only 1,400 acres of impervious surface, which represents 3 times the current jobs per acre density as compared to without the Highlands Act growth patterns. While this scenario had less impervious cover than the trend of “sprawl” it still showed constraints for water availability and wastewater capacity.

Within the key findings, it was found that under the Without the Highlands Act scenario, significant conflicts with water availability and wastewater utility capacity will occur (27% of projected water availability and 15% of wastewater utility capacity would be exceeded) and limit growth potential. Even with 100% RMP implementation, water availability and wastewater capacity will limit growth potential in some areas; although the negative effects are significantly reduced under 100% conformance (2% of water availability and 11% of wastewater capacity will constrain potential development). It was found that much of the existing non-residential zoning is in environmentally constrained areas outside of existing water and sewer service areas and in the future is unlikely to occur and doesn't reflect smart growth policies.

Ms. Swan outlined the next steps regarding Regional Build Out. She explained that refinement of this model will happen through local build out analysis and that it will include updated information through the RMP Update Process. Support for local build out will come from the Council staff in providing the GIS model as a basis for local build out and the Council will be providing grants and technical assistance. With Council's approval, the technical report will be made available to the public on June 12<sup>th</sup>, 2008 on the Council's website.

Ms. Swan credited the hard work by staff but in particular by Chris Danis and Carl Figueiredo.

Mr. Dillingham pointed out that the numbers that show that even under 100% RMP Conformance there will be an effect on the deficits, perhaps there needs to be adjustments to the RMP regarding where growth should happen.

Both Chairman Weingart and Ms. Swan clarified that full conformance will not allow full build out due to these constraints and current conditions. Mr. Dillingham said that it should be made clear what the issues are relating to unsustainable growth.. Mr. Schrier stated support for Mr. Dillingham's comment and added that this information should be dispersed and will help municipalities in deciding to conform. Mr. Cogger explained that COAH will be doing additional buildout analysis and that the Highlands Council should be asking for access to that data.

Ms. Letts asked for clarification on the research on the water and wastewater capacities. Ms. Danis explained how the capacity analyses were completed and where the information was obtained. Dr. Van Abs then addressed the water capacities and the data involved.

Ms. Carluccio questioned the factors that were not taken into account within the figures (for example, exemptions) and how much they would change those figures. Ms. Danis explained that the report will contain a narrative regarding exemptions and redevelopment. However, it will not be forecasted in exact figures. Further analysis of exemptions will take place during conformance when a local build out is completed using the regional model.

### **I. Redevelopment and WQMP Procedures**

Ms. Swan noted that the Highlands Redevelopment Area designation procedures will be posted to the Highlands website after the June 12<sup>th</sup> meeting. She also outlined a recommendation for the Council to consider regarding the calculation of Impervious Surface for Redevelopment Area Designation Procedure. It is being recommended, after consideration of comments, that this procedure be modified to delete the default method and require a case-by-case analysis of impervious surface. This decision was reached after considering public comment and discussions with the NJDEP to ensure a consistent approach by state agencies. Council were in agreement on this issue.

Regarding Nitrate targets for WQMP consistency, there was a white paper drafted at the Council's request. It supports both consistency determinations regarding sewer extensions using the full RMP as well uses the full RMP regarding all WQMP amendments in the Preservation and Planning Areas of conforming municipalities. Issues were noted regarding the appropriate nitrate targets for the WQMP consistency determinations in nonconforming Planning Area municipalities, the range of choice being from the minimum of the DEP's WQMP rules to the RMP thresholds.

Ms. Swan then presented a slide regarding the WQMP approach. The counties are encouraged to develop Wastewater Management Plans (WMPs) for all municipalities, although municipalities may opt out of the process. If they do so, they lose all proposed sewer service areas, the NJDEP will not process any WQMP amendments, and any projects that require NJDEP permits may proceed only if they generate less than 2,000 gallons per day of wastewater.

She then discussed the NJDEP nitrate target for septic systems being 2 mg/L using average ground water recharge (which results in an average lot size between 4 and 7 acres per single family house). Since over 40% of Highlands current zoning is more stringent than the NJDEP (including already developed lands) an even higher percentage of zoning may meet NJDEP requirements (the estimate is 50%).

RMP Requirements, which are voluntary in the Planning Area until an area conforms, here then reviewed. The nitrate targets of 2 mg/L in the Existing Community Zone, 1.87 mg/L in Conservation Zone, and 0.72 mg/L in the Protection Zone were outlined. Ms. Swan noted that no municipalities have zoning that meets the Protection Zone requirements, but a few have zoning that meets the targets for other zones. The RMP Policies would result in roughly 30% of the WQMP septic system yields in the Planning Area, since the WQMP rules and existing zoning

would result in 20,600 new septics and the RMP policies would result in approximately 6,200 new septics.

#### STAFF RECOMMENDATION

Ms. Swan stated that the Council staff stands by its original recommendation in order to foster comprehensive planning by conforming municipalities (Portions of Section 11 of the Act were read). Section 10 sets forth the Goals of the RMP with respect to the Preservation Area and with respect for the Planning Area

Section 11 sets forth the contents of the Plan for preservation and planning:

11. a. The regional master plan shall include, but need not necessarily be limited to:

(1) A resource assessment which:

(a) determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain while still maintaining the overall ecological values thereof, with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region;

Ms Swan then read the final part of Section 11 : The resource assessment, transportation component, and smart growth component prepared pursuant to subsection a. of this section shall be used only for advisory purposes in the planning area and shall have no binding or regulatory effect therein.

She noted that the nitrate targets established in the RMP are designated not only to protect and enhance the existing water utility but also to ensure that the yield of additional septic systems are properly planned and distributed to avoid sprawling development patterns and to guide the growth into appropriate areas. While nonconforming municipalities will be strongly encouraged to utilize the Highlands Council's nitrate analysis in developing a WMP, the Council should support the municipalities' decision to meet the NJDEP's requirements through consistency determinations.

There was discussion on nitrate standards and whether mandating RMP standards for non conforming municipalities through the WMPs will affect municipalities' decision to conform. Ms. Swan further discussed the belief that the planning area communities had that the RMP and its standards were discretionary in that area. She also noted that changing the nitrate standards for septics from discretionary to a set standard may affect the trust and support of the municipalities. Mr. Dillingham disagreed with this recommendation, stating that failure to use the RMP standards would cause additional and unnecessary water pollution. He stated that there was no justification for this recommendation and that utilizing the higher standard is necessary for protecting the water. Mr. Cogger expressed that leaving the choice to the municipalities leaves room for making the wrong decision.

Ms. Swan read from the plan and expressed that these standards should be advisory in nature. She stated the negative effects that could occur with making these standards a set policy. Ms. Letts discussed the voluntary nature of opting in.

Ms. Carluccio supported the idea of the Council standing by the science and technical data they have developed. She explained that DEP's standard is set for the whole state, but includes a provision that areas that require a stricter standard can and should do so if they have the analysis to back that decision. Ms. Carluccio discussed Mr. Borden's memo and expressed her lack of support for not implementing the RMP standard. Ms. Swan noted that the information regarding the RMP standard was also provided to DEP and that all municipalities would be encouraged to comply with the RMP standards. Ms. Carluccio asked for language to be added regarding municipalities different options.

Mr. Schrier agreed that additional options for municipalities should be outlined.

There was discussion that the counties will be the wastewater planning entity but that the townships have the final say on their chapter within the County WMP.

Ms. Pasquarelli expressed her strong disapproval for not setting the RMP standard as a set standard. She stated that setting the stricter standard will not change the municipalities' choice to conform. She also pointed out that there needs to be consistency within the consistency standards. Ms. Pasquarelli noted concern about the origin of this discussion that she believed was started by the staff without sufficient input from Council. She stated that the question is – does the plan conform to the regional master plan – yes or no. We are not requiring anything, just does it or not. Conformance is voluntary, changing the standard does not change that.

Chairman Weingart stated that he believes this to be a difficult subject. He also stated that the matter was brought up as a result of the Somerset County WMP process and that staff have been fully briefing the Council members. He noted that the Act gives the Council flexibility and that this policy may affect the public's perception that the Planning Area is voluntary.

Mr. Schrier expressed his belief that it would go against the Act to impose the higher standard. There was discussion on how the nitrate standards would apply in municipalities which may decide to opt in further into the future. Ms Swan stated that the matter had been discussed with NJDEP and towns could choose a higher standard than the 2mg/L and if a town later conformed having used the DEP threshold they would then do a revision in order to change to the RMP standards.

Mr. Vetrano expressed that Ms. Swan and the staff are in his opinion the best at judging the reaction of municipalities and whether this action will affect conformance as the staff have been doing outreach.

Ms. Letts stated that other standards for the Planning Area are not being set, so it should not be set in this instance either.

Ms. Calabrese asked why the application of this standard as mandatory standard is perceived to be negatively accepted by municipalities.

There was discussion on the effect of this standard. Mr. Dillingham discussed the differences between mandatory conformance and the making of recommendations to DEP. He also explained the importance of implementing the plan. Ms. Carluccio stated that it may in fact have a very positive effect, and get the municipalities to opt in so that they can receive the benefits. Applying the standard would give the Council a way to positively affect water quality. Mr. Schrier stated that the Council should not push the municipalities to conform but encourage them to conform.

Chairman Weingart asked for a straw vote and mentioned that the actual vote would take place at the meeting of June 26, 2008.

Mr. Alstede expressed wanting to make a motion to support the staff's recommendation.

Ms. Way stated the importance for water protection and that there needs to be a set standard so as to not create any other issues.

Mr. Peterson expressed his concerns and confusions regarding the changes for nitrate standard. He believes it is a good argument for water quality and that with the upcoming COAH regulations, many towns will want to use this standard to avoid COAH.

Mr. Dillingham stated that it is about whether or not the Council will implement the policies or not and that the Council should not be carving out one standard

The Council took a straw vote regarding the staff recommendation.

The following Council members voted to stay with staff recommendation:

Mr. Alstede, Mr. Vetrano, Mr. Schrier, Ms. Letts and Mr. Whitenack (5 total)

The following Council members voted to change the recommendation and mandate the standard:

Ms. Calabrese, Mr. Dillingham, Ms. Way, Mr. Peterson, Ms. Pasquarelli, Ms. Carluccio, Mr. Cogger, and Ms. Kovach (8 total)

Ms. Pasquarelli asked for language discouraging large lot zoning and sprawl.

There was further discussion regarding nitrate standards and WMPs and how they will be applied in conforming and non-conforming municipalities as well as the different aspects of full conformance. Mr. Dillingham said that there needed to be no change to the RMP as Council would review WMPs against all RMP standards that are applicable not just one policy. Ms. Swan asked that the Council be clear that it is all the standards and not just the nitrate thresholds. Mr. Peterson disagreed. Staff would present to the Council further information on the application of RMP standards to non conforming municipalities.

Ms. Carluccio asked that the staff look into new policies that are in place within WQMP and DEP policies.

Chairman Weingart announced that the next meeting is June 12<sup>th</sup> at 10:00am.

**PUBLIC COMMENTS:**

**RICHARD BERGER, Hackensack, a lawyer representing a developer:** Mr. Berger asked for recommendations regarding sewer and water extensions for properties that he is representing. He would like a policy in which a builder can come to the Council regarding a consistency determination. Mr. Berger also asked about non-contiguous clustering. Also, he mentioned that under a NJ Statute, there is a statement that the Council shall identify undeveloped areas in the Planning Area that are suitable for development.

**JULIA SOMERS, NJ Highlands Coalition:** Ms. Somers stated her support of the nitrate standards vote and stated that the Council has a mandate to protect the water. She expressed a need for an MOU with DEP regarding the new rules and recommendations. Ms. Somers asked about the presentation being posted online. She also stated her support for dropping the default method for impervious surfaces. Lastly, she commented that there aren't standards for wastewater plants and on site systems within the plan and that the state standards are not sufficient. She asked for additional language regarding this issue. She noted that written comments will be submitted covering topics that need to be revisited.

**MONIQUE PURCELL, Department of Agriculture:** She stated her confusion about the Council's nitrate discussion. She explained the difference between recommending and setting mandatory limits. She stated her support of the staff's recommendation.

**PAT MATARAZZO, Passaic River Basin Alliance and Association of Environmental Authorities:** He mentioned the work that they are doing on with DRBC on an amendment to their source water protection rules and their special protected waters' rules. This includes capping all wastewater discharge at their 2004 levels, which could affect the TDR program. Their definitions are changing as well, which could change the capacity that is available. He suggested that the Council sit down with the DRBC to be updated on this topic. Regarding nitrates discussion, he noted that the average discharge from a wastewater treatment plant is 20 milligrams and that is acceptable to DEP. He suggested that the Council look into the TDR process further.

**ROBIN O'HEARN, Sklands Clean:** Ms. O'Hearn expressed that many comments seem to be ignored or only resulting in minor adjustments (particularly in Lake Management). She suggested that capacities be looked into further. She expressed that some of the TDR receiving zones may be in unwarranted areas. She believes that no receiving zones are necessary within the Preservation Area. Lastly, she would like the Council's response on the proposed Permit Extension Act.

**ROSS KUSHNER, Pequannock River Coalition:** Mr. Kushner questioned the staff's response to comments received. He noted the removing the sensitive areas has not be properly addressed or discussed. He stated that receiving zones are far in excess of what is mandated in the Act. . He asked for sensible map adjustments. He objected for various reasons to the changes on the overlay zone map to show the wildlife management areas.

**WILMA FREY, NJ Conservation Foundation:** Ms. Frey commented that the staff recommendation regarding the WMP requires a consistency determination. She stated that there is an impact that needs to be dealt with in the WMP – especially the water quality. She expressed her lack of support for using any nitrate standard other than the one that the staff has set forth in the RMP. Regarding the Wildlife Management Zones, she advocated including other publicly owned conservation/recreation areas (State Parks, forests, etc).

**DAVID PEIFER, ANJEC: (written comments submitted):** Mr. Peifer brought up the Permit Extension Act and asked for the Council’s opposition to this Act due to the critical nature of the Highlands Area. He stated that this Act will go against the Highlands rules and regulations. Mr. Peifer also noted issues with permit standards and how they could create a type of exemption. He suggested that the Council look into this Act. Secondly, he discussed the Steep Slope Protection Conformance standards. He began with complimenting the job the staff has done with this area. Mr. Peifer noted that ERIs should be discussed further in the Plan, particularly how it will differ from a standard ERI. He noted that there will be a wide range in the quality of ERIs that are received. He suggested that the Council set some data standards, including the use of digital data. He submitted written comments on the conformance standards.

**CHRISTINE HEPBURN, Madison:** She expressed her support for the stricter nitrate standard. She stated that most people are happy about the Highlands Act and support the efforts of the plan. She stated that the work the Council and staff are doing is very important and appreciated.

**TONY SORIANO, Morris County Planning Board:** Mr. Sorianno expressed concern over the new zone for the Wildlife Areas. He said that this will only complicate and confuse the map and that language should be added to the plan in its place. Regarding septic densities, he stated that Planning Area municipalities will be surprised at conformance being mandatory and he expressed sympathy for staff who would have to carry that message. Regarding the Preservation Area, the septic densities set by NJDEP are different from those in the RMP. He recommended that the Council ask the DEP to adopt the highlands standards and abandon their own.

**HELEN HEINRICH, NJ Farm Bureau:** Ms. Heinrich stated her support for seeing a real life example of the allocation process within TDR. She also supported the fact that the Council will revisit the nitrate standard as she believes that the Council may be confused about what they are voting on. She stated support for flexibility in planning.

**DAVID SHOPE, NJ Farm Bureau member:** He discussed rainfall and the effects it has on water pollution by washing garbage into the sea. He stated his belief that NJ is not in compliance with the 1972 Federal Clean Water Act. He discussed the historic use of scientific knowledge and that the use of this science is an excuse for mandating social policies. He compared the Federal standard of 10mg/L to what is happening here. He compared the local policies to colonial policies. He stated that water is held in trust by the State and that he doesn’t trust the State. He expressed his lack of belief that there will be any relief from Trenton. He stated that relief will be from the courts and not the New Jersey courts.

**ANDY DRYSDALE, Chester Township:** Mr. Drysdale discussed his lack of support for confidential lists that effect people’s property values. Regarding the nitrate standard, he stated that it is ridiculous and likely to be impossible to achieve.

**Chairman Weingart asked for a motion to adjourn.**

**Motion made by Jack Schrier seconded by Glen Vetrano all in favor. Meeting was adjourned.**

**Vote on the Approval of these Minutes**

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede				✓
Councilmember Calabrese	✓			
Councilmember Carluccio	✓			
Councilmember Cogger	✓			
Councilmember Dillingham	✓			
Councilmember Kovach				✓
Councilmember Letts	✓			
Councilmember Pasquarelli	✓			
Councilmember Peterson				✓
Councilmember Schrier				✓
Councilmember Vetrano				✓
Councilmember Way	✓			
Councilmember Whitenack	✓			
Councilmember Weingart	✓			

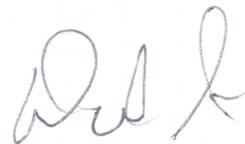
**PUBLIC COMMENTS SUBMITTED**

CORRECTIONS TO 5-22 MTG - RE COMMENTS BY

D. SHOPE. THE LIST OF WHAT I SAID WAS THAT EXPERIMENTS WITH CHIMPS IN WHICH TWO ~~OF~~ CHIMPS, IN SEPARATE ~~AND~~ BUT ADJOINING CAGES COULD OBTAIN, BY CO OPERATING, FOOD REWARDS. WHEN ONE CHIMP WAS "SHORTCHANGED," IN TERMS OF THE REWARDS GAINED FROM THEIR MUTUAL CO OPERATION, THE "SHORTCHANGED" CHIMP REFUSED FURTHER CO OPERATION, RESULTING IN ~~A~~ NEITHER CHIMP GETTING ANYTHING. THIS WAS THE LIST OF THE EXPERIMENT.

I EQUATED THE ETHICAL EVOLVEMENT OF THE CHIMPS, AS TO THE CONCEPT OF FAIRNESS, TO THAT OF ADAM ZIMMER, CHARLES SEMONS, THOSE JUDGES, AND OTHERS WHO BELIEVE THAT TAKING ALIBUT A SMALL FRACTION OF HIGHLAND FARMER & LANDOWNER EQUITY AS O.K. & PERMISSIBLE, UNFAVORABLY. I SAID THOSE MENTIONED ABOVE AS HAVING NOT EVOLVED TO ACHIEVE THE ETHICAL STANDARDS OF APES.

THE CYNICISM OF THIS LAW IS ENCAPSULATED IN THE WAIVER GIVEN TO AVOID A TAKING.



DAVID SHOPE

6-5-08

**Comments  
Of  
The Association of New Jersey Environmental Commissions  
On  
Assembly Bill No. 2867, "Permit Extension Act of 2008"**

**Presented to the New Jersey Highlands Council  
June 5, 2008**

**Prepared and Presented by**

**David Peifer, Highlands Project Director**

The Association has reviewed the "Permit Extension Act of 2008" in the context of its potential impacts on the Highlands Region and the effective implementation of the Highlands Act, including conformance with the RMP. The Association strongly urges the Council to express its opposition to this ill conceived and environmentally damaging legislation. We take this position for the following reasons:

In the Highlands Act in several locations specifically declared that the existing regulatory system was *insufficient* to protect the resources of the region. For example, "...*the existing land use and environmental regulation system cannot protect the water and natural resources of the New Jersey Highlands against the environmental impacts of sprawl development...*" and "...*is an issue of State level importance that cannot be left to the uncoordinated land use decisions of 88 municipalities, seven counties and a myriad of private landowners*".

The legislature's correct assumption was the existing state permitting system, as well as a host of other county and local land use control mechanisms were inadequate to protect the essential natural resources of the region. The proposed permit Extension Act will allow these existing inadequate permitting decisions to remain in place until, in some cases, the year 2014. Thus the proposed legislation is destructive of the rational Highlands planning process and should not be implemented due to the critical statewide significance of the Highlands resources.

We would also note that under existing rules, state permits are granted for a period of 5 years, with an extension of five years available. This decade long life span is more than sufficient to meet the requirements of applicants.

Additionally, the extension of existing and, in some cases expired permits will create an administrative nightmare for both the Council itself and the 88 municipalities of the region precisely at a time when the conformance process is beginning. In effect, applicable extended permits will become a class of "temporal exemptions" around which both the RMP and the municipal conformance processes will have to work.

We strongly suggest that the Council conduct an assessment of the potential impacts on the implementation of the Highlands Act and the successful completion of municipal conformance. We trust that, if conducted, such a review would reveal that the Permit Extension Act of 2008 is destructive to the Council's legislative mandate and should not be implemented. The Council should forcefully convey its conclusion to the appropriate legislators and to the Governor at the earliest possible time.

Comments of ANJEC, June 5, 2008  
(Conformance materials released May 22, 2008)

“Guidance for Municipal Plan Conformance  
with the  
Highlands Regional Master Plan”

“Steep Slopes Protection Conformance Standards”  
Prepared and Presented  
by  
David Peifer, Highlands Project Director

The material released is an example of a part of the “Guidance Document” to be provided to municipalities during the conformance process. Numerous other sections remain to be produced/released. The document works together with the RMP Chapter VI, subpart a Plan Conformance and several previous technical papers. It serves both as guidance and as a worksheet for municipal conformance.

The format of the document includes a column called “*Component*”. This includes:

- ERI
- Master Plan and Conservation Element
- Institutional Capacity
- Development Review Checklists
- Land Use Ordinance
- Enforcement and Recommended Model or Sample Ordinances.

The second column is “Status”. This is to be used during the municipal self assessment.

Entries can include:

C-fully complete

P=Partially complete, with a need for improvement

IP-in progress

NS-Not started

NA-not applicable.

The third column is “Standards”. This appears to be a linkage to specific provisions of the RMP. Basic Plan Conformance Standards and “plan Conformance Standards” are presented. The user is referred to the RMO and the DEP Highlands rules.

- This will entail considerable cross-referencing and will result in a possibly negative narrow focus by municipal participants.

The fourth column is “Commentary”. Specific guidance is provided here.

#### General Comments

- The Council is to be commended for the approach taken which follows a logical progression from ERI to Master Plan and Conservation Element, Institutional Capacity, Development Checklists, Land Use Ordinances, Enforcement and Model or sample Ordinances.

While it is impossible, from the sample provided to know what the entire Guidance Document will contain ANJEC makes the following observations.

#### ERI's (in general)

ERIs will vary considerably throughout the region. Some municipalities will not have one at all. Others will be out of date paper (non-digital) documents. Still others will be digital, but the appointed municipal officials will not have access to or use GIS technology. Some will be fully functional GIS based digital products that are used by municipal professionals.

ERI's created or revised during conformance must support the full range of existing municipal functions and those created by the Highlands RMP.

- The Council must describe how a “Highlands Conformance ERI” will differ from traditional, municipal based ERI's, especially with regard to maintaining regional objectives. Specific data sets to be acquired and accompanying meta data should be provided
- The Council must set data standards for municipal GIS systems.
- The Council must assure that municipalities have ability to use, manipulate, and revise digital ERIs internally. This should be a requirement under “Institutional Capacity”, otherwise the value of using GIS technology may be lost. Municipalities will need to make the funding and personnel commitments to acquire adequate hardware, software, and data, train personnel in use of GIS and maintain data in the most current condition, including maintenance of metadata.

#### Municipal Master Plan and Conservation Element (in general)

- The Council is to be commended for requiring a Conservation element. However, specific guidance on what it is to contain to meet Highlands Requirements should be provided. Full compliance with the MLUL should be specified as a minimum

(40:55D-28(8): A conservation plan element providing for the preservation, conservation and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers, and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systematically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources

Specific Comments: Steep Slopes Protection Conformance Standards

P.1

Standards: Basic Plan Conformance: ANJEC does not understand #3. What specifically is to be mapped or described?

Commentary: The user should be directed to definitions and GPOs related to ridgelines and viewsheds.

Plan Conformance Standards: Mapping What is the rationale for the minimum mapping area of 5000s.f.? What is the appropriate size if data are not sufficient?

Commentary: When will the LiDAR based slope mapping be available?

P.2

Institutional Capability: Project Review :Commentary: ANJEC does not agree that steep slope review is “primarily performed by the municipal engineer. Environmental Commissions routinely review steep slopes during site plan review and during field visits.

Site Visit Authority: Commentary: should be made a checklist item.

Development Review Checklists:

ANJEC supports the use of checklists as one element of project review.

P.5: Exemptions: Commentary

ANJEC appreciates the clarification regarding more stringent local ordinances for non-exempt properties but was under the impression that local ordinance could control exempt properties in any manner it chose, provided the regulation was not arbitrary, capricious or unreasonable or vague, that is meeting the normal land use law tests. In sum, our understanding has been that exempt properties would still be subject to local ordinance.

The Council’s position to deny the legal shield protections to a municipality that instituted more stringent environmental protections or which may currently have more stringent protections in place is unacceptable.

#6, Steep Slope Application

ANJEC strongly objects to the language that seems to indicate that a reviewing municipal professional may “grant an approval”. Only planning board or boards of adjustment may grant approvals. If this is the approach advocated by the Council it must be stricken.

**#7, Completeness**

Completeness determinations must be made by the planning board or the board of adjustment in open public session, not by a “completeness designee”.

**#9, Requirements for Deed Restrictions**

This section is wholly inadequate. The holder of the easement must be specified and the holder must have the financial resources and institutional structure to monitor and enforce the terms of the easement. Baseline documentation must be required and a storage system for this information must be required. The Council could consider general guidance and a sample easement but monitoring and enforcement must be clearly defined and financially provided for. As written, ANJEC cannot support this provision.