

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

PRESENT

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

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 66th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:08 pm.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

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

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF APRIL 10, 2008

Mr. Schrier introduced the motion to approve the minutes. Mr. Cogger seconded it. All members present voted to approve. The minutes were APPROVED.

CHAIRMAN'S REPORT

Chairman Weingart stated that the proposed discussion of a resolution addressing the issue of closing State parks was not on the agenda due to recent budget discussions. He stated that he had directed staff to draft a letter supporting the need to keep the Highlands Region parks open to the public. He also commented that the staff is drafting a letter to the State Ethics Commission regarding conflicts of interest in order to seek clarification on that issue.

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan reported that since the meeting, the Voorhees contract for transportation planning had been executed. She also stated that the staff has received numerous inquiries from Highlands municipalities regarding the available grants for the Initial Assessment program for Plan Conformance and the TDR feasibility grant program. Grant information has been sent to all municipalities regarding these programs via mail. Ms. Swan then listed towns that have contacted the Highlands Council regarding their interest including: Bedminster, Tewksbury, Hampton Borough, Sparta, Mount Olive, Morris Township, Bethlehem, Greenwich, Oakland, Town of Clinton, Holland, Bloomsbury, Washington Township, and Washington Borough.

Ms. Swan then reviewed the informational meetings that have taken place with the Township of Morris, Oakland Borough, Holland Township, and Washington Borough. There was also a meeting with Green Acres regarding priority property acquisition methodology, and a meeting with the Department of Agriculture and State Agricultural Development Committee in which they offered suggestions and supported the staff's methodology. On April 18th, the Regional Plan Association had a conference and the staff did a presentation on the Regional Master Plan with an emphasis on the use of technology and the sharing of information.

COMMITTEE REPORTS

Audit Committee – The Chair of the Audit Committee, Ms. Calabrese, announced that the Committee met immediately before the Council meeting and agreed that the bid for Audit services be awarded to Mercadian, the bidder that had been recommended by the Audit Evaluation Committee. It was discussed that the recommended bid was \$28,000. The Budget would reflect this amount.

CONSIDERATION OF RESOLUTION – APPROVAL OF CONTRACT FOR AUDITING SERVICES

The motion to approve was introduced by Ms. Calabrese and seconded by Mr. Dillingham. There was no public comment. All members present voted to approve. The resolution was APPROVED.

REGIONAL MASTER PLAN DISCUSSION

Ms. Swan began the discussion with a PowerPoint presentation highlighting revisions and clarifications in the Regional Master Plan.

a. Critical Habitat

Ms. Swan noted changes to Chapters II, IV, and V which clarify and add concepts, as well as address technical issues. She explained that in Chapter II, the Analysis of the Highlands Region, there were changes for consistency with the introduction to Chapter IV as well as a clarified section on the delineation of Critical Habitat.

She went on to discuss the Critical Habitat Goals, Policies, and Objectives (GPOs) and the clarifications that were made to this section. Specifically, she highlighted the definition of Significant Natural Areas, the use of Critical Habitat Conservation and Management Plans, the goal of developing a Critical Habitat Conservation and Management Plan, as well as the requirement of site-

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

by-site development applications in municipalities with unapproved Critical Habitat Conservation and Management Plans. There were also clarifications on the policies regarding guidance documents, low impact management practices, and periodic monitoring of conservation easements, and the definition for habitat value.

Ms. Swan then discussed the Critical Habitat Program and the use of Critical Habitat Conservation and Management Plans within this program. She explained how the Highlands Council will be providing guidance to municipalities during this process. The use of standards set forth by the Council-approved Critical Habitat Conservation and Management Plan will be a condition of local approval and all development must employ low impact best management practices if any disturbance is allowed.

Mr. Dillingham stated that the provision regarding scientific knowledge needs to reflect stated science in the literature. He also commented that any protocols which are in place should be utilized in the Critical Habitat Program. He recommended that the Council use local knowledge and that parameters be set for the science that is used in this program. Ms. Carluccio would like to see an example of a completed plan and Ms. Swan stated that this would be available after July 17th.

b. Lake Management

Ms. Swan continued her presentation with a discussion on Lake Management GPO changes. There was clarification regarding the distinction between Lake Community Sub-zones and the undeveloped Lake Management Areas which allows for different standards. She explained that the Council will be coordinating with lake commissions and associations. Within the changes to the Lake Management GPOs, the importance of historic and cultural resources within lake communities will be highlighted. In order to avoid harmful secondary impacts, clarification was provided regarding failing septic systems and the need for updated treatment.

c. Steep Slopes

Ms. Swan then presented information on Steep Slope GPOs and how they have been amended and clarified. Specifically, there was language added regarding exceptions for linear development within some steep slopes. She continued to discuss that language regarding waivers was deleted in this section but that there will be a cross-reference to the new consolidated waiver language.

Mr. Alstede questioned the Landscape Version 3 Map that is being used. Dr. Van Abs and Ms. Lynam clarified the details of the Landscape Version 3 Map. Then Mr. Borden explained the legal basis for the use of the Landscape Project.

Ms. Letts asked whether the Council will be providing model ordinances to municipalities and Ms. Swan explained that they will provide standards that can be used in existing ordinances and will also provide some sample ordinances.

Mr. Alstede mentioned that the requirements under Critical Habitat may be an issue when towns consider Plan Conformance.

Deborah Pasquarelli joined the meeting.

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

Mr. Dillingham stated that the methodology and science are accurate and he also clarified, as did Ms. Carluccio, that it is the Council's charge to protect habitat and endangered species. Chairman Weingart stated that the Council should be focused on specific language and concept changes rather than just making broad comments. Ms. Swan pointed out, in response to Council comments, that Critical Habitat areas can be adjusted with sufficient documentation and support.

d. RMP Updates

Ms. Swan continued her presentation with a discussion on the RMP Updates program in the Regional Master Plan. She explained that the RMP Updates Program has been separated from the Adjustments Program for clarification. There are new objectives added regarding the exchange of factual information. She stated that all RMP Updates will be publicly available.

There was Council discussion about how this process will be developed and who will be reviewing and approving that process.

Erik Peterson joined the meeting.

e. Housing Program

Ms. Swan then presented on Housing and Community Facilities GPO changes. She discussed the clarification on the goal for affordable housing, the concept of preferred locations for development, and the community facilities policy discussion. She then outlined the affordable housing policies and the provision requiring that municipalities meet their constitutional obligation regarding affordable housing. The Housing GPOs require that conforming municipalities adopt a housing element, a fair share plan, and necessary implementation ordinances to meet the resource protection requirements of the RMP and the constitutional obligation. She explained that the Affordable Housing Program has been updated to reflect any changes or clarifications. Information on available assistance for eligible projects has been added as well.

Ms. Pasquarelli questioned where in the program it is clarified how the RMP and related resource protection standards may affect municipal obligations. She also stated that she doesn't understand what municipalities are supposed to do when they cannot meet both COAH requirements and requirements in the Highlands Regional Master Plan.

Ms. Swan explained that Council packets contained an updated paper on this issue as a result of Council briefing calls.

Mr. Borden clarified that COAH has not yet considered the implications of the Highlands Regional Master Plan, as it has not yet been adopted, but that the Highlands Act requires that COAH consider the RMP. He explained that COAH's proposed regulations allow for adjustments for resource protection and utility capacity. He stated that the New Jersey Supreme Court has made it clear that believes that environmental protection can be met along with the provision of affordable housing. Mr. Borden then explained that the Council staff will assist municipalities with doing a local analysis.

Ms. Pasquarelli stated that she believes the process in determining the fair share obligations as stated in COAH rules is inconsistent with what Mr. Borden has stated. She explained that she believes that COAH's rules only allow projection to be adjusted upward and may not be lower than COAH's

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

projections and she asked for Mr. Borden and the staff to look into this issue. She then expressed her concern that this issue may go to court at the cost of local residents. Ms. Pasquarelli then asked about the timing of the release of the buildout analysis and Ms. Swan stated it will be completed in June and emphasized that it will be a regional analysis. Ms. Pasquarelli added that the buildout analysis is essential.

Chairman Weingart stated that his understanding was that towns, if they believe that the COAH projections are too high, have the ability to go to COAH to request an adjustment. Ms. Swan explained that the municipal buildout analyses will be done with the towns during Plan Conformance to assist conforming towns with any adjustments.

f. Water Quality Management Planning (WQMP)

Ms. Swan then presented the issues regarding consistency determinations for WQMP amendments. A staff recommendation was presented that the Council continue to apply the standards in the RMP to limit the use or expansion of wastewater or water supply infrastructure for non-conforming municipalities and to specify that the septic density thresholds in the RMP will not be used for consistency determinations for non-conforming municipalities. It was then clarified that where the NJDEP requires adoptions of municipal ordinances for resource protection, the RMP resource protection standards will be applied and all other relevant RMP requirements would be provided as recommendations.

Mr. Borden discussed the background regarding WQMP amendments as contained in his legal memo to Council. He stated that the septic density requirements in the RMP are more stringent than the NJDEP requirements based upon the more detailed analysis of nitrate concentrations in the Highlands Region. He then stated that this issue is a policy choice and that the Council's direction regarding the staff recommendation was needed. He stated that the Council has previously used the RMP to limit the use and expansion of wastewater and water supply infrastructure in non-conforming municipalities. However, the Council had yet to confront the issue of how the septic density thresholds in the RMP will be used for consistency determinations for non-conforming municipalities. He explained that the staff recommendation was based upon the voluntary nature of Plan Conformance for municipalities in the Planning Area. Dr. Van Abs explained that there are significant differences in the septic densities between NJDEP's rules based on 2 mg/L and the more stringent thresholds used in the Protection Zone and the Conservation Zone within the Highlands Region.

Ms. Pasquarelli asked if the Council members could receive a copy of the PowerPoint presentation and Ms. Swan stated that this will be done and added that the presentations are routinely posted on the Council website after the meeting.

Mr. Borden clarified that the Council has the authority to use the septic densities in the RMP in their consistency determinations for WQMP amendments. Mr. Dillingham discussed the authority of the Council and stated that he did not agree with the memo or the recommendations of the staff. He believes that the Council should use the more strict standards because they are based on a sound scientific analysis. He stated that lessening the septic system requirements will cause more damage to the groundwater and that will be going against what the Council has been directed to do by the

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

Highlands Act. He recommended that the septic requirements in the RMP be included for all municipalities.

Ms. Carluccio stated her concerns about the water quality rules. She brought up the concern that there will be pressure on towns to adopt weaker protections. She believes that the Council is starting to go against itself on some of its policies. She thinks it will allow more nitrate pollution. Ms. Pasquarelli pointed out that the Highlands Act directs the Council to protect resources, not to focus on Plan Conformance and while the Council would like to have the towns conform, the Council needs to protect the resources in the Highlands Region.

Chairman Weingart questioned the timing of adopting this recommendation and if it would cause an issue with towns who had already created a plan. Ms. Swan explained that this has already been discussed and will not be an issue. There was discussion on how adopting this recommendation would affect the towns and their decisions on Plan Conformance. It was brought up that the Council needs to protect water and other resources and not focus solely on Plan Conformance.

After a straw vote on the issue, Mr. Weingart stated that there was not a consensus on the staff recommendations. Mr. Weingart then stated that, given the lack of consensus, that counties such as Somerset County be advised that they should analyze the issue using both the septic density requirements in the RMP as well as the standards in NJDEP's rules. Chairman Weingart stated that the Council will return to this issue in the future and would like to be presented with more information from the staff.

Ms. Letts questioned the phrase "growth area" in the Housing program and Mr. Borden explained that the term was used by the New Jersey Supreme Court. Ms. Letts asked for clarification on growth areas in the RMP and agreed to Ms. Swans's suggestion that it be specifically stated in the RMP that this term comes from the Supreme Court's Mount *Laurel* decisions.

PUBLIC COMMENT:

JULIA SOMERS, NJ Highlands Coalition – Ms. Somers recognized and congratulated Ms. Pasquarelli for her recent planning award. She discussed the importance of standards in the RMP and pointed out that they are hard to find within the document. She also brought up the concern that it is hard to see the proposed changes in the documents presented. Ms. Somers expressed her disappointment in the weakening of the septic standards and believes that it is abandoning the Planning Area. She stated that this will have a profound effect on what happens with COAH and will send a mixed message to the public. She supported the effort of having NJDEP harmonize with the Highlands' rules, but also stated she believes this will be difficult. Lastly, she discussed a property in Harding that is habitat for wood turtles.

DAVID SHOPE, Lebanon Twp – Mr. Shope stated that he wants to see the peer reviewed study with health hazards of nitrate standards. He discussed Peregrine falcons and where they have nested. He stated that he thinks that exemptions are being removed from the plan. He explained that the Highlands Act speaks of economic viability, just compensation, and agricultural viability but none of this is being discussed.

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

MONIQUE PURCELL, Department of Agriculture – She has concerns about critical habitat; for example Objective W, and the fact that there will be no way to meet requirements except through waivers. She explained that there needs to be some flexibility in the RMP. She is concerned with some of the objectives as they will tie the hands of the Council, and they will not be able to allow projects that may be beneficial.

WILMA FREY, NJ Conservation Foundation – Ms. Frey stated her support for Council questioning the staff recommendation on septic density standards to be applied in the WQMP. She pointed out that the Highlands Act was passed to protect the critical water supply for the whole region, not just in the Preservation Area.

DAVID PEIFER, ANJEC – Mr. Peifer expressed his interest in the septic density issue and urged the Council to use their power for greater protection of water resources. Regarding COAH issues, he believes that with the process of the 3rd round rules, it is going to be hard to get municipalities to focus on Plan Conformance. He expressed that the Council needs to take an advocacy roll to protect natural resources and that going through the courts is not the proper way. He then spoke about the section on Clusters and stated that he was unable to understand these provisions and recommended that the staff use the readability and grade tests in the word processing program. He had run some passages with this program and found problems with the reading ease. He recommended working to make the plan easier to read.

HELEN HEINRICH, NJ Farm Bureau – Ms. Heinrich commented that if the Council insists that Somerset County recommend its towns to use the septic density, they will be automatically down-zoning those areas. She explained that the Act is about water but also calls for better municipal planning. She recommended that the public be able to contribute at the time an issue is raised during a Council meeting. She also stated that changes should be highlighted to make them easier to understand. In regards to Critical Habitat, she mentioned that they disagree that it has a scientific process and proper support and believes that the maps are incorrect.

MARIANNE HARRIS – Morris County Trust for Historic Preservation – Ms. Harris expressed concern that the cultural resource issues haven't been handled or even brought up. She did note that there seem to be more additions of references to historic preservation in regards to the comments they submitted. She stated that the history section is very weak and so is the plan to protect cultural resources. She said that there needs to be a rewrite of these sections by someone who is experienced in these areas.

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 24, 2008

Mr. Weingart stated that the next meeting will be in on May 1st at 10 am. A motion was made to adjourn and the meeting was adjourned.

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: _____

Name: _____

Laura Forrest, Administrative Assistant

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



ASSOCIATION OF NEW JERSEY
ENVIRONMENTAL COMMISSIONS

Comments submitted at Highlands Council
Meeting on April 24, 2008 by Dave Peifer,
ANJEC Page 1 of 8

ANJEC Advisory Notes

“Issues for Further Council Discussion”

**Prepared by: David Peifer
Highlands Project director
April 2008**

ANJEC has prepared the following “Advisory Notes” to assist the Council in its task of finalizing the Highlands Regional Master Plan. ANJEC provides these notes in the spirit of constructive criticism. ANJEC has prepared this information on its own volition to assist the Council with the “Issues for further Discussion” that the Council has identified. The Association owns no land in the Highlands Region. Preparation of this document is a general part of the Association’s Smart Growth Planning Project, funded in part, by the Victoria Foundation.

Purpose and Intent

ANJEC is primarily concerned with the implementation of the RMP at the municipal level. With this focus in mind, issues of clarity, acceptability, equity, and efficient administration were primary considerations. Although substantive or factual issues are also treated, the overall objective is to assist the Council in its preparation of an effective RMP that has local “buy-in”, is well received and that will provide local municipalities with the tools needed to achieve the goals of the Act.

I. **Clarity:**

- *The RMP is full of imprecise, confusing and misleading language, exclusive of the content.*
- *Clarity of expression is a minimum requirement of the RMP.*
- *Use of the commonly available readability tests provided in Microsoft Word can identify difficult to understand sections and display the grade level needed for comprehension.*

The RMP is primarily a communications document that must serve the needs of the public, municipalities, and the Council itself. Thus, the language used must be clear, not only to expert users but to a variety of users. Most reviewers that have struggled with the massive RMP document and the Technical Reports have come away with a rather poor understanding of exactly what municipalities should do. Many readers have reported after making a good faith effort to understand the documents they cannot tell what the RMP says, let alone what it means.

Investigating these problems has led to the following observations.

1. At many points, the text does not contain complete sentences, has poor sentence structure or improper use of grammar.
2. Complicated concepts, sometimes unrelated to one another, are “conflated” in critical passages, especially in the Goals, Policies and Objectives.
3. The writing is generally not easy to read.
4. The writing level is well above the expected audiences’ levels of comprehension.

Item one is a traditional writing problem that can be cured by careful editing. Item 2 is more difficult to address in that the document is massive and interrelated. However addressing items 3 and 4 yields some interesting observations.

Microsoft Word contains two widely used and accepted tests to evaluate readability of a document. These tests are widely used in the communications industry and by government agencies, including the Department of Defense. They can readily be applied to text under development.

The first is the “Flesch Reading Ease Test”. The writer can easily run the test and obtain a readability score number. Higher numbers indicate that the document is easier to read. A document with a score of 90-100 could be understood by an 11 year old. A score of 60-70 could be understood by 13-15 year olds. The Reader’s Digest generally has a score of 65, Time Magazine, 52 while the Harvard Law Review scores in the low 30’s.

The second test is the “Flesch-Kincaid Grade Level Test”. The writer can easily run the test and obtain a number, which indicates the grade level to which the document is written. For example, a result of 12 indicates that the reader would need to have a high school education to comprehend the document.

To this point, this document has a Flesch Reading Ease rating of 42.9 and a Flesch Grade Level rating of 11.4. This means that the document is somewhat more difficult to read than Time magazine and could be understood by a high school junior.

ANJEC tested a portion of the RMP selected at random from the Program Summary section of the RMP Program: Cluster Technical Paper. This section appears on p. 246 of the RMP in the Program Summary section. The tested text is:

“The use of clustering for new development and particularly residential development, is a key mechanism for development siting that can reduce the environmental impacts of development and minimize the potential for conflict between the development and neighboring agricultural activities”.

The test results for this passage were a reading ease number of 0.0(!) and a grade level of 25.9, more than twice that of a high school graduate. When ANJEC re-wrote the passage attempting to keep the meaning intact the scores improved:

Clustering development, particularly when applied to residential projects, can reduce environmental impacts and minimize conflicts with farming”.
Scores: 0.0-19.4. Still too difficult

Arranging new buildings in clusters, especially residences, can reduce environmental impacts and minimize conflicts with nearby farms.
Scores: 10.4-16.0. Better, but still difficult, requiring a college education

Arranging buildings in a cluster on a building site can reduce harmful environmental impacts and prevent conflicts with farming.

Scores: 36.1-12.9. Readable by a high school graduate

Placing buildings in a cluster on a site can reduce harmful environmental impacts and prevent conflicts with farming”.

Scores: 42.8-11.7. Most readable, approaching Time Magazine and can be understood by a high school graduate.

The same problems extend to the Goals, Policies and Objectives where clarity of expression is even more critical. For example, Policy 6D3:

To encourage owners of lands which are eligible for exemptions under the Highlands Act to voluntarily offer their land for acquisition, participate in the TDR program or engage in contiguous or non-contiguous clustering in cooperation with exempt landowners, and comply with standards and criteria which protect the land and water resources of the Highlands Region from any adverse impacts.

Scores: 0.0-29

Several re-write attempts resulted in a best score of 26.5-13.1, still quite difficult to read. We would observe that the Policy appears to relate primarily to the treatment of exempt lands, involves the TDR program, land acquisition and clustering although it is contained in the section on Cluster Development. This illustrates the “conflation” of issues problem. The Council could reassign all the policies on exempt properties to the Landowner Fairness section or break down the ideas into their appropriate subject areas, for example:

Owners of exempt properties are encouraged to voluntarily preserve their land by sale or the sale of a conservation easement. (Land Preservation policy)

Scores: 34.2-13.4

Owners of exempt properties are encouraged to sell their development rights by participation in the TDR Program. (TDR policy)

Scores: 35.3-12.5

Owners of exempt properties are encouraged to participate in contiguous or non-contiguous clustering with owners of other exempt properties.

(Clustering)

Scores: 9.4-16.6

Conclusion: The RMP is full of imprecise, confusing and misleading language, exclusive of the content. Municipalities must address content during conformance. Clarity of expression is a minimum requirement of the RMP. Use of the commonly available readability tests provided in Microsoft Word can identify difficult to understand sections and display the grade level needed for comprehension. Use of these test will call out areas needing re-write and guide the approach taken.

II. Acceptability:

- ***Municipalities will continue to assert their home rule authority during conformance.***
- ***Some approaches, such as clustering, advocated in the RMP have been previously tried and rejected by municipalities.***
- ***The Council must avoid “loaded terms” that elicit unwanted responses from municipalities and clearly explain “terms of art” used in the RMP.***
- ***The Council should anticipate considerable difficulty in gaining acceptance of key RMP programs that exceed municipal boundaries, increase perceived government intrusion” of have been outside of the traditional planning process.***
- ***Other key concepts of the RMP such a capacity allocation must be carefully controlled by clear language and stringent policies.***
- ***Concepts such as using HUC 14 areas a planning units will cause initial confusion and resistance.***
- ***Unless the Council clearly articulates what the public trust doctrine means in the context of the Highlands Act and the RMP, important advantage will be lost.***

The existing planning and zoning framework in the region is highly variable. This variability results from the tradition of local control and the manner in which elected and appointed officials create regulations over time. Local control is a jealously guarded tradition among the region’s municipalities. Despite the fact that the power to control land use resides with the state legislature, delegated through the MLUL and recently modified by the

Highlands Act, municipalities will continue to assert their home rule authority. Changing this tradition will continue to prove difficult during conformance.

Importantly many municipalities have explored or tried various techniques that are recommended in the RMP, such as clustering. In some cases, the experience has not been positive and the technique was discredited and dropped. Municipal responses will vary, based on experience. Requiring or strongly encouraging these techniques will result in considerable resistance.

Because of these various histories, the language used in Council publications has the potential to trigger unwanted emotional reactions. Many terms used in the RMP have become “labels” and “code words” over the years of political process during which municipalities developed their ordinances and master plans. Conversely, professional planners and other policy makers, including the Council have developed various “terms of art” with specific and complicated meanings. When these words are used in the RMP, care must be taken to not only trigger unwanted response but to adequately and plainly explain the concept, in a manner acceptable to the municipality.

Overall, the “allowable reach” of government authority will be a background issue in all conformance negotiations. Because of the conservative social, economic, political and cultural traditions in the region, difficulties can be expected on issues that exceed a municipal jurisdiction or those that are unfamiliar to local officials.

Some examples include: contiguous forest protection, groundwater recharge protection, wildlife habitat protection, and watershed protection. These key RMP concerns commonly exceed municipal borders and are poorly developed in municipal planning practice. Some issues, such as the protection of scenic character and aesthetics have traditionally been viewed as being outside the reach of legitimate government control. “You can’t legislate esthetics” is a common refrain throughout the region. Overall, this resistance is ideological in nature. Attempting to address ideological objections which hide behind a mass of “rational” responses by the use of grant funding will probably not work.

Some success can be anticipated in the preservation area where conformance is mandatory. However, even in these situations, municipalities do not clearly perceive the “down side” of not conforming. Explaining the

consequences of not conforming while negotiating conformance and explaining its advantages will place Council staff in a very difficult position.

Other key concepts in the RMP, such as water allocation or capacity allocation will prove unfamiliar or unpopular with the public and local officials. Concepts such as using HUC 14 areas as planning units will cause initial confusion and resistance. Where programs call for allocation decision making, specific “bright line” objectives are called for, not only to guide municipalities but to control Council actions. The current “first come first served” allocation system will need to be controlled and redirected strenuously. It is precisely this existing allocation system that has resulted in the failure of municipal planning to protect the public trust.

The entire concept of the public trust, a fundamental underpinning of the Act, is poorly understood among municipal officials who have, in many cases, viewed the role of planning as the facilitation and management of development. Unless the Council clearly articulates what the public trust doctrine means in the context of the Highlands Act and the RMP, important advantage will be lost.

III. Equity:

- ***The Council must take a clear and proper position on the so-called equity issue and the takings question.***

Perhaps no term has been so distorted by public comment and inaction or lack of response by the Council than the term “equity”. It is important to remember that the Act does not use the term but rather speaks to fairness by the creation of a highly questionable (from a policy perspective) appraisal process, numerous exemptions, waivers, the TDR Program, and a land acquisition program.

What the council must establish is the meaning of the term in the context of the Act and the RMP. Is equity, as advocated by numerous commenter’s responses: “The money value of a property or an interest in the property in excess of claims or leans against it” or is it rather “Justice according to natural law or right; specifically; freedom from bias or favoritism.” The allegations of “taking” and the Council’s seeming fear of it have distorted the goals, policies, objectives, and programs of the RMP. The Council must take a clear position on the so-called equity issue and the takings question.

IV. Efficient Administration:

- *It is difficult to envision how the “re-aligned” planning framework engendered by the conformance process will function at the municipal level.*
- *Changes in the existing pattern of interaction resulting from conformance between municipalities and the Council, DCA, DOT, Green Acres and DOA must be specified.*
- *The Council must provide much more specific information about the resulting configurations of authority desired in the RMP.*
- *Prior to initiating the conformance process, the Council should identify those elements of RMP that are the initial and on-going responsibilities of the municipalities.*
- *Mandatory and optional conformance elements should contain standards and it should be clear what these standards are.*

An overall lack of clarity concerning municipal administration and inter-governmental relationships that would result from conformance is conditioning municipal responses. It remain unclear how the partnership between the Council and local government will work in practice. In addition, it remains unclear to most municipalities how conformance will influence their relations with COAH, (and other elements of DCA, such as the State Planning Commission), the NJ DEP, the NJ DOT, NJ DOA and Green Acres.

ANJEC recognizes that to some degree a period of “muddling” will be needed to establish clear relationships between and among these various entities. However, the Council must provide much more specific information about the resulting configurations of authority desired in the RMP.

Specific program element and the goals, policies and objectives of the RMP may require institutional and business management changes at the local level. The Council should identify those elements of RMP that are the initial and on-going responsibilities of the municipalities, prior to initiating the conformance process.

Although the Council has produced some guidance for municipal conformance, the actual quality and contents of required elements such as ERI’s and Master Plans remain unexpressed. It should be clear that standards will be applied and what these standards are.