

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF AUGUST 27, 2009

PRESENT

JOHN WEINGART)	CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
MIMI LETTS)	
MICHAEL FRANCIS)	
ERIK PETERSON)	
TAHESHA WAY)	
TRACY CARLUCCIO)	
JANICE KOVACH)	
JACK SCHRIER)	
SCOTT WHITENACK)	

ABSENT

ELIZABETH CALABRESE)
BILL COGGER)
GLEN VETRANO)

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 87th meeting of the New Jersey Highlands Water Protection and Planning Council to order.

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 July 16, 2009

Mr. Schrier introduced a motion to approve the minutes. Ms. Kovach seconded it. Ms. Way abstained. Ms. Calabrese and Messrs. Cogger, Peterson, and Vetrano were absent. All other members present voted to approve. The minutes were APPROVED.

CHAIRMAN'S REPORT

Chairman Weingart read the Audit Committee Chair report recommending approval of the resolution to approve the Audit for Fiscal 2008. There were no recommendations arising out of this Audit which was conducted by Mercadien, PC, CPA.

He also noted that there had been a Personnel Committee earlier today where the Committee discussed the impact of furlough days on the staff. Ms. Swan summarized the impact as 9 furlough days in this fiscal year, one of which will be the day after Thanksgiving (Nov. 27) and the other Lincoln's Birthday on February 12, 2010. The remaining days will be self directed. The Council office will be closed on the two required days.

RESOLUTIONS

I. CONSIDERATION OF RESOLUTION – ACCEPTANCE OF AUDIT REPORT – (voting matter with public comment)

Mr. Schrier introduced a motion to approve this resolution. Ms. Kovach seconded it. Ms. Calabrese and Messrs. Cogger, Peterson and Vetrano were absent. All other members voted to approve this resolution. The resolution was APPROVED.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan began with a power point presentation that highlighted the three areas of her report: Plan Conformance Update, 2009 Plan Conformance Grants, and the Highlands TDR Program.

For the Plan Conformance update, she reviewed the progress to date: 75 of the 88 Highlands municipalities have filed a Notice of Intent, 72 municipalities and 4 counties have applied for an Initial Assessment Grant, 74 municipalities have filed a 2009 Plan Conformance Grant Application, 48 municipalities have received a final Municipal Build-Out Report; 72 have received their Module 1 Reports, and 41 municipalities submitted draft Highlands ERIs. She also mentioned that the Highlands Master Plan Elements are due Sept. 1, 2009. She continued with a map showing the municipalities that have filed a Notice of Intent to Conform noting that the Preservation Area Petitions are due December 8, 2009 and that the Planning Area submissions do not have a deadline. She also had a slide for a map of the municipalities whose Highlands Municipal Build-Out Reports were posted on the Highlands Council website and the Environmental Resource Inventories that have been submitted to date.

She reviewed the recent training sessions that have been and will be held for municipal officials and their professionals – Module 2 for Build Out and Module 3 for Fair Share Plans on August 17 and August 31; and Module 6 for proposed draft Land Use Ordinance and the two proposed Board of Health draft ordinances on August 20th and August 25.

Ms. Swan discussed the purpose of the Highlands Municipal Build-Out Reports as describing the growth potential at full build-out based on available land for septic system and sewer development, and as constrained where applicable by utility capacity and water availability. She noted that the build out model focuses on Existing Areas Served and other areas based on the RMP. She noted that the Build-Out Report process is a cooperative one beginning with the Highlands Council staff giving the assigned municipal professionals a data base which is linked to spatial files and shows the block and lot information collected, e.g. oversized lots, and preserved lands. Then the professionals verify that information and it is resubmitted to the Council staff. Ms. Letts asked if

there was an assumption where there was a large area of undeveloped land close to sewers that septic systems were required. Both Ms. Swan and Dr. Van Abs responded that there were many factors that affected whether sewers could be extended. It was explained that even in the Preservation Area there could be a sewer extension for public health and safety reasons. Dr. Van Abs added that the Build-Out Reports were a snap shot in time and did not represent zoning or regulations. He also noted that zoning had been used in the calculations for sewer areas, but that the septic system yield was based on the RMP because the existing zoning in most municipalities was less restrictive than the requirements of the RMP.

Ms. Swan continued with an example showing the results of the Build-Out and the methodology used to calculate affordable housing projections using the Highlands Municipal Build-Out Reports and comparing them to COAH projections. This was to show how a conforming municipality could use the Build-Out to calculate their Fair Share projections. She turned to some key changes in Module 3 including two resolutions approved by COAH on August 12 – one granting a waiver from COAH’s third round growth projections for conforming municipalities, authorizing calculation of a municipality’s RMP adjusted growth projections based on conformance with the RMP and another resolution regarding the schedule for submittal, for all Highlands municipalities (51) that previously received an extension from COAH extending the deadline to June 8, 2010. She noted that these resolutions were consistent with the Executive Order 114 and the MOU between COAH and the Highlands Council. She also discussed the Guidance Document that COAH has approved to calculate the RMP adjusted Growth Projections. She noted that the RMP Adjusted Growth Projections are based upon the Highlands Municipal Build-Out Reports (Table 4), plus actual growth based on applicable residential and non-residential certificates of occupancy for 2004 through 2008. She explained that the Prior Round and Rehabilitation Obligations are the same as those found in COAH’s Appendices and that any exclusions as permitted under COAH rules are also entered into the calculations.

Ms. Swan showed an example of the municipal choice based on the August 12, 2008 COAH resolution. Option 1 is when obligations are based on RMP Adjusted Growth Projections added to COs from 2004 to 2008; and Option 2 is when COAH 2018 Growth Share Obligation is used. She explained that for most Highlands municipalities, Option 1 obligations are lower than Option 2. Where Highlands obligations exceed those of COAH that is due to 2004-2008 actual growth obligations and she emphasized that verification by the municipality of 2004-2008 CO data from NJDCA will be critical.

She then specified the Module 3 requirements for December 8, 2009: Calculation of Growth Share Obligation; identification and review consistent with the RMP of previously identified affordable housing project sites; statement and justification of need for use of Regional Affordable Housing Development Planning Program (transfer of housing obligations). The next deadline is March 1, 2010 for DRAFT Housing Element, Fair Share Plan summary, and RMP evaluation of sites and finally June 8, 2010 for the ADOPTED Housing Element and full Fair Share Plan to COAH.

Ms. Swan continued with a discussion of the Module 6 proposed draft Model Highlands Ordinances describing the purpose to: implement immediate mandatory requirements of RMP regarding land development and disturbance; specify exclusions and exemptions, and methods for determination; RMP resource protection requirements; septic system density requirements; requirements for low impact development (LID) techniques, conservation restrictions, mandatory clustering in ARA; submission Checklist requirements; prior Highlands Council and NJDEP review for specific types

of resource disturbances. She also discussed the two proposed draft Model Board of Health Ordinances: one is the draft Model Septic System Ordinance the primary purpose of which is to ensure that septic systems are properly constructed and maintained to prevent ground and surface water contamination and the other is the draft Model Potential Contaminant Source Management Ordinance whose primary purpose is to ensure the protection of critical ground water resources from the discharge of pollutants from a Potential Contaminant Source (PCS) located within a Prime Ground Water Recharge Area (PGWRA) or Wellhead Protection Area (WHPA). She mentioned that after receiving comments from professionals there may be revision of the models and that she expected the results to be discussed at the September 17th Highlands Council Meeting. Ms. Letts asked if a town decides to conform whether it can still transfer prior obligations and Ms. Swan noted that transfer is permissible up to 50% of total obligations but only within the 88 Highlands municipalities.

Next, Ms. Swan presented a TDR update and discussed, as requested, the responsibilities of the Highlands Council and those of the Highlands Development Credit Bank. She summarized the role of Highlands Council to: establish the TDR program, including working with municipalities to establish TDR Receiving Zones; approve model conservation restrictions; to establish the initial Highlands Development (HDC) Credit value (currently \$16,000 per HDC); to determine the HDC allocation for Sending Zone parcels; to assess the program at specified intervals for improvements; and continue to work to pass new TDR legislation providing greater opportunities for use of HDCs (i.e. create more demand). She also highlighted the main responsibilities of the HDC Bank: to issue HDC certificates after property owner records appropriate conservation restriction; to serve as administrator of TDR program by tracking all HDC transactions; to serve as an information clearinghouse regarding the TDR program and link potential HDC buyers and sellers; and to serve as buyer and seller of HDCs.

Ms. Swan showed a proposed timeline of the Highlands TDR Program noting that in the Fall of 2009, the Highlands Council expects to approve the HDC Allocation Determination application materials, to launch the web-based HDC Allocation Determination Tool which Jeff LeJava and Nathan McLean have been working on, and to approve the conservation restrictions and to review the HDC Allocation Determination materials. She noted that the conservation restrictions had been a great deal of work in cooperation with State Agency partners. She also reviewed an additional proposed date for the Highlands Council start the processing of HDC Allocation Determination applications through December 2009. She then reviewed the proposed timeline for the HDC Bank to consider Bank Operating Procedures in September 2009 and HDC Certificate application materials in October 2009. She finished by mentioning that the consideration of HDC hardship purchases is currently proposed to begin January through March 2010.

Mr. Francis asked for an explanation of the basis for the HDC initial credit price. Mr. LeJava gave an overview of the methodology that used MOD 4 tax assessment data and how staff had reviewed adjusted values that were broken out for each municipality. He noted that regression analysis was used to determine the dollar amount of the HDC initial credit price. Ms. Swan commented that the Highlands Act requires the Highlands Council to set the initial value, but recognizes that the private market can dictate price once the program is market driven. Mr. LeJava mentioned that the methodology is on the website in the technical report. Mr. Francis commented that the HDC credit price was key to the success of the program.

Ms. Swan summarized the 8 approved TDR Feasibility Grants for: Chester Borough, City of Clifton, Town of Clinton, Harmony Township, Hopatcong Borough, Lopatcong Township, Oakland Borough and Washington Borough. She also commented on the Borough of Bogota and Tewksbury Township that have submitted grant applications to be considered today by the Highlands Council. She concluded speaking about a presentation to Long Hill Township on June 9, 2009 on TDR that she, Mr. Borden and Mr. LeJava gave at the request of the Township.

Ms. Letts asked what the Highlands Council role would be in the receiving areas. Mr. LeJava noted that the general process of designation of receiving zones was in the RMP and that at the point that the municipality submits its petition for Plan Conformance there could be consideration for areas for TDR and that the Highlands Council would be reviewing these applications, but site plan review would be the responsibility of the municipality.

Ms. Swan continued her report noting that there had been a contract modification executed as permitted consistent with the resolution for the Biohabitats contract to allow Biohabitats to subcontract work to Conserve Wildlife for the investigation of a potential innovative tool for evaluating habitat value in the Highlands Region. This modification will add \$20,000 to the original \$85,000 contract making the total contract \$105,000.

She also reported on the Water Use and Conservation Management Plan pilot program noting that staff would be making a final selection for the 10 pilot areas. She concluded her report with a brief summary of the actions recently taken by the Fair Share Housing Center that took issue with the COAH extension and waiver process and filed a motion to stay both resolutions and the guidance document. She mentioned that Fair Share Housing Center had also amended its appeal to include the August 12 resolutions and had filed a notice of appeal for the Module 3 instructions from the 2009 Highlands Plan Conformance Grant Program. She indicated that Mr. Borden would prepare a memo to Council Members regarding this appeal.

Chairman Weingart asked Ms. Swan to introduce the Resolutions on TDR Grants.

II. CONSIDERATION OF RESOLUTION – Approval of a Transfer of Development Rights Receiving Zone Feasibility Grant to Borough of Bogata – (voting matter with public comment)

Ms. Swan summarized the grant request mentioning that the Borough of Bogata had revised Task 1 and was asking for a total of \$38,000.

Mr. Schrier introduced a motion to approve both TDR grant resolutions. Mr. Whitenack seconded it.

PUBLIC COMMENT ON THE RESOLUTIONS

David Shope, Long Valley

Mr. Shope commented that there was not adequate staff oversight and guidance of grants citing the Town of Clinton grant that originally was scheduled for completion in September, 2008 and now was due for completion a year later. He asked that his comments apply to both resolutions on TDR grants.

III. CONSIDERATION OF RESOLUTION – Approval of a Transfer of Development Rights Receiving Zone Feasibility Grant to Tewksbury Township – (voting matter with public comment)

Ms. Swan noted that the application had a detailed schedule and task description and the request was for \$25,000.

Ms. Calabrese and Messrs. Cogger, Peterson, and Vetrano were absent. All other members present voted to approve these resolutions. The resolutions were APPROVED.

Mr. Alstede raised the issue of a definition of ownership of property in connection with the exemption #1 for constructing a single family home. He cited advice by Mr. Borden that the language in the exemption applies whether an individual or a family LLC owns the property. Mr. Alstede noted that the NJDEP believes the exemption applies to individuals. Mr. Alstede asked the Council to take a position on this issue and asked about what the Highlands Council's authority would be to do so. His concern stems from the preponderance of family farms that have been placed in family LLCs for estate planning reasons. Chairman Weingart asked that this matter be tabled to the next meeting as Mr. Borden was not present at this meeting.

Chairman Weingart also asked Ms. Swan to review the other key positions that the Highlands Council had taken with the legislature in the past and asked that she report back at the next meeting so that the Highlands Council could reiterate those positions after review. He gave examples of advocacy for: TDR receiving areas statewide, dual appraisal methodology of farmland and support for the Garden State Preservation Trust renewal.

He announced that the next meeting of the Highlands Council would be September 17th at 1 pm and the HDC Bank Board will meet September 3rd at 1 pm.

PUBLIC COMMENT

Helen Heinrich, NJ Farm Bureau

She suggested that someone from Sussex County could make a presentation at an upcoming Council Meeting on the Agricultural Grant. She asked if the Master Plan element due in September included the agriculture retention section, and what will happen to the units that COAH had projected to be built if the lower Highlands Council numbers are used. She also inquired as to whether the exemption data was a part of the analysis for the Build-Out Reports.

Julia Somers, New Jersey Highlands Coalition

She requested the power point be posted on the website and asked for a list of the 51 towns that had received exemptions from COAH. She commented that the public was very interested in commenting on the Module 6 ordinance and hoped that public comment would be sought. She also inquired as to whether the Conservation Restrictions were to be approved at the September 17 Highlands Council Meeting. She advocated for support for the passing of the Garden State Preservation Trust now on the ballot for November and asked that as municipal and County officials that Council Members advocate locally for resolutions of support.

Dave Peifer, ANJEC

He complimented staff on getting the Module 6 ordinances together and offered the ANJEC data base for further information. He commented that because of concern for the financial hardship imposed on property owners if their septic systems were deemed in failure that the Highlands Council might consider a revolving low interest fund that could help defer the financial burden from the property owners and encourage passage of these important ordinances for water protection.

David Shope, Long Valley

Mr. Shope commented that the initial credit price for HDC credits equated to a devaluation of land values. He asked for the legal justification of the \$16,000 figure. He also commented on the shared staff between the Highlands Council and the Highlands Development Credit Bank noting that he believed that they should be separate and independent. He asked for two additional appendices for the Princeton Hydro Contract be sent to him.

Ms. Swan in response to several of the questions raised in public comment said that there would be more information on the proposed draft septic ordinances forthcoming and that as far as presentations at future meetings that the September agenda was quite full and it would be up to the Chair and the Highlands Council to determine whether there was adequate time for presentations with the reviews of Plan Conformance that would have to be undertaken.

There was a motion introduced and seconded to adjourn the meeting 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: 10/28/09

Name: Paula M. Dees
Paula M. Dees Executive Assistant

TRUE COPY

Vote on the Approval of these Minutes

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