

**NEW JERSEY HIGHLANDS COUNCIL
NATURAL RESOURCES COMMITTEE**

**CHAIR REPORT
FOR THE MEETING OF JANUARY 17, 2008**

On January 17, 2008, the Natural Resources Committee held a meeting at the New Jersey Highlands Council office in Chester, New Jersey. Notice of the meeting was provided on the Highlands Council's website. Council members present included the Committee Chair Tim Dillingham, Tracy Carluccio, Scott Whitenack, and Erik Peterson. The Highlands Council staff included Eileen Swan, Tom Borden, Dan Van Abs, Jim Hutzelmann, Erin Lynam and Chris Ross. The meeting was called to order at 8:35 a.m.

Mr. Dillingham provided an overview of the agenda items which included discussion of staff reviews of a proposed Water Quality Management Plan ("WQMP") revision (Asbury Farms/Hawke Pointe Golf Community) and two WQMP amendment proposals (Huntington Knolls and Canfield Builders Associates). Ms. Swan reminded the public that the Huntington Knolls and Canfield Builders Associates proposals were the subject of previous meetings. She noted that the Huntington Knolls proposal was discussed at the December 6th Natural Resources Committee (NRC) meeting, which resulted in a recommendation for denial, and was on the agenda of the December 13th Council meeting (though it was not ultimately discussed at that meeting). Upon reviewing the staff recommendation memo to the NRC, the Huntington Knolls applicant submitted additional material (a hard copy site plan, which had not previously been submitted to the Council) for the staff's consideration. The staff's subsequent review is the subject of this meeting. With respect to the Canfield Builders Associates proposal, Ms. Swan noted that it was discussed at the September 20th NRC meeting, but no recommendation was made based on the applicant's request to submit further information. Subsequent to that meeting, the applicant did submit additional materials for the staff's consideration. Further, staff reviewed the proposal against the November 2007 Final Draft Regional Master Plan (the previous review was against the November 2006 Draft Plan). The staff's subsequent review is the subject of this meeting.

Asbury Farms/Hawke Pointe Golf Community WQMP Revision

Turning back to the agenda, Mr. Dillingham asked the staff to present a summary of its review of the proposed Asbury Farms/Hawke Pointe Golf Community WQMP revision. Chris Ross directed the Committee members to the subject recommendation memo contained in their meeting packet. She explained that this is a proposed revision to the Upper Delaware WQMP and the Washington Township Wastewater Management Plan (WMP) previously adopted in 1999 by the NJDEP regarding the Asbury Farms/Hawke Pointe Golf Community in Washington Township, Warren County. She explained that revisions allow for changes to correct, clarify or update erroneous, unclear or outdated statements in areawide WQMPs, and that the NJDEP has determined that this proposal qualifies as a revision. This revision modifies the adopted amendment which approved a discharge to ground water of 82,000 gallons per day (gpd) for this project. Ms. Ross noted that the revision does not alter the total flow generated by the project, the boundaries of the approved sewer service area, or the development footprint – only the individual elements which contribute to the total flow are modified (i.e., removal of assisted living units but

increasing the number of age restricted units, etc.). Accordingly, Ms. Ross indicated that the staff recommends that the Committee concur with the proposed revision.

Mr. Dillingham invited members of the public to speak. Sylvia Kovacs, Warren County Environmental Commission, stated that the Commission has concerns that the site is underlain by limestone. Mr. Dillingham indicated that those concerns should be expressed in writing to the Council. Wilma Frye, New Jersey Conservation Foundation, stated that much of the proposed development has yet to be constructed and she believes that the Council should review the area that remains to be constructed against the goals, policies, and objectives of the Final Draft Regional Master Plan. Mr. Dillingham indicated that the Council will not be reopening historical approvals.

Mr. Dillingham indicated that the Committee would vote on this matter and forward its recommendation to the Council. Ms. Swan and Mr. Borden pointed out that based on a Council resolution regarding WQMP revisions that had previously been passed, the Executive Director can submit the Committee's recommendation to NJDEP after a Council call-up period. The Committee was unanimous in its concurrence with the staff recommendation. Mr. Dillingham instructed the staff to draft the recommendation letter to NJDEP. He also stated that the Council's Draft WQMP procedures should reflect this provision for WQMP revisions. Ms. Swan indicated that staff is continuing to revise the WQMP procedures based on public comment and that the staff will ensure that this revisions provision will be in the procedures.

Huntington Knolls WQMP Amendment

With respect to the Huntington Knolls proposal, Mr. Dillingham acknowledged the presence of the applicant's representative (Darren Leotti, attorney). He then asked the staff to present a summary of its most recent review. Erin Lynam stated that in early January, the applicant provided a hard copy of the site plan. She stated that the staff visually compared the hard copy site plan to the GIS review of the entire site parcel. Because an electronic copy of the site plan was not provided, Ms. Lynam indicated that all site inconsistencies with the Final Draft RMP were visually estimated. It was determined that the proposed development will significantly infringe on Highlands Open Waters protection area buffers, portions of steep slopes, portions of the riparian area, a high integrity forested subwatershed, and portions of mapped critical habitat. As a result of the site plan review, Ms. Lynam indicated that the staff recommends that NJDEP not approve this proposal because it remains substantially inconsistent with several of the goals, policies and objectives of the Final Draft RMP, and that modification of the plan to address these inconsistencies is impractical without submitting essentially a new proposal.

Dan Van Abs noted that the NRC Committee voted to recommend denial of this amendment to the NJDEP at the December 6, 2008 meeting. Based upon review of the site plan, the staff sees no reason to modify that recommendation. In addition to the resource conflicts that Ms. Lynam identified, Ms. Swan indicated that the site is located entirely within the Agricultural Resource Area and that the proposed site plan does not appear to cluster development on 20% of the site with an 80% dedication of the site to agricultures or natural resource open space, which is a policy in the Final Draft RMP. The proposed site plan indicates that the development footprint is approximately 30 to 35 acres (34 to 40% of the site). The proposed site plan indicates a dedication of approximately 32 acres (36% of the

site) to open space.

Mr. Dillingham invited Darren Leotti, the applicant's representative, to speak. Mr. Leotti indicated that while he had no issues with the staff assessment regarding the project's consistency with the Final Draft RMP, he did have several procedural concerns. He noted that construction had already begun and that the project had already received permits from the NJDEP. Thus, he felt that it was not appropriate for the Council to prevent the project from being built at this late date. He noted that the sewer treatment plant has reserved capacity. He asked that the Committee please recognize the long history of this project.

Scott Whitenack asked if the project had received all necessary municipal approvals and NJDEP permits. Mr. Leotti noted that the project has received all the NJDEP permits except the sewer permit associated with the WQMP amendment and that the construction at the site had already commenced. Dr. Van Abs indicated that with respect to the stream encroachment permit, there are conditions such that the permit is not yet valid. Condition #6 states that this permit does not waive the obtaining of Federal or other State or local government consent when necessary; because this condition has not been met, this permit is not yet valid and no work should be undertaken until such time as all other required approvals and permits have been obtained. Condition #25 states that there shall be no development until the proposed sewage generating structures have been found to be consistent with the appropriate areawide WQMP, which has not yet occurred. Mr. Leotti indicated that rudimentary site preparation work had been conducted, and therefore there had been no law violations. In response to Dr. Van Abs' question, Mr. Leotti confirmed that work activities to-date had been conducted in areas not affected by the stream encroachment permit.

Ms. Carluccio stated that the project is not consistent with the Final Draft RMP and she reiterated the inconsistencies that the staff had identified. She concurs with the staff recommendation.

Mr. Dillingham invited members of the public to speak. Michael Keady (Friends of Holland Highlands) spoke first. Following is a summary list of the issues raised by Mr. Keady:

- Supports the Act and the work of the Council
- Questions if all appropriate building permits were obtained
- Notes that the town initiated this project – they approached the applicant as a means to meet its Council on Affordable Housing (COAH) obligation
- Disagrees with NJDEP's decision to cut back C-1 stream buffers from 300 feet to 150 feet because the fields adjacent to the C-1 stream were mowed
- Disagrees with NJDEP's decision to subsequently permit encroachment into the 150-foot buffer
- Notes that the property had not been actively farmed for many years
- Hopes NJDEP takes any recommendations from the Council seriously

Julia Somers (New Jersey Highlands Coalition) indicated that on-site work began subsequent to the Highlands Council Natural Resources Committee deliberations.

Mr. Dillingham stated that he believed that there was nothing presented today that would

change the Committee's prior recommendation of denial to the Council. Mr. Whitenack stated that he was concerned that the applicant had their approvals in-hand and was led to believe by NJDEP that the project would receive full approvals. While he understands that there are many inconsistencies with the goals, policies, and objectives of the Final Draft RMP, he is troubled with the notion to automatically recommend denial without considering the approvals and project history. Mr. Whitenack pointed out that the town is behind the applicant and the project will assist in satisfying their COAH obligations.

Mr. Dillingham stated that he felt that the WQMP process should not be minimized, that it should not be viewed as an afterthought by applicants and municipalities. The perceived procedural problems should not undermine the Council's WQMP review process. Dr. Van Abs noted that it is problematic that municipalities routinely issue approvals prior to having an approved WMP. He also noted that the NJDEP should not be issuing final permits without prior WMP approval. Based on the sense of the Committee, Mr. Dillingham concluded this portion of the meeting by stating that the Committee's prior recommendation to the Council stands.

Canfield Builders Associates WQMP Amendment

Mr. Dillingham asked the staff to present a summary of its review of the proposed Canfield Builders Associates WQMP Amendment. Jim Hutzelmann directed the Committee members to the subject recommendation memo contained in their meeting packet. He noted that staff initially reviewed and prepared recommendations for consistency with the 2006 Draft RMP. Those recommendations were prepared in an August 14, 2007 memo, which recommended denial of the application. The findings were presented to the Natural Resource Committee at the September 20, 2007 meeting, but no Committee recommendation was made due to a request by the applicant for time to present more information. As a result of that meeting, the applicant did provide updated information regarding the scale and impact of the proposal, including a digital conceptual site plan and a report on wildlife habitat. Based on the new information provided by the applicant, the staff reviewed the application again in accordance with the goals, policies, and objectives of the 2007 Final Draft RMP.

Mr. Hutzelmann indicated that the staff still identified instances where the proposed development was inconsistent with the Final Draft RMP including steep slopes, open water protection areas, riparian areas, forest resources, buffers to vernal pools, critical habitats, prime ground water recharge areas, and water availability deficits. He noted that many of the conflicts (steep slopes, open water protection areas, vernal pool buffers, riparian areas, forest resources) can be resolved by reducing the development footprint in a limited manner from the current conceptual plan, and the applicant has indicated a willingness to do so. Mr. Hutzelmann noted that the staff recommends that the final site plan avoid these areas entirely and that additional requirements should also be imposed on the site design such as clustering, low impact design, and water conservation measures.

Mr. Hutzelmann also noted that several conflicts cannot be avoided by minor site design changes and should be subject to additional conditions. There is extensive wood turtle habitat (threatened and endangered species habitat) identified using Landscape Project Version 3 that cannot likely be avoided by minimal reductions in the development footprint. In response to this finding, the applicant has submitted a report that indicates that while

there is suitable habitat for wood turtle, they are not present on the site. Highlands Council staff cannot verify this conclusion without concurrence from the NJDEP. The NJDEP should evaluate the report and determine whether this conclusion is warranted.

Mr. Hutzelmann noted that there is a conflict with respect to prime ground water recharge areas that cannot be resolved due to its extensive area in the development footprint. He also noted that there are net water availability deficits in the source subwatersheds and additional consumptive and depletive uses would only be permitted with 125% mitigation in the source subwatershed. Because the site location is in a different subwatershed than the source wells, the applicant would have to arrange for the mitigation in the source subwatershed. However, based on a USGS aquifer model that the applicant references in their comments, the project site and the Alamatong Wellfield (in the source subwatershed) may be hydrologically connected. Under that conclusion, the additional water use required would be consumptive rather than depletive, would require significantly less recharge to reach the targeted 125% mitigation, and could be mitigated in the project area subwatershed.

Mr. Dillingham noted that based upon Mr. Hutzelmann's presentation, it appears that there are aspects of the project that can not be remedied. Dr. Van Abs replied that the issue related to the threatened and endangered species habitat is not definitive. The staff recommends that the NJDEP, as the source of the Landscape Project data, evaluate the report the applicant submitted and determine whether its conclusion is warranted, which could reduce or eliminate the level of inconsistency with the Final Draft RMP. Dr. Van Abs noted that with respect to net water availability, if the NJDEP, which has in-house expertise, determines that the two subwatersheds are linked, then mitigation is quite feasible. Thus, the prime recharge area inconsistency would remain the sole outstanding issue.

Ms. Carluccio stated that she is not persuaded by the applicant's threatened and endangered species report, as staff have pointed out in the recommendation memo that the people who conducted the survey did not enter directly upon Canfield Builders property. Dr. Van Abs indicated that the NJDEP, as the source of Landscape Project data, needs to judge if the report would warrant a change to Landscape Project data. Erik Peterson stated that, as he has indicated at previous meetings, he feels it is unjust that applicants must use Landscape 2.0 data and that the Landscape 3.0 data that the Council utilizes is still not available to the public.

Ms. Carluccio stated that the prime ground water recharge area issue is irreconcilable because the Final Draft RMP policy states that there should be no disturbance of prime ground water recharge area in the Protection Zone.

Mr. Dillingham invited the applicant's attorney, Mr. Glen Geiger, to speak. Mr. Geiger thanked the staff for reviewing the additional reports and data that were submitted. With respect to the threatened and endangered species report submitted by the applicant, he indicated that the people conducting the survey were given access to the entire site and he was not clear why they did not go on site, but that the public access ways do provide significant visual access. He noted that NJDEP had not raised threatened and endangered species as an issue in their review of the WQMP amendment. With respect to net water availability, Mr. Geiger noted that the project has a public water approval allocation. He asked that the Committee consider recommending approval of the amendment with

conditions. He indicated that the applicant is willing to avoid all resources identified by the Council staff including the 1,000-foot buffer on vernal pools. For prime ground water recharge, the applicant is willing to meet the 125% mitigation requirement working with NJDEP as appropriate.

Mr. Dillingham noted that the burden of compliance with the Final Draft RMP lies with the applicant. He does not feel that the Committee can make a recommendation of approval with conditions given the inconsistencies that cannot be remedied. He reminded the Committee members and the public that the Committee had not previously voted on this particular WQMP amendment, as it agreed to first allow the applicant to supply additional information.

Mr. Peterson stated that since the project is in the Planning Area, where the Council is in an advisory role, a recommendation of denial should not be made to the NJDEP. The Council should point out where there are inconsistencies, but should not recommend denial. He stated that the Council should not try to trump NJDEP now, especially since the RMP has yet to be adopted. Ms. Carluccio stated that the Council is charged to review WQMP amendments and make recommendations based on the goals, policies, and objectives of the RMP. The Council staff has done tremendous amount of data gathering and it is incumbent on the Council to make hard decisions.

Mr. Peterson stated that there is a perception in the general public that the Council is shutting down all development in both the Planning and Preservation Areas. If the Council starts issuing denials in the Planning Area, it will reinforce that misconception. He stated that the Council's actions are being watched carefully and Planning Area towns are deciding whether to opt-in or not; issuing denials in the Planning Area will not encourage towns to opt-in. Mr. Whitenack seconded Mr. Peterson's position. He noted that two of the four Committee members are asking for flexibility. Mr. Dillingham stated that he believes that the Council needs to be definitive and clear to minimize misconceptions. As the vote among the Committee members was split 2-2, it was agreed that this matter would be forwarded to the Council meeting later in the day without Committee recommendation. As the 10:00 a.m. start time for the full Highlands Council meeting was approaching, Mr. Dillingham indicated that it would not be possible to take public comments at this time, but he urged all those who wished to speak to do so at the Council meeting.

Prior to adjourning the meeting, Mr. Dillingham requested that staff prepare a formal recommendation regarding the use of the Landscape Project Version 3.0 data.

Mr. Dillingham adjourned the Natural Resource Committee meeting at 10:05 a.m.