

**NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF JANUARY 17, 2008**

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

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 61st meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:23 am.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

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

PLEDGE OF ALLEGIANCE was then recited.

CHAIRMAN'S REPORT

Chairman Weingart asked for a motion to approve the Minutes of December 13, 2007. A motion was made and seconded. Ms. Swan made one correction that the record should reflect that Tahesha Way, Debbie Pasquarelli, and Elizabeth Calabrese were absent from the December 13th meeting. The minutes were approved with two abstentions, Ms. Way and Ms. Calabrese.

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Mr. Weingart announced the dates for the three public hearings on the Regional Master Plan: February 6th at 4 pm in Morristown, February 11th in Paterson at 6 pm and February 13th at 6:30 pm in Glen Gardner. The details of all the hearings are on the Highlands Council website. He invited all Council Members to come and announced that the hearings would adjourn after everyone had had an opportunity to speak. He also mentioned that detailed written comments are encouraged.

Mr. Weingart indicated that Kurt Alstede will represent the Council at the Mt. Arlington train station opening on Sunday at 11 am.

Mr. Weingart then announced that he was reexamining the Council's committee structure and would welcome any input from Council members. He announced that the Personnel Committee will be meeting after the Council meeting today in Executive Session and that there will be an Executive Session for the Council to discuss matters in litigation. Lastly, he announced that the next Council meeting will be February 28, 2008 at 10 am.

Mr. Schrier asked why there was a court reporter present at the meeting and Mr. Weingart explained that one of the applicants, on Agenda item # 10, was preparing a transcript of the proceedings. There were no additional Council Members reports and Mr. Weingart asked for the Executive Director's report.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan described that the Council staff had been working on many issues since the release of the Final Draft Regional Master Plan (RMP) and our last meeting of December 13th, 2007. She indicated that copies of the RMP had been sent to all Highlands municipalities and counties and to the Governor's Office, all legislators and numerous State agencies. Also, all GIS files for the Land Use Capability Map Series are available on the website. She continued reviewing that the Property Search Tool had been updated and continues to be enhanced. See: <http://maps.njhighlands.us/>

Ms. Swan also noted that the updated Atlas had been moved to the 1st page of the website at the request of a Council Member and indicated that the Atlas shows the Highlands Region along with block and lot mapping and RMP zone overlays. See: http://www.highlands.state.nj.us/njhighlands/draft_nov_2007/atlas/atlas_grid_grid1.pdf

The RMP can also be downloaded from the website and information is also available on the website for ordering printed versions of the RMP. She also mentioned that the CDs are available for \$2.00 if picked up from this office and \$5.00 if mailed.

Ms. Swan reported that the Memorandum of Understanding amongst the Highlands Council, the State Planning Commission, and the Office of Smart Growth was executed after SPC and Highlands Council voted to approve. Other MOUs are under discussion with units of NJDEP including water supply, watershed management, and land use regulation as well as an additional MOU with COAH.

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With the assistance of the Council's Financial Consultant, the Council completed an analysis of accounts since the inception of the Council. Members of the Audit Evaluation Committee have been contacted to set up a meeting for the review of an RFP to solicit bids from the State list of accredited auditors to conduct an audit of Highlands's accounts since start up.

Ms. Swan noted work to advance the TDR program and development of a TDR bank. At a previous TDR Committee meeting, we committed to having additional public discussion on the TDR process. She noted that staff is continuing to work on the development of the TDR Bank Board and capitalizing of same.

The Comment and Response document for 2006 RMP is being finalized and process for evaluation of 2007 comments will be complete by end of comment period to assist Council in response.

In addition, a work plan to complete items committed to in RMP has been outlined by staff. This includes but is not limited to: Priorities for preservation, Plan Conformance and project review standards, Plan Conformance Grant Guidelines, amending and finalizing technical reports, Transportation programs, Guidelines for Critical Habitat conservation, forest conservation, and a build out analysis under the RMP. Ms. Swan notes that staff has also started a work plan to lay out future commitments for a science agenda.

Ms. Swan mentioned that the Budget and Finance Committee had met on January 10th to review the RMP budget and that Chair Cogger would give a report on that meeting. She then summarized the schedule of meetings as there have been numerous requests from agencies and municipalities.

Municipal and County Outreach:

December 14th – County Planners Meeting (Staff - Van Abs, Danis)

December 18th – Washington Borough Warren County information meeting (Staff - Swan, Borden)

December 20th – Town of Clinton to discuss Water Management Planning/grant (Staff - Swan, Borden, Van Abs)

January 7th – Jefferson Township informational meeting with Mayor and municipal representatives (Staff - Swan, Borden)

January 11th – Mt. Arlington informational meeting with Mayor and municipal representatives (Staff - Swan, Borden)

State and Federal Agency Coordination:

December 19th OSG and Highlands meeting to discuss Guidelines for Plan Endorsement for RMP (Staff - Swan, Borden, Van Abs, Danis, Webb, Haddock-Weiler)

December 20th meeting with Transportation Center to discuss Transportation Strategy for RMP (Staff - Swan, Borden, Van Abs, Danis)

December 21 OSG Smart Growth Policy Team in Trenton (Staff - Borden)

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January 8th – Meeting with DEP Divisions: Division of Water Supply, Division of Watershed Management and Division of Land Use Regulation to discuss issues relating to RMP and coordination of efforts between DEP and Highlands Council.

January 11th – Meeting with COAH to discuss MOU (Staff - Swan, Borden)

Stakeholder Coordination:

December 14th – Presentation on RMP to NJ Future (Staff - Swan)

December 18th – Society of American Foresters (Staff - Swan, Van Abs)

December 19th – NJ Highlands Coalition LANDS model (Staff - Swan, Borden, Keren)

January 7th – PlanSmart NJ met with (Staff - Swan, Borden, Van Abs) to discuss growth areas for Highlands

January 10th – NJ Highlands Coalition Natural Resources Comm. (Staff - Swan, Borden, Van Abs and Lynam)

January 15th – Meeting with Advance Group re: marketing strategy for agro-tourism grant for Sussex County

January 15th – Presentation to ANJEC for Environmental Commissioners and Municipal officials on RMP 75 people in attendance (Staff - Swan). She noted that subsequent to the ANJEC meeting, there have been four more requests for meetings.

Upcoming Meetings

January 17th – Informational Meeting Harding Township (Staff - Swan, Borden)

January 18th – Smart Growth Policy Meeting with OSG (Staff - Swan, Borden)

January 22nd – Informational Meeting Bedminster (Staff - Swan, Borden)

January 23rd – Informational Meeting Jefferson Township (Staff - Swan, Borden)

January 28th – Meeting with NJEIT to discuss TDR financing (Staff - Swan, Borden, LeJava and Council Chair Weingart)

January 30th – Presentation to Hunterdon County municipalities on RMP and Plan Conformance. (Staff - Swan, Borden)

Ms. Swan also mentioned that informational meetings had been the scheduled through March.

Ms. Swan introduced Judy Thornton, a new staff member, who has joined as a Principal Planner leading on Plan Conformance issues. She brings a wealth of experience in municipal planning.

Chairman Weingart asked if any Council members had any comments. Mr. Schrier asked if there were any substantive decisions being made in the conversations on MOUs with the various agencies. Ms. Swan commented that DEP had taken into consideration what was in the RMP when rules were created and that any other decisions would be brought back to the Council for decision making. Ms. Schrier also asked about primacy of one agency over another; asking about COAH in particular. Ms. Swan noted that the COAH meeting was the first substantive meeting regarding how COAH should consider the Highlands Act and the RMP when doing the third round certification and how to work with the Highlands Council in the future. She said that they had discussed build out analysis and will be working with them on those issues. Mr. Schrier continued that there was great concern to municipalities

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about the new numbers and wanted to know what the understanding would be on Planning Area towns. Ms. Swan and Mr. Weingart said that those issues would be covered in the MOU. Ms. Swan specified that the Highlands Act requires that COAH consider the RMP in reviewing third round certifications. Mr. Schrier asked what the word “consider” means in the context of these reviews and Mr. Borden commented that the MOU would provide a more thorough framework for coordinated planning with the Highlands Council and COAH.

Ms. Letts supports the idea of an agreement of coordinated planning process. Ms. Pasquarelli joined the meeting via teleconference and supported the Council providing formal comments on COAH’s proposed rules. Mr. Dillingham asked whether the Council could anticipate formal comments prepared by staff on COAH’s proposed rules. Ms. Swan committed that the staff would work on formal comments as the Council members requested.

Mr. Alstede asked whether, with the resignation of Anthony Cortese and Ross MacDonald previously, there was a plan for hiring a staff member for economic analysis. Ms. Swan commented that there was always an attempt to look for broad skill sets and she noted that Lindsey Interlante had a background in economics and would be working in that area. Mr. Alstede encouraged Council staff work to address the economic impact of the RMP. Ms. Swan noted that Anthony Cortese decision to leave was based on his long commute from New York.

Mr. Weingart announced the new position of Adam Zellner as Director of Policy and Planning for the Governor, noting that Adam had been the first Executive Director of the Highlands Council.

BUDGET AND FINANCE COMMITTEE REPORT

Mr. Cogger, as Chair of the Budget and Finance Committee, reported that the accounts had been reconciled by the Council’s Financial Consultant with help from Ranji Persaud and that the record keeping would be moving to a program like Quickbooks. He also reported that there was 60% of the operating budget remaining for the balance of the year. He noted the RMP budget items listed were proposed projects, but not necessarily all projects that would be completed. He also explained that contract negotiations are continuing hence the blank column. He also commented that the financial accounts were ready for an audit and that process would be undertaken by the Audit Evaluation Committee.

NATURAL RESOURCES COMMITTEE REPORT

Mr. Dillingham asked Ms. Swan to begin with an overview. Ms. Swan explained why the Huntington Knolls application and the Canfield applications have both been seen twice by the Natural Resources Committee. In the case of Huntington Knolls, after the determination was first made, on December 28th the applicant asked to submit additional site plan information. The applicant for Canfield also asked to submit additional information. In both cases, Ms. Swan requested that the information be shared with NJDEP. Ms. Swan said that the 2007 Final draft Plan had been used for the reviews.

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Mr. Dillingham then asked Mr. Borden to speak to the nature of the Water Quality Management Plan (WQMP) reviews. Mr. Borden commented that the reviews were based on both statutory and regulatory requirements. He continued that the Highlands Act includes a requirement for state agency coordination and also amended various existing statutes of sister state entities to require a coordination in analysis of the Highlands Regional Master Plan. To coordinate the planning under the Water Quality Planning Act, NJDEP incorporated a requirement to review input from the Highlands Council prior to the approval of a WQMP amendment in both the Planning Area and Preservation Area. This requirement is consistent with the Water Quality Planning Act's mandate of a continuing planning process. In the rules at N.J.A.C. 7:38-1.1, NJDEP will not approve a WQMP amendment in either the Planning Area or Preservation Area without obtaining a recommendation from the Highlands Council. Once the Regional Master Plan is adopted, the regulatory standard changes to require that NJDEP not approve a plan before obtaining a consistency determination from the Highlands Council.

Mr. Dillingham continued that there were three items on the agenda for the Natural Resources Committee. The first was for a project named Hawk Point. The project was deemed a WQMP revision as there were no changes to the wastewater or footprint of disturbance. He indicated that the Committee was recommending to the full Council that a letter recommending approval of the revision be sent to the NJDEP. Ms. Swan reviewed the agreed upon process that staff would prepare the letter and it would be sent to all Council members who would have 10 days from receipt and, absent a call up from members, the letter will be sent to NJDEP.

Mr. Dillingham reviewed the second project, named Huntington Knolls, where the Committee determined that there were inconsistencies with 300 foot buffers, clustering requirements, steep slopes, riparian areas and C1 streams. Mr. Weingart asked Mr. Dillingham whether the Committee would recommend the original recommendation from staff.

There was discussion begun by Erik Peterson asking whether the letter of recommendation could just identify the issues and provide resolution or recommendations for resolution. He did not advocate that the letter should contain an approval or denial. He indicated that NJDEP would look at the application differently with an approval or denial. Mr. Peterson indicated that the Council should not want to say no to all development in the Planning Area. Other Council members spoke to the issue of using the language of approval or denial. Chair Weingart clarified that comments to NJDEP had been sent previously using the language recommending an approval or denial.

**CONSIDERATION OF RESOLUTION ON RECOMMENDATION ON
PROPOSED WATER QUALITY MANAGEMENT PLAN AMENDMENT FOR
HUNTINGTON KNOLLS**

Mr. Dillingham introduced a motion to send a letter to NJDEP recommending a denial of the proposed WQMP amendment for Huntington Knolls. Ms. Kovach seconded it. There was additional discussion among Council members regarding the use of approve or deny language and the merits of offering a recommendation. Mr. Schrier offered an amendment

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to the motion that recommended approval contingent upon the applicant coming into conformance with the inconsistencies in the application with respect to the RMP and that motion was seconded by Mr. Peterson. Mr. Borden clarified that in the Mansfield application the letter categorized approval contingent upon inconsistencies being addressed.

There was also discussion regarding the extent of the inconsistencies, e.g. the 300 foot buffer, and whether the project is close to consistency or grossly out of compliance with the RMP. Ms. Swan asked that if Council members wanted to review the projects would it be preferable to hold separate Council meetings to address these reviews rather than use the Natural Resources Committee to make recommendations to the full Council. Chairman Weingart stated that having a staff recommendation and Natural Resources Committee unanimously recommending denial and then reviewing the application at the full Council will impede the process from going forward.

Mr. Borden again clarified that in the NJDEP regulations, the NJDEP shall not approve a WQMP amendment in the Planning or Preservation Area without first obtaining a recommendation from the Highlands Council. Ms. Pasquarelli noted that the directive says a recommendation relative to the action the NJDEP would take on this project. She believes that it should not be an approval with conditions.

Mr. Schrier offered to withdraw his motion for an amendment to the original motion. Mr. Peterson again raised the issue of whether the Council had the right to approve or deny or just point out whether the application is consistent with the RMP. He believes that if the letter says approval or denial that the full Council should review the applications. In response to concerns about the voluntary nature of conformance Mr. Borden clarified that the Highlands Act sets up a framework where state agencies are required to coordinate their activities irrespective of municipal decision making process. Mr. Borden noted that the municipal conformance with the RMP is a separate process. Chairman Weingart commented that if the Council voted that an application was inconsistent there has to be some action associated with the decision.

Ms. Carluccio spoke in support of denial of the application based on the staff and Natural Resource Committee recommendations. She noted that staff has identified issues that will aid the application in coming into compliance and that staff does not recommend denial unless the application is so far out of compliance with the RMP.

Mr. Cogger spoke in favor of making a decision and that information can be provided to NJDEP. Mr. Whitenack spoke to quantifying the inconsistencies. It was noted that there was a checklist and memo from the staff on the recommendations. Mr. Schrier added that some explanation might be included with the letter to NJDEP. Mr. Dillingham noted that these applications are being measured against standards in the RMP and those objectives should be measured objectively.

Ms. Pasquarelli spoke in support of the motion introduced by Mr. Dillingham and that the recommendation should be meaningful, and perhaps add another whereas that the Natural

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Resources Committee and the staff has determined that there is significant inconsistency in the application

PUBLIC COMMENT – HUNTINGTON KNOLLS WQMP

Sylvia Kovacs – Warren County Environmental Commission

She cautioned the Council about using the Mansfield language as the standard. She noted that in the case of Mansfield there were some inconsistencies represented. She spoke about her concern about using language of conditional approvals.

Peter Craig, Chair Holland Township Planning Board

He noted that he understood the difficulty in making a recommendation on this application. He believes that this application is completely inconsistent with the RMP; however, he did comment that this project did have a ten year history and that there were NJDEP approvals already in place that had primacy. He encouraged the Council to avoid language seeking to approve or deny.

Mr. Dillingham commented that Dr. Van Abs had, during the Committee meeting, read a statement that the NJDEP permit approvals were conditioned upon the WQMP amendment and that the project could not go forward until all approvals are obtained.

Julia Somers, NJ Highlands Coalition

She commented that the issue of consistency vs. inconsistency is convoluted and advocated clear language be used rather than a statement that this application is not inconsistent. She noted that using the word approval with conditions is an approval in the land use community. She reviewed the responsibility of the Council members to make decisions and asked that they vote for denial. She asked about conflicts of interest. Mr. Borden noted that clarification had been obtained from the ethics office that county representatives could vote on municipal Project Review and municipal Plan Conformance. However, for their own municipality, if they were a municipal official they should recuse themselves. Mr. Borden noted that additional clarification will be sought for residency issues.

David Pringle, NJ Environmental Federation

He advocated for an unconditional denial of this application and thanked the staff for the analysis. He commented that the Council had the legal right to make a decision.

Deborah Post, Chester Township

She did not support the Council actions. She advocated that the Council should take action without contingencies.

Dave Peifer, ANJEC

He commented based on his attendance at meetings and review of Highlands staff work that the Council should deny the application. He noted that the notion that there are bright line indicators, he commented that the Council would not necessarily have the information to make those kinds of decisions. He believes that the fact that NJDEP has already issued permits does not necessarily take into account consistency with the RMP and that the

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Council has a right to deny the application. He advocated that the Council trust the staff recommendations. He noted that the greatest leverage was denial.

Michael Keady, Friends of Holland Township

He urged denial of the application.

Darren J. Leotti, Esq., Mauro, Savo, Camerino & Grant, PA

Mr. Leotti stated that he represents the developer. He commented that whether the project is consistent with the RMP is not the only issue upon which to make a decision. This project was approved by the NJDEP prior to the Highlands Act. He indicated that \$1,400,000 in engineering has been expended for a project brought to his client by the municipality. He also indicated that there had been representations by the Township attorney that the project would be grandfathered and sewer permit issued. . He also said that 2nd and 3rd rounds of COAH are dependent on this project. Mr. Schrier commented that the NJDEP approvals were not before this council, only the WQMP.

Chairman Weingart called for a vote on the original motion introduced by Mr. Dillingham to recommend to NJDEP that they deny the application. There was a roll call vote: Mr. Alstede, nay; Ms. Calabrese, aye; Ms. Carluccio, aye; Mr. Cogger, aye; Mr. Dillingham, aye; Ms. Kovach, aye; Ms. Letts, aye; Ms. Pasquarelli, aye; Mr. Peterson, nay; Mr. Schrier, aye; Ms. Way, aye; Mr. Whitenack, aye; Mr. Weingart, aye. Eleven members voted to approve and two voted against. The motion was APPROVED.

There was a short adjournment.

Mr. Hutzelmann summarized the staff findings for the proposed WQMP on the project known as Canfield Development. He indicated that the original recommendations were submitted at the Natural Resources Committee in September. The current project footprint is smaller than that previously reviewed – 275 units. Highlands open water buffers, riparian, wellhead protection, vernal pools are some of the areas where the project is inconsistent with the RMP. He reviewed the memorandum prepared by staff addressing critical habitats, Prime ground water recharge areas, net water availability deficits and clustering. He noted that the applicant had provided some additional analysis with respect to the steep slope and wetland information.

Ms. Swan asked that Mr. Hutzelmann discuss the critical habitat analyses. The analysis used by the staff utilized Landscape Project Version 3 showing that there was wood turtle habitat. A study was provided by the applicant to rebut this but staff raised concerns about the report, in particular as to if access for the report was on the property or limited to public rights of way.

Chairman Weingart asked what inconsistencies remained unaddressed on this application. Ms. Swan noted that the applicant had shown a willingness and ability to avoid certain inconsistencies, but with the critical habitat, staff suggested that the applicant send that report to NJDEP. She also spoke to the unresolved inconsistencies of water availability requiring 125% mitigation and clustering. If those issues are addressed, there is a remaining

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concern over prime groundwater recharge. Mr. Whitenack noted that the staff had addressed many issues with the applicant. Mr. Dillingham cautioned about placing too much emphasis on collaborative applicants. He also commented on the fact the critical habitat study was not done in connection with this application. Chair Weingart asked if there was a motion to approve the resolution.

**CONSIDERATION OF RESOLUTION ON RECOMMENDATION ON
PROPOSED WATER QUALITY MANAGEMENT PLAN AMENDMENT FOR
CANFIELD DEVELOPMENT aka KUSHNER - MINE HILL**

Mr. Dillingham made a motion recommending denial of the proposed WQMP amendment for Canfield Development based upon the significant inconsistencies related to core policies of the RMP. He stated that this would provide the applicant with the opportunity to redress these issues. Ms. Carluccio seconded the motion.

Mr. Alstede advocated for a review for an application that has fewer inconsistencies. Ms. Carluccio reiterated that there are a set of standards that all applications must be measured against. The staff did point out to the applicant that they could address certain issues, and then become consistent; however, Ms. Carluccio noted that avoiding the prime recharge area would be impossible unless the project was not built. She did not believe that there should be two levels of review. Mr. Alstede continued with the discussion addressing the compliance differences between the Planning and Preservations Areas.

Chair Weingart asked Natural Resource Committee members Mr. Whitenack and Mr. Peterson for their views on this application. Mr. Whitenack indicated that he viewed the review process as one in which all factors should be considered and particularly whether the applicant has utilized the RMP in the design. Mr. Peterson was not a part of the entire meeting. He concurred with Mr. Whitenack's comments that this project is not as inconsistent as the previous one. He continued that because the project was in the Planning Area and the municipality has not opted in as yet that there should be a comfort level for the Council in how to handle these applications. Ms. Kovach rejoined the meeting.

Ms. Calabrese asked if there was a staff recommendation and the response was the recommendation from staff was that the application was inconsistent. Mr. Schrier commented that there was a good suggestion by Mr. Peifer that the Council rely on staff; however, he believes that this is a deliberative body and that is important. Ms. Carluccio asked if using the Landscape Version 3 data that the application is still inconsistent for critical habitat and Mr. Hutzelmann confirmed that statement. She also spoke to what guarantees there would be that the applicant would address issues like steep slopes. Mr. Borden noted that there could be specific restrictions put on the application.

PUBLIC COMMENT ON CANFIELD DEVELOPMENT APPLICATION

Marion Harris, President, Mt. Hope Historical Conservancy

She noted that this project is the site of the Dickerson mine – one of the two oldest mine sites in northwest New Jersey. The mining industry being the earliest economic engine

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makes it an important resource. – This site is not listed on the register and noted that there are very few historic resources listed. This site continues across the road where the Dickerson house was located and there are auxiliary buildings and miner's housing. She stated that industrial archaeology can be above or below ground and she believes that the site should be investigated and is an important resource to the community. She commented that the township engineer at a previous hearing had discussed the dangers of mine shafts and how the veins can be slanted in different directions. There could be negative impacts to a building. She also noted that the community character would be impacted by this development from a design point of view. She advocated that the archaeological investigation be completed.

Deborah Post, Chester Township

She believes that the staff is biased in favor of environmental protection. She advocated that the Council makes its own decisions.

Cindy Ehrenclou, URWA Executive Director

She asked for clarification on the clustering provision – how the developer would meet the 80% provision. The township purchased 190 acres last summer as open space. She asked for ownership clarification. She urged the Council to deny the application.

Wilma Frey, NJCF

She commented that this project was one of those that led to the passage of the Highlands Act. She does not believe that there is any difference in consistency to this project from the previous one. She urged denial. She noted that the open space does not belong to the applicant and did not believe that it could be considered open space for the cluster provision.

Peggy Snyder, Engineer representing URWA

She noted that she had attended the previous meeting on this application. She was asked to review the project for engineering and environmental impacts. She supports the technical comments from the staff. She believes that the site is a prime groundwater recharge area and the applicant has not provided for infiltration. She also noted that the soils are perhaps too permeable for infiltration. She recommended that soil borings would be helpful for analysis. There were two areas that she took issue with staff – forest area. She does not agree that this development is utilizing low impact stormwater management. She also did not believe that the steep slopes impact can be addressed unless the project is scaled back. She also noted that there is only ½ of the parking required according to her calculations. Ms. Snyder reiterated her concerns that she had communicated to the NJDEP that there would be significant impacts of discharged wastewater if there is a hydrological connection between the site and Alamatong Wellfield and was concerned about what level of treatment would be required. She also noted that she was concerned about the impact with a history of mining on site.

Mark Zakutansky, New Jersey Highlands Coalition

He spoke in support of denial of this application.

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Dave Peifer, ANJEC

As former Executive Director of URWA, he participated in the Alamatong Well study. He indicated that there was modeling used then that could not anticipate groundwater impacts relating to groundwater recharge. He commented that there was not a natural condition with mining operations 1,000 feet or 500-600 feet below where the wells are located. He also mentioned that the abandoned iron mines are mapped, but cannot connect them to the review. The checklist does not show archaeological features. Historic iron mines are not just assets from an historic perspective but could pose public health and safety concerns with collapse. He reiterated the soil permeability discussion raised by Ms. Snyder. He advocated that the RMP include catching abandoned mines. He recommended denial. The NJ Environmental Federation also supports denial.

Stephen Severud, Esq. Township Attorney Mine Hill

He asked that the Council take into consideration that the open space closing took place before the funding sources expired. He also indicated that the open space transaction was part of a settlement agreement. He reviewed that the project was next to the Randolph Industrial park and across from another apartment complex and that the number of units had been significantly reduced and the town acquired portions that will only have paths. He also mentioned that the MCMUA was looking into using one of the mines for water storage. The town supports the applications with conditions if that is what the Council wants.

Glen Geiger, Day Pitney, LLC, attorney for the applicant

He addressed the concerns about mines. He reviewed that there has been close to \$100,000 spent to review the archaeological features and he also mentioned that there had been a study costing upwards of \$1,000,000 of the mining features completed. The settlement was designed to effectuate cluster on 46 acres. He noted that the vernal pool could be accommodated as well as steep slopes. He commented on Ms. Snyder's review and noted that she was working with a concept plan not a site plan. He reviewed that soil borings had been done, there was an onsite sewage treatment designed. He complimented the staff approach on getting the facts correct. He emphasized that the context of this review is with the Draft Regional Master Plan with a township that was asking for changes to accommodate this project. The first issue he discussed was critical habitat and NJDEP has not raised it as an issue since 2001 using the Landscape Version 2. He reviewed Prime ground water recharge area with respect to the township's desire to move forward and he noted that the 125% mitigation would help with the recharge. There is already an allocation of water and although there is a deficit noted in the staff recommendation, he asked that the staff make recommendations to NJDEP as to how the project could move forward. Any growth in the planning area will require balancing the goals of the RMP.

In response to Ms. Letts, he noted that 125% requirement of predevelopment recharge will mitigate the issues raised by staff. He also explained that all requirements of RSIS and stormwater rules will have to be met for the project to move forward and the ultimate number of units will be affected by compliance.

Chairman Weingart said there is a motion on the floor to deny. Mr. Cogger remarked that the archaeological resources were not noted on the checklist. State and national register of

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historic sites is the review standard according to Dr. Van Abs. The RMP says that the register is standard for review in the RMP. Ms. Carluccio commented that the prime groundwater recharge area takes up the entire site and that the RMP says that this area should not be disturbed, that does not mean that 125% mitigation can be used to allow disturbance of a prime groundwater recharge area. The other outstanding issue is the critical habitat.

Mr. Schrier noted that the county had originally opposed the project. He summarized the funding grants that were provided totaling some \$6 million. He also mentioned that the MCMUA provided some funding. He commented that those funds were granted with the expectation of a smaller project. He further discussed the storage project of water in the Dickerson mine as an important one for the residents of Morris County. He noted that the former NJDEP commissioner had pledged \$500,000 for analysis of the project. He believes that it is the applicant's responsibility to bring the project into compliance and that the council's charge is to make a recommendation to NJDEP and he advocated for approval with conditions.

Mr. Borden responded to a question about Mr. Schrier's involvement in the mine project for water storage that if there were a specific county project associated with this application he would strongly encourage recusal. However, it was further noted that the mine project is not inclusive of the Canfield property. Mr. Borden stated that given the fact that the projects are not interrelated that he did not believe there was a conflict.

There was additional discussion regarding the approach to take including Approval, Denial or Approval subject to conditions.

Chairman Weingart asked for a roll call vote on the original motion to recommend denial the application. The vote was as follows: Mr. Alstede, nay; Ms. Calabrese, aye; Ms. Carluccio, aye; Mr. Cogger, nay; Mr. Dillingham, aye; Ms. Kovach, aye; Ms. Letts, nay; Ms. Pasquarelli, aye; Mr. Peterson, nay; Mr. Schrier, nay; Ms. Way, aye; Mr. Whitenack, nay; Mr. Weingart, aye. The motion was not approved.

A new motion was introduced by Mr. Schrier to recommend approval of the application subject to the conditions in the staff memo along with safety issues with respect to the mine requested by Ms.Way. Mr. Whitenack seconded it. There was additional discussion about the mine issues and Mr. Geiger noted that the settlement agreement included a mine investigation study.

Mr. Weingart asked for a roll call vote. The vote was as follows: Mr. Alstede, aye; Ms. Calabrese, aye; Ms. Carluccio, nay; Mr. Cogger, aye; Mr. Dillingham, nay; Ms. Kovach, aye; Ms. Letts, aye; Ms. Pasquarelli, nay; Mr. Peterson, aye; Mr. Schrier, aye; Ms. Way, aye; Mr. Whitenack, aye; Mr. Weingart, aye. The motion is APPROVED.

He noted that the process for reviewing these applications should be reviewed.

**NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF JANUARY 17, 2008**

CONSIDERATION OF ELECTION OF OFFICERS OF THE HIGHLANDS COUNCIL

Chairman Weingart asked for nominations for Vice Chairman. Ms. Letts nominated Mr. Schrier for Vice Chairman and Mr. Peterson seconded the nomination. All members present voted in the affirmative. Ms. Letts nominated Mr. Cogger for Treasurer and Ms. Kovach seconded the nomination. All members present voted in the affirmative.

PUBLIC COMMENT

Deborah Post, Chester Township

Ms. Post read a statement that she submitted for public comment. She asked for compensation for her land which she asserted could have been subdivided into 17 lots and for which she had a site plan, Block 33 Lot 4.

Ms. Carluccio made a motion to adjourn to Executive Session and Mr. Dillingham seconded it at 2:15pm.

The meeting was adjourned after the Executive Session at 2:25pm.

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: 3/10/08

Name: Paula M. Dees
Paula M. Dees, Executive 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	✓			

TRUE COPY

PUBLIC COMMENTS SUBMITTED

Comments to Highlands Council – January 17, 2008

My name is Deborah Post.

I first addressed this body over three years ago when this Council was gleefully handing out a half mill or so in municipal grant checks amidst much photo flashing and handshaking and smiles. That day I thought it was appropriate that we landowners join the good cheer of check distribution so I asked you: Where's my check? You didn't have an answer.

I submitted site specific Master Plan comments last spring to this Council advising of the suitability of my property for community zone designation. As is its typical modus operandi, the Council turned a deaf ear to my, and all landowner, comments. So I am back today to again ask you: Where's my check? Where's my just compensation? I would like to be paid. We landowners feel caught in a Beckett play waiting for compensation with no exit available to us.

To assist you in making out the check, I have brought a subdivision conceptual for my property, Block 33 Lot 4 in Chester Township, prepared solely for this exercise. Utilizing pre-Highlands Chester Township municipal land use law, requiring no variances, I have seventeen buildable lots. There are no wetlands and no steep slopes on my property. It abuts an existing development which is designated a community zone. It would be humorous to note that your hydrological science seems to, stunningly, show that water sensitivity stops and starts along the zig-zag line of my deer fence, if the intellectual dishonesty of this finding weren't so morally reprehensible.

And I am formally asking you to be paid my just compensation for the seventeen buildable lots in Chester Township that the Highlands Act has denied me. ~~By the way, Mr. Ventrano, this multi-million dollar loss buys me a heck of a lot of mean-spiritedness.~~

My farm is a model of good environmental stewardship. I work with the land every day. No one on this Council, excepting Mr. Alstede, actually work with their hands to care for the environment in their daily life. No, the paid environmental lobbyists on this Council do not qualify as genuinely working with the land. You are all armchair greenies, feeling self-important on this powerful and dysfunctional Council. When the farmers who are the real environmentalists are kicked and tortured and punished as viciously as the Act and your Plan does, it should be no surprise to society when there simply are no farmers left. Remember Pavlov's dog.

Section 6n of the Highlands Act orders this Council to identify lands in the Preservation Area where development shall not occur and to recognize the need for just compensation. You have not done this...your Plan is silent...you have not fulfilled your mandate. What part of Section 6n does this Council not understand?

Section 8a of the Highlands Act says, I quote, "The Council shall not adopt a Regional Master Plan unless it recommends receiving zones in the planning area and

capacity therefore for each receiving zone pursuant to the transfer of development rights program.” You must identify a receiving zone in the planning area for all Preservation Area sending zones. That’s what the legislature told you to do. You have not done this...your Plan is silent...you have not fulfilled your mandate. What part of Section 8a does this Council not understand?

Sections 6n and 8a are the essence of what this Council was supposed to do. You were to specifically identify those lands that were sincerely water sensitive and then establish a program to compensate their owners. You have not done this. Instead you have listened to the slick Mr. Borden who has advised you to just finesse your statutory mandates. Sections 6n and 8a are written in clear English. Before you vote for this Plan each one of you might want to read up on whether or not you have done what the legislature told you to do.

About that check...I will be looking for it. Please make sure it’s in the mail.