

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF SEPTEMBER 18, 2008

**PRESENT**

JOHN WEINGART ) CHAIRMAN

BILL COGGER )  
DEBBIE PASQUARELLI ) COUNCIL MEMBERS  
TRACY CARLUCCIO )  
JACK SCHRIER )  
MIMI LETTS )  
KURT ALSTEDE )  
ERIK PETERSON )  
JANICE KOVACH )  
GLEN VETRANO )  
TIM DILLINGHAM )

**TELECONFERENCE**

TAHESHA WAY )  
SCOTT WHITENACK )

**ABSENT**

ELIZABETH CALABRESE )

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 77th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:09 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.

**APPROVAL OF MINUTES OF August 21, 2008**

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

**CHAIRMAN'S REPORT**

Chairman Weingart noted that this is the first meeting after the Governor declined to veto the minutes and signed an executive order on September 5th. The Chairman noted that the Plan officially went into effect as of September 8, 2008. He described how the Governor expressed his appreciation of the Council as well as the staff.

## EXECUTIVE DIRECTOR'S REPORT

Ms. Swan introduced the Financial Consultant, Greg Della Pia. She explained his role within the Highlands Staff as well his municipal and state experience which were of benefit to the Council.

Ms. Swan stated that the RMP was posted on the website after the Governor had signed the Executive Order on Friday, September 5<sup>th</sup>. The Governor's Press Release and Executive Order 114 were also posted. She explained that the RMP became effective on Monday September 8<sup>th</sup> and that on Tuesday all municipalities and counties were sent a CD containing the RMP as well as copies of the Executive Order, Council Resolution on Adoption of the RMP, information on Initial Assessment Grants and information on both Basic and Full Conformance. She explained that this was to allow municipalities to move forward before receiving the Regional Master Plan in hard copy. It will still be several weeks before printed copies will be available for distribution. The Technical Reports supporting the RMP have also been posted on the website. She explained that it takes a lot of time to format the final documents and post the documents online. She explained that the response to comment document for both the 2006 and the 2007 comments will have been posted by end of today.

In terms of Water Quality Management Plans (WQMPs), Ms. Swan explained that Highlands counties are already working on WQMPs. Ms. Swan noted that a template for consistency determinations for WQMPs has been sent to NJDEP along with the submittal requirements. This allows them to advise counties, as well as municipalities, of the necessary planning that the NJDEP will require for approval of WQMPs. The Council will also continue to do consistency determinations when the plans are submitted to NJDEP.

EO114 will require the Council to make some changes to conformance and setting priorities. EO114 ordered that the Highlands Council shall work in cooperation with COAH, DEP, and DCA to review the Round 3 projections for consistency, and assist in developing adjusted growth projections for areas which will conform with the RMP. She explained the responsibilities of the Highlands Council to support and maximize affordable housing opportunities while also preserving critical resources. Some of these requirements will require expediting some of the work associated with these responsibilities. She explained that staff has prepared an RFQ to assist with the work associated with the EO and the obligations that the Council must meet under A500 (P.L. 2008, Chapter 46). A regional system for affordable housing planning must be created consistent with A500. The Highlands Build Out will have to be revised to consider the COAH requirement of a planning horizon of 2018 and local build out needs to be done so that the adjusted numbers will be consistent with the RMP for conforming towns. The scope of services would be for assisting the Council with implementation of the goals, policies and objectives of the RMP with respect to the COAH regulations assist in implementing EO114 and A500. This will be brought before the Council when more information is available.

Mr. Schrier stated that there is a lack of clarity within the Executive Order regarding COAH regulations and the Highlands Regional Master Plan, municipalities need clear direction as they have time constraints. Ms. Swan stated that she understands the concerns of the towns. Council staff has met with COAH and have worked to get answers for the towns to provide direction. Towns that conform to the RMP will have the opportunity to have an extension to file their housing plans and have their numbers adjusted to be consistent with the RMP. For towns that do not conform, they will not fall under the adjusted projections consistent with the Highlands RMP in regards to COAH.



In that instance, they will be treated like the rest of the State in regards to COAH requirements. She stated that when an agreement is reached on an approach with COAH and that is approved by the Council, then a letter will be sent to the municipalities clarifying the requirements and regulations. This would clarify that extensions will be available for those municipalities conforming if they submit a letter of intent of conformance, adopt a resolution regarding that intent (on or before December 8, 2009), for municipalities in the Planning Area the letter of intent would specify if conformance would be for the Planning Area of their municipality and also that they intend to submit a petition for Plan Conformance. They would submit a request for a waiver to COAH in order to get the time extension, with the letter of intent for Plan Conformance.

Mr. Schrier verified that the letter of intent and Resolution would not be binding for the Planning Area. Ms. Letts stated that if a municipality were to submit a Resolution of intent, but then choose not to comply, they will not be penalized. It was discussed that all municipalities have the right to submit a Resolution of intent and receive an extension. It was noted that a consultant with COAH experience will be necessary to assist the Council staff with the work regarding the new affordable housing requirements in A500.

Mr. Cogger asked about the status of the COAH MOU. He was advised that work was ongoing and that agreement had to be reached by November 4<sup>th</sup>. Chairman Weingart reiterated that the Council needs to consider if they are supportive of the approach Ms. Swan put forward regarding the letter to be sent to the municipalities regarding COAH regulations. No members were opposed and Ms. Swan was authorized to negotiate the agreement with COAH and send out the letter advising municipalities.

Ms. Swan then discussed petition for Plan Endorsement for lands in the Planning Area that was submitted to the State Planning Commission's Office of Smart Growth. Documents supporting the Highlands Council's petition for Plan Endorsement are under review by the Office of Smart Growth. She explained that the Highlands Council's petition is the first Special Resource Area petition and that the staff has worked using the Office of Smart Growth for consistency with the State Plan.

Ms. Swan noted that comments were received from the Office of Smart Growth as well as other state agencies and these were all considered in the development and preparation of the RMP. She explained that there was a presentation to the State Planning Commission regarding the Highlands Council and the RMP. The open process regarding the Highlands was emphasized. There was also emphasis made to the State Planning Commission regarding interoffice coordination. All involved agencies have been involved and updated during the process of creating the RMP. Therefore, the agencies represented on the State Planning Commission shared in the information that was included in the RMP and had opportunities to make suggested changes. Thus it was anticipated that those agencies were familiar with the Plan and had already had input.

Mr. Borden explained that a notice regarding the implications of the Permit Extension Act for the Highlands Region has been sent for publication in the New Jersey Register. Essentially it states that there are no designated growth areas in the Regional Master Plan and the entire Highlands Region, including all 88 Highlands municipalities, is as a matter of law excluded from the Permit Extension Act. Another notice was registered regarding the adoption of the RMP and its effective date of September 8, 2008.

Ms. Swan reviewed NJDEP actions on WQMPs that have been previously reviewed by the Highlands Council (including Heritage 55 in Randolph Township and Pinnacle Communities Development in Oakland Borough). Heritage 55 was approved and she noted the statements of the Highlands Council included in the determination. NJDEP found that Randolph Township Water conservation projects have more than met the 125% mitigation. Mr. Dillingham stated that the Randolph township preservation program and mitigation work was town-wide, and wanted to know how the mitigation will be tracked so that it will apply regarding this project. Ms. Swan explained that a tally will be kept.

In the case of Pinnacle, the project was denied and the NJDEP found four reasons for this denial. The denial addressed specific issues regarding the interbasin transfer of water, the fact that the site is a legitimate habitat for barn owl, it is also a natural heritage site, and finally their recently submitted wastewater management plan identified other sites that were more appropriate.

Mr. Glen Vetrano joined the meeting. Chairman Weingart noted that Mr. Vetrano has decided not to seek a second term on the Highlands Council, but will remain until a replacement has been found. He explained that both Ms. Way and Mr. Whitenack were participating by phone.

#### **BUDGET AND FINANCE COMMITTEE**

Mr. Cogger provided a report of the work of the Budget and Finance Committee. He reported that updated accounting software will be utilized this fiscal year. He thanked Ranji Persaud of the staff for all of his work and the level of detail of the records.

He discussed the State appropriation of \$2.4 million for Highlands Council operations. In preparing the FY09 General Operating Budget, nearly \$500,000 will be carried forward from the FY08 operating budget. Therefore, the State reduction of the Council's operating budget will not adversely impact Council fiscal operations for this fiscal year. He noted that the Highlands Council is presently understaffed to meet the aggressive Plan Conformance process for 88 municipalities and seven counties. He asked if any Council members had any specific questions for Greg Della Pia. Mr. Della Pia stated that the FY09 General Operating Budget is based on a very good plan for fiscal responsibility. He provided an overview of the efficiency of the new accounting system and described the work staff has done to utilize the system.

Ms. Letts also recognized Mr. Persaud for his work. Ms. Swan thanked Mr. Cogger for his work on the Budget. Chairman Weingart noted that there was a draft resolution regarding the General Operating Budget. Mr. Alstede pointed out the increase in training funding. Ms. Swan explained the need for Council staff training, particularly for staff to do continuing education to maintain their planning licenses. She also noted other opportunities, including field work and training for stream restoration planning. Mr. Schrier asked about opportunities for training and made some recommendations. Ms. Swan explained that there is constant research regarding training. Mr. Schrier noted that there may be opportunities for training with some volunteer organizations. Ms. Swan stated that they want to continue doing this type of work. Ms. Swan also explained the Graduate Studies Program funding for interns. Ms. Carluccio stated that it is totally appropriate to fund training on stream restoration and that it is important to get the best training possible. It is a training that is heavy in both science and calculus.



Mr. Alstede asked if rent for the building had increased. Ms. Swan stated that this is negotiated by the Department of Treasury and noted that it had been raised and that a retroactive payment for adjusted rent was necessary.

## RESOLUTIONS

### I. CONSIDERATION OF RESOLUTION – Approval of FY09 General Operating Budget (voting matter with public comment)

*Mr. Schrier moved the motion to approve resolution, Ms. Letts seconded the motion. Ms. Calabrese and Ms. Pasquarelli were absent. (Ms. Pasquarelli noted later that she would like to abstain). ALL members present voted in favor.*

Chairman Weingart noted that the Personnel Committee will be meeting later today.

### II. CONSIDERATION OF RESOLUTIONS – Approval of Certain Planning Assistance Grants (voting matter with public comment)

**Summary:** *The Highlands Council initiated a grant application process for Initial Assessment grants to municipalities within the seven Highlands Counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000. Council staff reviewed the grant applications and recommend grants for Council consideration.*

#### 1. Consideration of Resolution – Initial Assessment Grant for Holland Township

The Township of Holland is requesting an Initial Assessment Grant in the amount of \$17,000. This is the first grant that they are applying for.

*Mr. Schrier moved the motion to approve resolution, Ms. Kovach seconded the motion. Ms. Calabrese and Ms. Pasquarelli were absent. ALL members present voted in favor. There was no public comment.*

#### 2. Consideration of Resolution – CP3 Grant for Sussex County

The County of Sussex is applying for a grant. Previous grants included a CP3 grant for parcel data which was executed in June of 2006, a Prior Approval Grant for \$15,000 which was executed in June of 2006, a Sewer and Water grant for \$25,000 which was executed in June of 2006. They also have two agricultural grants: one for Agritourism and one for a Commercial Kitchen grant. They may need additional extensions for the two agricultural grants.

Ms. Swan explained that this grant is for a business process to capture all lot line adjustments and other spatially enabled information and to support local GIS data. The hope is that this could be a model for other Counties moving forward. They are requesting \$15,000 and the staff (in particular the Director of GIS) recommends approval for this grant. Although this was submitted as an Initial Assessment Grant, it is actually another CP3 grant.

*Mr. Cogger moved the motion to approve resolution, Ms. Kovach seconded the motion. Ms. Calabrese and Ms. Pasquarelli were absent.*

Mr. Dillingham asked about how the GIS work will be done and how it advances the RMP. Mr. Keren stated that the work that they will be doing will link their municipal records (such as deeds) with the land management system. This would allow for gaining a large amount of information fairly quickly. He stated that Morris County has a similar process in place that they are continuing to

update. It helps in terms of RMP updates, as well as gathering additional information about parcels. Mr. Dillingham asked if the larger benefit would be to utilize this type of system throughout the Highlands. Chairman Weingart asked if there was anything within the grant to have Sussex County to interact with other Counties so that they may have a similar business plan in place. Mr. Keren stated that this is the intent of this business model. Ms. Letts asked if there are County Planners meetings to discuss these issues and Ms. Swan stated that these meeting were ongoing.

*Chairman Weingart asked for the vote on this resolution. Ms. Calabrese and Ms. Pasquarelli were absent. Mr. Vetrano abstained. ALL members present voted in favor. There was no public comment.*

EXTENSION REQUESTS – Ms. Swan noted that the Township of Bethlehem had some extenuating situations and will be needing an extension for the initial assessment grant. No action from the Highlands Council is necessary.

### **III. CONSIDERATION OF RESOLUTION - Approval for Printing Services (voting matter with public comment)**

Ms. Swan explained that a contract was awarded previously for printing, but in working with AKRF it has been found that higher quality paper would be necessary to properly print the mapping and the photographs. She explained the pricing, and how the price per unit will go down significantly with an order of 2,500 (instead of 1,000). The price do this on quality 100% recycled paper under the current contract would exceed the agreed upon price. Therefore, it is being requested to put out an amended RFP to all of the companies that responded to the original and then find the most appropriate printer.

Mr. Schrier asked how many copies were requested previously. Ms. Swan stated approximately 300 hard copies and 300 on CD. Ms. Swan stated that the municipalities stated they would typically like 3 copies. The Executive and Legislative branches will also be needing numerous copies. Mr. Schrier stated that he isn't sure it is necessary to have this many copies made. Ms. Swan explained the costs of printing the RMP in house versus using this contract.

There was discussion on the costs of printing. Mr. Cogger asked about how to update the RMP. Ms. Swan stated updates will be posted but a new version will not be printed for 6 years. Chairman Weingart noted that copies will be sold at cost. Mr. Borden explained that the demand will be greater with the final plan than it was for draft RMP. There was further discussion on the difference in printing services and what affects the costs.

*Ms. Pasquarelli joined the meeting.*

Chairman Weingart stated that there is a Resolution regarding the printing services.

*Ms. Carluccio moved the motion to approve resolution, Ms. Letts seconded the motion. Ms. Calabrese was absent. ALL members present voted in favor.*

Mr. Dillingham stated that it is important to provide a quality copy to the public. There was no public comment.

### **IV. CONSIDERATION OF RESOLUTION - WQMP Amendments**



**(voting matter with public comment)**

The process for providing consistency determinations to NJDEP for WQMPs, pursuant to N.J.A.C 7:38-1.1 was then outlined. These consistency determinations are factual comparisons of the proposed WQMP amendment to all relevant aspects of the RMP policies, objectives and programs. The review template has been completely revised for this purpose.

Ms. Swan explained that Consistency Determinations for four Areawide WQMP Amendments were released for public comment on August 27, 2008, with comments due by close of business on September 8, 2008. Comments were received on all four Consistency Determinations. Highlands Council staff have summarized the public comments and modified the Consistency Determinations as appropriate. She stated that the track changes in the documents show where they were revised in response to comments received. The maps used by the staff are posted on the Council web site at: <http://www.highlands.state.nj.us/njhighlands/implementation/project>.

Ms. Swan clarified that the first four Consistency Determinations are for project-specific amendments and that the fifth is a municipal wastewater management plan.

The Consistency Determinations were as follows:

1. 200/202 Howard Boulevard, Mt. Arlington, the applicant is the Borough

The proposed amendment consists of allowing two existing residential properties, 200 Howard Boulevard (Block 65, Lot 1) and 202 Howard Boulevard (Block 64, Lot 7), that are currently within the Upper Raritan WQMP area to have sewage conveyed through the Borough of Mount Arlington WMP area and treated by the Musconetcong Sewerage Authority (MSA) sewage treatment plant (STP), which is located in the Upper Delaware WQMP area. The two single-family residential properties currently discharge into septic systems, which have been certified by the Borough as failing. Therefore, an estimated 600 gpd of additional sewage flow will be conveyed to the MSA STP. Deed restrictions will be placed on the lots to prevent future flow increases. The project was found to be consistent with all but one of the applicable goals, policies, and objectives of the Regional Master Plan. The exception is Objective 2B8b which requires 125% mitigation of the increase in consumptive/depletive water use. Ms. Swan also noted that Borough of Mt. Arlington already has many water conservation projects in place. NJDEP may find that they have already met these mitigation requirements.

**PUBLIC COMMENT:**

**David Shope:** He asked for clarification and also about the cost of this to these two property owners. He expressed his confusion about what is being discussed.

**Darren Phil, Borough Engineer of Mount Arlington and Dave Clark, Principal Engineer:** He noted that the Borough had requested 5 years ago regarding redevelopment in this area. They have been looking into including these two properties in the wastewater management plan and including them into the sewers. He stated that there are costs to attach to the sewer and then the user fee established by the ordinance – these are the only fees being assessed.

Ms. Pasquarelli asked about the additional cost as far as escrow fees? Mr. Phil answered that there will not be any escrow fees. There was no additional assessment done. Ms. Pasquarelli asked is this

is a health and safety issue. Mr. Phil noted that it is due to the failing septic systems. Ms. Letts asked how this will be monitored. Mr. Phil explained that it is per dwelling unit – so they cannot subdivide or create a duplex. It is a flow based on a single family home. Ms. Letts asked what will happen if they go over the 300 gpd. Mr. Phil explained that it is an estimate. Ms. Carluccio asked about testing for failed septic system. Mr. Phil stated that there was confirmation from the property owners and the Borough's health department also verified that the septic was failing. This is covered by shared services. Ms. Carluccio asked about the water conservation measures for these two homes. Mr. Phil explained that a large portion of the town of the water comes from the Morris County MUA and is an interbasin transfer. The Borough implemented an annual water assessment regarding leakage and this has been very successful. They have also acknowledged the large townhouse projects which have been required to follow odd/even days, to conserve water. Ms. Carluccio asked regarding these two specific homes and the implementation of water conservation measures. Mr. Phil explained the deed restrictions, but that there weren't any other restrictions or implementation measures required by NJDEP.

Mr. Cogger stated that reviewing the document on this and the consistency determination note she pointed out that there are areas without any notation. There was explanation that this is a full template for review of any amendment. Areas without notation did not apply to this project. There was clarification that this document will then be passed on to the NJDEP.

Chairman Weingart asked if there is a deadline regarding consistency determinations. There are No deadlines but staff have been turning these around expeditiously. Ms. Swan stated that the staff was urged to move these as quickly as possible. Ms. Pasquarelli asked about 2b8b on page 8 and asked why this is inconsistent (regarding the statement of approved Conservation Plans) Ms. Swan pointed out that it is inconsistent because there is no approval - the information on the mitigation work has not all been forwarded to the Highlands Council. The consistency reviews are advisory to NJ DEP.

Chairman Weingart noted the resolution for forwarding consistency determinations.

*Mr. Schrier moved the motion to approve resolution, Mr. Dillingham seconded the motion.*

Mr. Vetrano asked about his ability to vote on this matter and any conflicts of interest present. Mr. Borden suggested that he abstain until it can be looked into it further.

*Ms. Carluccio opposed. Ms. Calabrese was absent. Mr. Vetrano abstained. ALL members present voted in favor.*

Ms. Pasquarelli asked for clarification on the consistency determination being sent to the NJDEP. Ms. Swan explained how the form lays out what is consistent and what is not consistent. This is then forwarded to NJDEP. No specific recommendations or suggestions are made.

## 2. Pilot Travel Center, Union Township, the applicant is Pilot Travel Center

This is a proposed amendment to the Upper Raritan Water Quality Management Plan and the Union Township Wastewater Management Plan that would allow for the expansion of the existing on-site discharge to ground water wastewater treatment facility for the redevelopment of the site formerly known as Johnny's Truck Stop. The proposed sewer service area for the new facility is restricted to the existing impervious cover footprint of the previous Johnny's Truck Stop; the proposed project has no increase in impervious surface. The total area to be redeveloped is 7.5 acres



of the 11.75-acre lot. The projected wastewater flow is 6,500 gpd. The project will use an on-site well for water supply and will discharge treated wastewater back to ground water.

Ms. Swan noted that this project was found inconsistent with policies: 1b7 Forest, 1f2 Critical Habitat, 6h1 Redevelopment and Sensitive lands as well as objectives 1k4c Carbonate Rock. As well as the mitigation of 125%— in addition any undisturbed critical lands should be deed restricted.

Ms. Swan asked that staff member Ms. Ross explain a change within this project. Ms. Ross noted that a site plan was turned in after the application was submitted. It showed that there were two septic fields in the undeveloped section of the site (within critical habitat).

**Public Comment:**

**Elliot Ruga** – He noted that the project will be drawing from a watershed that is deficit. He referred to the Executive Order 114 item 10 where it is stated that the NJDEP shall not approve further water use within a HUC 14 that is in or anticipated to be in deficit. He read from EO114.

Mr. Schrier asked about the deed restriction – is it a requirement? Mr. Borden stated that this would be part of the consistency determination. Mr. Dillingham stated that it will be noted to NJDEP that the deed restriction will be necessary. He also asked that the cover letter state what is in the report.

Mr. Dillingham spoke about the letter that would be sent to NJDEP regarding consistency determinations and how they would be structured. Mr. Alstede stated that in reading the comments – regarding a statement that the site is 100% built out. Ms. Swan reiterated that when it was reviewed without the site plan, it was believed that there wouldn't be additional disturbance. However, after reviewing the site plan, the septic fields would be in a previously undisturbed area.

*Mr. Schrier moved the motion to approve resolution, Ms. Kovach seconded the motion. Ms. Calabrese was absent. ALL members present voted in favor.*

The Pilot Travel Center project was found to be inconsistent with Policies 1B7 (forest clearing), 1F2 (critical habitat), and 6H1 (redevelopment and sensitive lands) and with Objectives 1K4c (carbonate rock) and 2B8b (the requirement for 125% mitigation of the increase in depletive water use). There was no public comment.

3. “Hamptons at Pohatcong”, the applicant is EAI Investments

Proposed amendment to the Upper Delaware WQMP submitted on behalf of EAI Investments, LLC, for an expansion of the Phillipsburg STP sewer service area to include the proposed Hamptons at Pohatcong development in Pohatcong Township, Warren County. The proposed development is a Mount Laurel inclusive development (under Superior Court jurisdiction in the matter of EAI Investments, L.L.C. v. Township of Pohatcong) consisting of 396 residential units and associated recreational park (six 1-bedroom units, 26 2-bedroom units, 364 3-bedroom units of which 352 are planned as single-family residential units). Project was deemed inconsistent with the Highlands Regional Master Plan.

Ms. Swan reviewed the primary issues including the extension of both water and wastewater facilities into the conservation zone not associated clustering present, a waiver for public health and safety, extension in the agricultural zone without mandatory clustering. Water availability constraints in 2

HUC14 subwatersheds, encouragement of structures in Highlands open water buffers, proposal to dispose stormwater offsite were also issues. Stormwater recharge requirements have been waived by DEP without the requirement of recharge. There was conflicting information regarding wildlife habitat as well as insufficient information regarding low impact development, karst topography concerns, compliance regarding a TMDL for pathogens, well head protection, and maximum feasible water conservation measures.

*Ms. Carluccio moved the motion to approve resolution, Ms. Kovach seconded the motion. Ms. Calabrese was absent.*

## **PUBLIC COMMENT:**

**Judith Forbes, resident of Pohatcong:** She stated that endangered birds the savanna sparrow and the kestrel were found on and around this site by Blane Rothhouser in 2006.

**Neil Yoskin, attorney representing EAI Investments – Representing EAI Investments:** He stated that the RMP seems to target several COAH Round 2 sites for elimination. He congratulated Ms. Swan for the speed with which she addressed their concerns. Mr. Yoskin spoke about the project and comments that were made regarding it and the RMP. He noted that this project has been in the Townships affordable housing since 1988 – and has been approved since 1996. It was as early as 1996 that the Superior Court order that a wastewater management plan be processed for this site – it was not filed until 2002, and was not until July of this year that the DEP set forth the notice. He stated that the site is unusual that it has a metropolitan area and PA1 adjacent to it. He presented a photo of the area. He explained that there is high density housing on 3 sides of this project. Each of the issues surrounding this property have been discussed with Highlands Staff. The property has been designated as a Conservation Area – which leads to inconsistency issues. He explained that many of the issues have been surrounding an erosion ditch which has become a Category 1 body of water and now a Highlands Open Water. He spoke about water quality and the buffer requirements. He stated that the Executive Order gives the Highlands Council the ability to approve or find consistent, within Conservation Zone consistent under certain circumstances. Mr. Yoskin noted that by issuing a report of inconsistency to NJDEP, the Highlands Council will be interfering with the Township's affordable housing.

Chairman Weingart inquired as to why this project has not been completed. Mr. Yoskin replied that it was held up partially from the need for an updated WMP and other changes in regulations (and the necessary updates to the project). He expounded on the regulatory issues of this project and changes that have had to be made for consistency.

Ms. Pasquarelli asked about the erosion ditch. Mr. Yoskin stated that it doesn't appear as a stream on USGS mapping. It is a ditch on the county soils map. He explained that regarding the stormwater rules, it is identified as a stream. She spoke about the Wastewater Management Plan amendment and whether it is for this project or areawide. Mr. Yoskin explained that it would be specific for this project/area, not for Phillipsburg. He spoke about the history of the allocations for Pohatcong and Phillipsburg. Ms. Pasquarelli explained that this amendment is separate from the Wastewater Amendments that have been ordered for all municipalities. She asked about why Mr. Yoskin is here and why they are asking the Council to reconsider. Mr. Yoskin stated that they don't believe this area should be mapped as a Conservation Zone, but also that he wanted to point out that the Executive order gives the Council the ability to find projects within the Conservation Zone consistent, given certain conditions.



Mr. Yoskin stated that the Executive Order provides the Highlands Council with discretion to alter the findings in the RMP. Mr. Schrier stated that he would like the legal opinion on this from the Council's Chief Counsel. Mr. Borden asked about which section of the Executive Order he is Mr. Yoskin was referring to. Mr. Yoskin stated that section 7 is directed to the NJDEP. He read areas of the Executive Order and expressed how he believes they apply to this project. He stated that the Highlands Council can conditionally approve the WMP. Mr. Borden stated that it is clear from EO 114 that it is NJDEP that has the authority and responsibility on these issues. He suggested that the Council make their consistency determination based upon the provisions in the RMP.

**Laura Oldman, resident of Pohatcong:** She noted that the site is surrounded on two sides. The map that was shown didn't show that there is a large sweeping site of agricultural lands. This area is a breeding area for endangered grassland birds (there are very few appropriate sites in NJ). Pohatcong is not a growing population. She also noted that the obligation for COAH is actually 26 units. She stated that there haven't been any additional projects because most of them have been very large and far over exceed both the need and the requirements for affordable housing. She stated that the staff has done an excellent job at reviewing this project and finding the inconsistencies.

**Helen Heinrich, NJ Farm Bureau:** She asked whether these projects been reviewed at the Natural Resource Committee. Chairman Weingart stated that the Council has been acting on these matters as a committee of the whole. Ms. Heinrich asked about how the public is notified for amendments. Ms. Swan stated that there is a service list and the documents are posted on the Council's website—but stated that there is a public comment period before final approval as well.

**Peggy Snyder, consulting engineer of ECHO:** She wanted to clarify a statement of Mr. Yoskin – the project doesn't meet the stormwater requirements. Specifically they do not meet the recharge requirements. Mr. Yoskin responded that there is a waiver within the stormwater requirements. So it is not accurate to say that it isn't compliant with the stormwater rules. Ms. Snyder stated that there is no waiver for karst areas.

*VOTE: ALL members present voted in favor. The resolution was APPROVED.*

#### 4. Holland Township Wastewater Management Plan      Applicant is the Township

The Holland Township Wastewater Management Plan (WMP) Consistency Determination Review was a town-wide WMP review and many inconsistencies were found. Among the inconsistencies was the amendment to the WMP for the extension of the Sewer Service Area into the Conservation Zone and the Conservation – Environmentally Constrained Sub-Zone, which is inconsistent with the policies and objectives of the Highlands Regional Master Plan.

Holland Township proposes amendments to the WMP that include adding to the approved Sewer Service Area the Huntington Knolls PCD/PSV project (Block 24, Lots 3 & 13) including 158 residential units, 2 group homes, a private clubhouse, office/retail space (27,000 sq. ft.), and an 80 seat restaurant, which was previously reviewed by the Highlands Council as a project-specific WQMP amendment (see attached comment letter to the NJDEP); the Gardner project (Block 6 Lot 61) including 2 three-bedroom rental apartments and 12 residential units; a future school expansion

(150 students); in-fill development of existing lots and future subdivision of new lots (18 lots); and a future commercial development (20,000 sq ft).

For the purposes of a WMP review, the Highlands Council utilizes the Highlands Council GIS data for Highlands Domestic Sewerage Facilities Existing Area Served (HDSF EAS) defined in the Highlands Council Utility Capacity Technical Report, as that portion of an approved Sewer Service Area where existing infrastructure is in place (i.e, pipes in the ground). Portions of an approved Sewer Service Area without infrastructure in place are reviewed in concert with, and under the same review criteria as, any proposed future creation/expansion/extension of the service area, and are referred to as future sewer service area. The WMP proposes all portions of the town outside the Sewer Service Area as *General Service Area for Wastewater Facilities with Planning Flows of Less Than 2,000 gpd which Discharge to Ground Water* (i.e., septic systems), and the Highlands Council reviews these areas for consistency with the appropriate RMP policies.

*Ms. Kovach moved the motion to approve resolution, Ms. Carluccio seconded the motion. Ms. Calabrese was absent.*

#### **Public Comment:**

**Michael Keady, Friends of Holland Highlands:** He commended the staff on their review of the project. He was pleased consideration was given to his comments. He spoke of the grant that was given to Holland. He pointed out that there were no representatives from the Township and that he believes that they are not fully understanding and respecting the Highlands regulations.

Mr. Dillingham stated that the letter to NJDEP needs to state that there needs to be changes made since it is so inconsistent. Ms. Pasquarelli suggested that the discussion of conformance should not be included in the consistency determination – she believes that it is inappropriate. (She asked for removal of the last sentence of the Conclusion). There was discussion on the consistency determinations.

Chairman Weingart clarified that Mr. Dillingham is asking for a change in the language to focus on the gross inconsistencies. Ms. Swan stated that changes could be made to the Conclusion wording as well as the cover letter to NJ DEP and the letter sent to the applicant.

*VOTE: Ms. Pasquarelli opposed. ALL other members present voted in favor. The resolution was APPROVED.*

Mr. Vetrano had to leave the meeting.

#### **5. Trump National Golf club, Bedminster Twp**

A proposal has been submitted that consists of expanding the sewer service area to build guest cottages, reuse of the Lamington Farm RF (aka Trump National Golf Club) effluent for irrigation, and use of on-site ponds and wells for irrigation (Block 39, Lots 8, 10, 11, 12.02, and 12.03, Block 38, Lots 9, 13, and 14). Ms. Swan noted that this was discussed by the Natural Resource Committee.

*Mr. Cogger moved the motion to approve resolution, Ms. Carluccio seconded the motion. Ms. Calabrese was absent.*

#### **PUBLIC COMMENT:**



**Mr. Ed Russo, on behalf of Donald Trump and the Trump Association:** He noted that the project will move forward with the recommendations made by the staff. The cottages will be removed and in regards to the 125% mitigation, there is a data available that they will be able to do this onsite. He noted that they will be communicating to NJDEP that they will meet those recommendations. Ms. Letts asked for some more information on the mitigation plan. Mr. Russo gave a quick overview of their plans.

Mr. Dillingham stated that he is not satisfied that the project will in fact move forward and meet these recommendations simply based on spoken word regarding the future actions (without supporting documentation). He stated that there it doesn't appear that all of the inconsistencies have been addressed. Dr. Van Abs stated that the staff recommendations will remain and that the report to NJDEP will state that they are inconsistent. He stated that the project is clearer now that on site systems are present. There was discussion about the wording of the consistency determinations and the letters that will be sent to NJDEP. Ms. Carluccio explained that the Council needs to vote on the consistency determination as written, not including the verbal testimony regarding the changes the applicant will move forward with to be consistent. She noted that the wording in the determination should be careful about wording regarding NJDEP's decision on consistency.

**Judith Forbes:** She spoke of her concerns about the quality of water that will be recharged from a golf course (particularly regarding the chemicals which will be applied).

Ms. Pasquarelli asked for clarification about what Ms. Carluccio wanted changed. Ms. Carluccio asked for a rewording regarding NJDEP decision on consistency. It was also stated that recommendations will be removed from the Consistency determinations. Mr. Dillingham spoke about the letter that will accompany the consistency determination and that the language will specify that the Highlands Council will not consider a project consistent until all of the listed inconsistencies are met.

*VOTE: Mr. Dillingham was opposed. ALL other members present voted in favor.*

Chairman Weingart checked who was on the phone – Mr. Whitenack answered. Ms. Swan noted the staff who had worked very hard on these determinations, specifically Chris Ross, Jim Hutzelmann, Erin Lynam, and Erika Webb.

## **V. REGIONAL MASTER PLAN IMPLEMENTATION PROCEDURES**

Ms. Swan noted that there are three parts to discuss under Regional Master Plan Implementation Procedures. First is the issue regarding the WQMPs. Chairman Weingart noted that there will be two types of reviews: one will be consistency determinations for another state agencies and one will be final decision of the Highlands Council. He noted the time that the Council has spent reviewing WQMP. He recommended delegating the consistency determinations for NJDEP's WQMP reviews and water allocations permits to the staff.

Ms. Letts stated that she liked reviewing the staff's recommendations as it was informing. Mr. Cogger stated that he doesn't believe that it is necessary. It was noted that the Council has not done

anything but agree with the staff recommendations. Mr. Schrier stated that he also believes that it is informative to review these consistency determinations. He believes that there is a value in reviewing the WQMP. Mr. Cogger recommended that a committee be formed involving those interested in reviewing the WQMPs. It was noted that Ms. Swan contacted the Pinelands regarding their process for this. She explained the process and the organization of how the Pinelands handles the review of WQMPs.

Ms. Carluccio stated that it is interested in what the Pinelands is doing. She expressed the differences between the inconsistencies the Highlands Council finds versus what the Pinelands finds. She believes that the Council has a responsibility to review these WQMPs. It is important the Council deliberate on the findings because there are issues that will come forth regarding consistency. Reviewing these also broadens the knowledge of the Council as well as the towns on these plans. Even though they are only advisory, these reviews are still very important. Removing the review from the council, would make it seem less important and less of an important responsibility of the Council. She also noted that it is important that the Council hear public comment. If the public and applicant are going to comment it would be awkward for the Council not to review it.

Mr. Cogger noted that when Mr. Dillingham stated that new information brought in during a comment will not affect the consistency determination. Mr. Cogger noted that there is time lost in simply reviewing the staff recommendation and moving it. So far, all that has been done is to duplicate the work the staff has already done and move it forward. There was discussion about whether the Council should review the WQMPs or delegate it to the staff or a subcommittee. Ms. Pasquarelli noted the importance of the council reviewing them. Mr. Alstede noted that the process will now be objective about whether the aspects of the project are consistent or inconsistent.

Mr. Schrier noted that at the Pinelands, during a meeting regarding the project, there is communication about what can be done for consistency. He noted that having a recommendation from the staff in the form of a letter will help in guidance, and he believes that this could be useful. Mr. Dillingham noted that the WQMPs are a key part of what determines what happens on the land. He believes that is important for the Council to review it. Mr. Peterson recommended that comments be limited in time.

Ms. Swan noted that the staff will be doing more than simply the consistency determinations. She pointed out that the staff has delivered on the date stated. She expressed that the reviews are objective. They are consistent or they aren't. More than one meeting per month will be necessary. She spoke of the different aspects that will require both staff and Council review. Mr. Schrier asked about if it is possible to simply accept the staff recommendations on a trial basis and see that if it works. Mr. Dillingham and Ms. Pasquarelli asked if the trial could go the other way. Ms. Carluccio stated that the Council's review today actually didn't take much time.

*Mr. Schrier introduced a motion to allow the staff recommendations to stand without Council review. Mr. Peterson seconded that motion.*

Mr. Alstede asked what would happen if a Council member has a question. Ms. Swan stated that the documents will be provided ahead of time and that she may be contacted if there is a question. Chairman noted that in the past, regarding WQMPs, the Council has always accepted the staff's recommendations. Ms. Letts noted that the Council will not be well informed on these WQMPs.



*VOTE: Mr. Peterson, Mr. Schrier and Mr. Cogger voted in favor. All others were opposed to the motion. The resolution did not pass.*

Chairman Weingart stated that the Audit, Personnel, and Budget and Finance Committees will remain and that all other issues will be reviewed by a full Council.

## **VI. CONSIDERATION OF RESOLUTION - Procedure for Redevelopment Area Designation (voting matter with public comment)**

On June 16, 2008, the Highlands Council released a revised procedure for the designation of redevelopment areas in the Preservation Area, along with a summary of changes from the draft procedures of May 2007 and the draft impervious surfaces method of February 2008, based on public comments received. Comments were received by July 16, 2008. A summary of public comments, proposed Council responses and a final procedure have been provided for Council review. Staff recommends adoption of the procedure. She noted that these are for the Preservation Area – as this is a two step process. In terms of the Planning Area, the Council will be doing both sides of the equation.

*Mr. Schrier moved the motion to approve resolution, Ms. Letts seconded the motion. Ms. Calabrese was absent.*

Mr. Dillingham discussed the definitions regarding Highlands Redevelopment. He noted that it should be articulated that the “purpose language be expanded”. Specifically, that Redevelopment sites act as growth areas and that the purpose is to focus or concentrate growth within these areas so that they do not occur in other inappropriate areas. He is concerned about having high density growth surrounded by sprawl. Also under 3 on page 9 he stated that it is important to note that the Council may impose regulations in order to make ensure compliance and as consistent with the RMP as necessary. Chairman Weingart recommended making it clear in the beginning, in the scope section. It was noted that the definition for Highlands Redevelopment from the RMP will be used. There was additional discussion on how to properly define the redevelopment areas. Mr. Dillingham stated the need to discuss why the redevelopment areas have been designated and why they are appropriate. Ms. Swan explained that a process needs to be established for each area.

Ms. Carluccio noted that under the purpose and scope, it should be clarified that the goal for the brownfields and redevelopment areas are to be viewed as to enable preserving the environmentally critical and sensitive areas. She also stated that the Smart Growth definition seems to imply less environmental protection. These redevelopment areas will have lower standards, but that the RMP will still be applied.

Ms. Carluccio asked about the flow chart and asked about the statement “70% contiguous parcels”. Ms. Swan gave an example. Dr. Van Abs suggested a language change to 70% of the land affected by contiguous parcels. She expressed that the issues surrounding defining impervious cover has not been flushed out. Care needs to be taken regarding impervious cover and particularly regarding 70% of a parcel versus 70% of the land.

*Ms. Kovach left the meeting.*

It was explained that these Procedures will be consistent with the Plan but different than what is in the Plan. Mr. Dillingham offers the amendment that on page 3, the sentence “the purpose of redevelopment is to...” To add at the end of the sentence “to concentrate growth, accommodate development which might otherwise occur in areas inconsistent with the RMP and advance opportunities for affordable housing...”

Ms. Carluccio seconded. Ms. Pasquarelli asked if this would also address contaminated sites. It was discussed to add “rebuild, restore or enhance” to the same sentence.

Chairman Weingart asked for a vote on the amendment and the amendment failed. There were other suggestions which also did not pass by majority. Ms. Letts asked what would trigger this redevelopment designation process. Ms. Swan gave examples and explained when it would occur.

#### **PUBLIC COMMENT:**

**Mark Zakutansky:** He noted that these procedures seem to have the Council assists people in developing without public input. He made suggestions about areas that should have more public input. He noted issues with some of the definitions (including redevelopment area, impervious surface). They would welcome any changes to the redevelopment definition – he gave specific recommendations. Regarding the definition of impervious surface, he believes that it provides too much latitude. Interested parties should include both the public and non-profit, not just applicants. Mr. Zakutansky made a suggestion for meetings; specifically to create an inquiry meeting where the public and non-profits can give input. Pre-application meetings should also allow an opportunity for nonprofits and the public to give input on redevelopment projects. He also asked that there be possibly a recording or minutes taken so it is easier to understand what occurred at the meeting. Also on page 9, he commented on recommendations that will be made to the applicant to make those publicly available. He believes that this will enable a truly transparent process.

Mr. Borden asked for second on this resolution – Mr. Peterson seconded. There were not enough affirmative votes for the issue, accordingly Chairman Weingart stated that this issue will have to be revisited.

#### **PUBLIC COMMENT:**

**Julia Somers, NJ Highlands Coalition** – In response to the WQMP reviews, the checklist is very helpful and informative. However, she asked that there be a process in which the public can access paperwork for review. Also, the notice of review of WQMPs – there needs to be better process for informing the public regarding when these meetings will occur and when the comments will be due.

**Elliot Ruga, NJ Highlands Coalition** – He offered the suggestion to make maps for each watershed and identifies them properly and is linked to the table of available water. This would make the RMP more user friendly. He also noted that the RMP doesn’t note any follow up that will occur after a consistency determination. However, the information sent to municipalities this month states that they are to adjust language according to the items identified in the consistency determination. He stated that people may have different views as to what may achieve consistency.



If it is up to the applicant to review their projects for consistency, this could have negative effects. The Council should do a final review to ensure consistency.

**David Shope** - He expressed that he finds the Budget to be insufficient, as there are no subheading. Regarding resolution 11a – he spoke about the numbers regarding septic flow. He finds them to be low and the analysis inadequate. He stated that he feels bad for the homeowners. Mr. Shope believes that the deed restrictions are unfair.

**Monique Purcell, NJ Department of Agriculture** – Regarding the WQMP amendment process, she asked that the Council and NJDEP provide clarity regarding the impact of Executive Order 114. She stated that now the County Plans have been adopted, these should be reviewed rather than project by project and asked that after these plans are adopted, what would be an amendment that would trigger EO 114. She noted that there will be an enormous amount of work before the Council.

**Joy Farber, Office of Smart Growth** – She thanked Ms. Swan and Mr. Borden for their presentation yesterday before that State Planning Commission. The Office of Smart Growth complemented the work of the staff. They have received the petition for endorsement of the plan. She spoke about the letter going to municipalities regarding COAH and the appropriate regulations. She asked to be involved in the process of creating this letter.

Chairman noted that the next meeting is October 16<sup>th</sup> at 4pm. Ms. Pasquarelli noted that she didn't vote on the Budget – but she did want to abstain.

Mr. Schrier moved the motion to adjourn.

### 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.

Date: 10/3/08

Name:   
 Laura C. Forrest, Administrative Assistant

**Vote on the Approval of these Minutes**

	<u>Motion</u>	<u>Second</u>	<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						✓

**Vote on the Approval of  
these Minutes**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Schrier	_____	_____	<u>✓</u>	_____	_____	_____
Councilmember Vetrano	_____	_____	_____	_____	_____	<u>✓</u>
Councilmember Way	_____	_____	_____	_____	_____	<u>✓</u>
Councilmember Whitenack	_____	_____	<u>✓</u>	_____	_____	_____
Councilmember Weingart	_____	_____	<u>✓</u>	_____	_____	_____



**PUBLIC COMMENTS SUBMITTED**

**Comments for the September 18, 2008 New Jersey Highlands Council Meeting**  
Elliott Ruga, New Jersey Highlands Coalition

1. I offer the following suggestion to help make the RMP friendlier to all users: A map that outlines each of the 183 subwatersheds in the Highlands and identifies them by their hydrologic unit code. By providing such a cross reference, one would have a geographic reference to the Water Availability table in the Technical Report Addenda and a better geographic orientation as to the opportunities and limitations on projects, municipalities and counties per the Land Use Capability series of maps. For example, looking at the Water Availability Map-- the HUC-14 in the central Highlands, halfway between I-80 and I-78, shaded medium blue and bordered north and south by green HUC-14s, what subwatershed am I looking at?

2. The Regional Master Plan does not specify what, if any, follow-up or further actions are required after the Council has made a Consistency Determination to approve with conditions, or deny a project. However, in both the Basic Plan Conformance and Plan Conformance documents that were included in the information packages sent to all Highlands municipalities earlier this month, conforming municipalities are instructed to amend project application checklists to include the following language:

“For non-exempt development applications having received a Consistency Determination indicating that specific revisions are required to achieve consistency, a certification from the applicant’s professional(s) affirming that the plans have been revised to specifically address the inconsistencies identified by the Highlands Council and to the best of his/her professional knowledge, they have achieved consistency.”

That’s it?

Consistency determinations are based upon interpretations of policy and facts. It is not a stretch to anticipate that an applicant may interpret policies and objectives quite differently than the Council and its staff. A tweak in a site plan may accomplish the applicant’s threshold for achieving consistency but upon



further scrutiny by the Council, that tweak may found to be entirely inadequate in correcting what the Council had found to be inconsistent.

If it is left entirely up to the applicant to police its adherence to the policies and objectives of the Regional Master Plan, the Council's own consensus-based and thoughtful judgments will be re-purposed at the pleasure of special interests. The results could be devastating.

The public has every reason to expect that projects found inconsistent with the RMP will be corrected to the satisfaction of the Council and only after project plans have been resubmitted (preferably in a digital format, of course) and judged by the Council and not by the applicant, to be consistent per the Council's initial intent and findings.

I certainly don't rule out the possibility that the language I have processed is not in sync with the Council's intent. If such is the case, I more than welcome your clarification.