

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF OCTOBER 15, 2009

PRESENT

JOHN WEINGART) CHAIRMAN

KURT ALSTEDE) COUNCIL MEMBERS

MIMI LETTS

MICHAEL FRANCIS

ERIK PETERSON

TRACY CARLUCCIO

JANICE KOVACH

JACK SCHRIER

ELIZABETH CALABRESE

BILL COGGER

SCOTT WHITENACK

TELECONFERENCE

TAHESHA WAY

ABSENT

GLEN VETRANO

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 88th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:12 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. *Mr. Peterson joined the meeting.*

APPROVAL OF MINUTES OF AUGUST 27, 2009

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

CHAIRMAN'S REPORT

Chairman Weingart mentioned that this would be Liz Calabrese's last meeting and he thanked her for her service to the Highlands Council. He announced that the next Council meeting would be November 12th at 1 pm, noting the change in time from 4 pm.

Mr. Weingart discussed the letter in Council Members packets advocating the extension of the dual appraisal methodology and expanding the TDR receiving areas to anywhere in the State. He asked for an indication from members of support for his sending this letter to the Governor. There was unanimous agreement.

RESOLUTIONS

I. CONSIDERATION OF RESOLUTION – SUPPORT FOR VOTER REFERENDUM BALLOT QUESTION #1 – (Voting matter with public comment)

Ms. Kovach introduced a motion to approve this resolution. Mr. Schrier seconded it. There was some discussion among Council Members and Mr. Borden as to whether it was appropriate for the Highlands Council to endorse this ballot questions. Mr. Borden indicated that it was a policy issue and not a legal issue for the Council to adopt a resolution on this ballot question and was appropriate.

PUBLIC COMMENT ON THIS RESOLUTION

Julia Somers, New Jersey Highlands Coalition

Ms. Somers spoke on behalf of her organization as part of the Keep It Green Campaign and encouraged the Council Members to support the Ballot Question #1. She noted that State funds for SADC and Green Acres have been an essential part of land preservation in this State and that 40% of all funding from Green Acres and SADC has been used in the Highlands. She mentioned that it was her understanding that the Council had supported a similar Ballot Question in 2007.

Wilma Frey, New Jersey Conservation Foundation

She also spoke in support of the Council Members advocating for Ballot Question #1 and made the point that municipal and local governments also utilized the funding from these funds.

Helen Heinrich, New Jersey Farm Bureau

She agreed with Ms. Somers and Ms. Frey's comments and mentioned that her organization was also part of the Keep It Green organization.

Debra Post, Chester Township

She believes that the bond issue if passed will not provide funding for the Highlands unless the dual appraisal methodology is renewed as well.

David Shope, Long Valley

He also believes that without the dual appraisal methodology the bond issue does not make sense. He did believe that the flood plan portion of the ballot question description was reasonable. He

would prefer a water tax to provide funding. He submitted an article from *NJBIZ* for the record on marketing property in the Highlands.

Monique Purcell, Department of Agriculture

She raised the issue of a two step process. The first step would be the voter action on the bond act and the second would be to craft legislation as to how to spend it and consider extending the dual appraisal methodology.

Mr. Schrier commented that the funds are to be used for open space and farmland preservation and that as citizens of the State, all should be aware that preserved land is less expensive to maintain than developed land as a cost to taxpayers. He noted that development was at a standstill in Morris County thanks to the Highlands Act, but that fact should not preclude support of the bond issue to buy land when prices are down.

Mr. Cogger made additional comments regarding the value that taxpayers received for investing in open space preservation in Chester Township – 10 to 1 return investing \$55 million and only \$6 million in debt and that the State had a history going back forty plus years of passing bond issues for preservation. He also spoke to the criticism of borrowing and suggested looking at it like a mortgage. He spoke in favor of advocating for the dual methodology. Mr. Alstede also spoke to the failure of the legislature to pass the dual appraisal methodology as an affront to the Highlands landowners. He does not believe that the bond issue should be supported without the dual appraisal methodology. Mr. Francis spoke in support of the resolution

Mr. Vetrano was absent and Mr. Alstede voted no. All other members present voted to approve this resolution. The resolution was APPROVED.

BUDGET COMMITTEE REPORT

Chairman Cogger discussed the proposed General Operating Budget with a reduction of \$85,000 in technology, temporary help and legal fees. He mentioned that there had been no across the board increase for staff since 2006 and that he could see turnover in the future. He believes that this budget represents the most the organization can give and continue to operate. He expressed concern that the budget might not be sufficient to cover the unforeseen costs that might be associated with legal fees.

II. CONSIDERATION OF RESOLUTION – APPROVAL OF FISCAL YEAR 2010 GENERAL OPERATING BUDGET – (voting matter with public comment)

Mr. Cogger introduced a motion to approve this resolution. Ms. Letts seconded it.

Mr. Schrier spoke against approving the budget as he did not want the organization to go out of business and be crippled. There were no public comments on the resolution.

Mr. Vetrano was absent. Mr. Schrier voted no. All other members present voted to approve this resolution. The resolution was APPROVED.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan began with a power point presentation that highlighted the Plan Conformance process, a Grant Program update and the Highlands TDR program.

For Plan Conformance, she reviewed the progress to date: 76 of the 88 Highlands municipalities have filed a Notice of Intent, 72 municipalities and 4 counties have applied for an Initial Assessment Grant, and 75 municipalities have filled a 2009 Plan Conformance Grant Application. She showed a slide of the Notice of Intent municipalities that have filed. Ms. Swan showed a slide describing the 7 modules for the 2009 Plan Conformance Program and began a summary of the status of Modules 1 and 2. For Module 1, 72 municipalities have received their Module 1 report. She noted that this module was the most complex for staff and professionals with verification of block and lot date and 59 municipalities have received their final Highlands Municipal Build-Out Report. The reports are sent to the appointed liaison professionals and the mayor and they have 10 business days to examine for any necessary corrections. If there are no issues, the reports are posted to the Highlands Council website completing Module 2. She said that currently there are 55 Highlands Municipal Build-Out Reports posted on the website with 2 undergoing revisions and 2 scheduled to be posted later this month and showed a slide that indicated the Build-Out status for all municipalities.

She next turned to the Module 3 (Fair Share Plan and Housing Element) and discussed the various actions by COAH including approving a Resolution on August 12 granting a waiver from its third round growth projections for conforming municipalities and authorizing calculation of a municipality's RMP Adjusted Growth Projections based on conformance with the RMP. COAH also approved a Resolution on August 12 extending submittal until June 8, 2010 for all Highlands municipalities that previously received an extension from COAH. Also, Chapter 46 an amendment to the Fair Share Housing Act signed on July 17, 2008 provides regional planning entities with new opportunities to identify and coordinate affordable housing based on regional planning consideration. She continued noting that on September 10, COAH approved the Regional Affordable Housing Development Program Guidelines to authorize municipalities to transfer up to 50 percent of their affordable housing obligation consistent with Chapter 46. The prioritization for this new program will be managed by the Highlands Council. In the sending area, they will be prioritized by need based on an inability to provide for fair share due to environmental or capacity constraints. A receiving area would have to show capacity to support the additional density. In total, 87 of the 88 Highlands municipalities, with the exception of Phillipsburg, may participate in the transfer program. For those in the Preservation Area with a deadline of December 8, 2009, she noted that there is a requirement to examine their prior round sites for consistency with RMP.

For Module 4 (Highlands Environmental Resource Inventory), a sample ERI was sent to all participating Highlands municipalities. To date, 43 municipalities have submitted their draft ERI's and there have been 38 Environmental Resource Inventories reviewed and sent back out. They will be resubmitted as part of the petition for Plan Conformance.

In Module 5, the Model Highlands Master Plan Element was provided to Highlands municipalities to give all the information necessary for consideration at a public meeting. To date, 22 municipalities have submitted their draft Highlands Master Plan Element. Next, she spoke on Module 6 for the Highlands Land Use Ordinance. Instructions have been provided on editing and the Highlands maps have been used. There have been informational sessions on all these sessions and staff has received their comments. The Land Use Ordinance is a supplement covering Planning and Preservation Areas and addresses basic Plan Conformance.

Regarding Module 7, the Municipal Petition for Plan Conformance includes detailed instructions for the preparation and review of a Petition. After December 8, 2009, those petitions will be brought for decision to the Highlands Council. The professionals have asked for a Self-Assessment template and that has been provided. The required elements are a cover letter, point of contact, a completed submittal checklist and Preservation Area resolution. She mentioned that the Highlands Act requires an ordinance for the Planning Area, so the Module 7 instructions specify that a municipality may submit a resolution to petition for both the Planning and Preservation Areas and it would be nonbinding in the Planning Area until such time as an ordinance is adopted. Planning Area municipalities can submit a resolution without an ordinance at this time. Along with the Petition, the submittals for Modules 4, 5 and 6 will also be provided in draft form.

She reviewed the Plan Conformance timeline as follows: Petitions submitted December 8, 2009 for Preservation Area lands and no date for Planning Area; within 60 days staff will issue a completeness determination and coordinate with municipal representatives for any additional information; within 45-90 days a draft consistency review and recommendations with municipal response period will occur. At the conclusion of that period, there will be a public notice and staff will bring recommendations to the Council to approve, approve with conditions or reject. She mentioned that the Counties have also been given information for Plan Conformance.

TDR Program Update

Ms. Swan reviewed the various editions and public comment periods that had resulted in the latest version of the Deeds of Easement for the TDR program. She noted that these Deeds of Easement had been sent out to Council Members and that they are in final review with the Division of Law. She then showed a slide summarizing the role of the Highlands Council and the role of the HDC Bank as it pertains to the TDR Program. She next reviewed the progress made on the HDC Estimator Tool (which provides landowners with a range of HDC credits on a property) that has required significant design work by Jeff LeJava, Nathan McLean and Roger Keren. The expected launch of the HDC Estimator Tool will be at the next HDC Bank Board Meeting on November 5th after further testing and mapping of stream buffers.

She summarized the features of the HDC Estimator Tool as providing an estimated range of HDCs to a parcel that is: located in the Preservation Area and situated in Protection and Conservation Zones or environmentally-constrained subzones; the parcel has to be residentially zoned based upon Highlands Council composite zoning and contains at least five acres in size or, if less than five acres, is at least three times the minimum lot size in effect on August 10, 2004. She noted that after accounting for pre-Highlands Act environmental constraints a parcel would have to have had at least one lost development opportunity (i.e. at least one potentially buildable lot). She mentioned that the HDC Estimator Tool does not provide an estimated HDC range if the parcel is non-residentially zoned, presently preserved, or has not lost at least one development opportunity and although a parcel might receive an allocation, it does not mean that the parcel is entitled to have its HDCs purchased by the Highlands Development Credit (HDC) Bank or on the private market.

Ms. Swan showed a movie demonstration of how the HDC Estimator Tool will work. She then described the process that starts with inputting either the address or block and lot. Information shown relates to the municipality, county, block and lot, address, acres in block and lot, the combined constrained acres, non-constrained acres, municipal zoning and range of credits applicable to the lot. The next section, she indicated, is the administrative information showing the county,

municipality, parcel, Planning and Preservation Areas and Existing Community Zones. She explained that a lot would not be eligible in the Existing Community Zone. Next, the constraint layers show the combined constraints, water bodies, slopes greater than 25%, slope 15-25%, flood prone areas. The Estimator Tool also has a "Create Report Feature" which will put the report together. The default feature will show the combined constraints on the particular sites but can be used for individual maps on the constraints.

Ms. Way left the teleconference. Mr. Schrier left the meeting.

Ms. Swan continued with a discussion of the background information tool and discussed the links from the tool to the technical reports and to the website. She noted that if someone owned non-residential property, they will have to fill out an HDC Allocation Application from the website. The tool also allows one to look at Google Earth to have a closer look at the particular block and lot. There are also links to the Allocation Application, which can be filled in and then and it must be sent to the office in hard copy. There is also background information on eligibility, allocation and a disclaimer.

She then reviewed the timeline to launch the Highlands TDR Program: finalize the deeds of easement after Attorney General review, launch the web-based HDC Estimator tool at the November 5th HDC Bank Board meeting, begin reviewing the HDC allocation applications in November 2009, open period for processing of HDC Allocation Determination applications for Highlands Council November 5, 2009 through January 5, 2009, review HDC Certificate application materials (HDC Bank) November, 2009, and consideration of HDC hardship purchases by the HDC Bank January 2010 through March 2010.

Finally, she summarized the status of TDR Feasibility Grants. She noted that to date the Highlands Council has approved 10 TDR Feasibility Grants for Bogota Borough, Chester Borough, City of Clifton, Town of Clinton, Harmony Township, Hopatcong Borough, Lopatcong Township, Oakland Borough, Tewksbury Township and Washington Borough. She mentioned that today Long Hill Township which is outside of the Highlands Region has submitted a grant application as allowed for receiving zones to be in one of the seven counties within the Highlands Region and that she, Tom Borden and Jeff LeJava had made a presentation to Long Hill Township on June 9, 2009.

III. CONSIDERATION OF RESOLUTION – APPROVAL OF A TRANSFER OF DEVELOPMENT RIGHTS RECEIVING ZONE FEASIBILITY GRANT TO LONG HILL TOWNSHIP – (voting matter with public comment)

Mr. Whitenack introduced a motion to approve this resolution. Ms. Kovach seconded it.

PUBLIC COMMENT ON THIS RESOLUTION

David Shope, Long Valley

Mr. Shope expressed his disapproval of this \$25,000 grant and mentioned the grant awarded to the Town of Clinton for the same purpose that was still not completed since March 2008. He also objects to the next resolution on agricultural grant funding.

Debra Post, Chester Township

She began making general comments on the TDR update and the Chairman asked her to be specific to this resolution. She responded that she thought it was time for general comments.

Messrs. Schrier and Vetrano and Ms. Way were absent. All other members voted to approve this resolution. The resolution was APPROVED.

Ms. Swan clarified that a \$10 million allocation to the HDC Bank will be used to support the TDR program in accordance with Executive Order 114.

IV. CONSIDERATION OF RESOLUTION – APPROVAL OF THE HUNTERDON COUNTY AGRICULTURAL MARKET DEVELOPMENT PROGRAM – (voting matter with public comment)

MS. Swan described this resolution as a modification to an existing grant and summarized the grant history for Hunterdon County. She noted that this requested amendment totals \$41,281.37 and would increase the 2009 grant award to a total of \$81,281.37 and would include work that continued through the winter of 2008 thus requiring a modification of the grant period. The grant is used by the New Jersey Council of Farmers and Communities as they are the entity that is the final recipient of the grant through Hunterdon County. Staff has reviewed the request with respect to the original scope as well as all invoices and checks and is recommending approval.

Ms. Kovach introduced a motion to approve this resolution. Mr. Cogger seconded it.

Ms. Letts asked if were possible to tract the revenue of farmers as a result of the grant. Mr. Steiner, the new Treasurer of the New Jersey Council of Farmers & Communities, spoke to the support from the Highlands Council and commented that the purpose of the funding was to increase the customer base for farmers by getting more customers to the farmers markets and that his organization does not get financial information from the farmers. He noted that there have been 3 more markets established this year.

PUBLIC COMMENT ON THIS RESOLUTION

Chairman Weingart reiterated that Mr. Shope had expressed his disapproval for this resolution in his previous comments.

Debra Post, Chester Township

Ms. Post spoke to what she described as exclusivity for the selection of which farmers participated in the Chester Farmer's Market noting that she had applied as the owner of an apple farm and had been declined.

Ms. Swan committed to having staff write up how the Highlands Council is involved in the Agricultural Grant and what rules are in place to safeguard how these markets are run.

Messrs. Schrier, Vetrano and Ms. Way were absent, Messrs. Alstede and Peterson abstained due to conflicts. All other members voted to approve the resolution. The resolution was APPROVED. Mr. Schrier rejoined the meeting.

V. CONSIDERATION OF RESOLUTION – DENIAL OF A REQUEST TO STAY 2009 PLAN CONFORMANCE GRANT PROGRAM MODULE 3:

HOUSING ELEMENT AND FAIR SHARE PLAN INSTRUCTIONS (voting matter with public comment)

Mr. Borden gave background on this matter. It is a request for a stay of a Council action in connection with litigation filed by a non-profit organization, Fair Share Housing Center (FSHC) that was involved in the original litigation challenging the RMP along with private developers. FSHC has filed a subsequent action challenging the Module 3 instructions for the 2009 Plan Conformance Grant Program for the Fair Share Housing Planning Element. While they have an appeal in the Appellate Division, they have requested a stay and in accordance with New Jersey Court rules the stay request must go to the agency first for a decision and then to the Appellate Division should the stay be denied. A similar request was made to COAH at its September 9th meeting and it was denied.

Mr. Borden continued his comments with an overview that this action involves the important aspect of the RMP that requires municipalities that conform to the RMP to comply with their constitutional obligation to provide affordable housing. The RMP requires municipalities to prepare a Housing Element and Fair Share Plan consistent with the constitutional obligation and in accordance with the resource protections in the RMP. Conforming municipalities are also required to either submit a petition for substantive certification to COAH or a petition the Superior Court. The Council incorporated those provisions into the RMP in July, 2008 and the Governor approved through the issuance of Executive Order 114 and subsequently the Highlands Council established the 2009 Plan Conformance Grant Program with 7 modules. The third module was to provide funding for the development of Fair Share Plans and Housing Elements. Those instructions were published by the Executive Director after COAH's resolution to extend the deadline to June 8, 2010 and the resolution providing guidance on the mechanism to calculate adjusted growth projections. Those two actions approved by COAH are on appeal as well and COAH denied FSHC's motion seeking that COAH stay these actions.

Mr. Borden advised the Council that FSHC is appealing the 2009 Plan Conformance Grant Program instructions for Module 3 and is requesting a stay of that action. However, Mr. Borden wanted the Council Members to hear from Kevin Walsh, staff attorney for FSHC and hear public comment before his making a recommendation to the Council Members.

PUBLIC COMMENT ON THIS RESOLUTION

Kevin Walsh, Fair Share Housing Center Attorney

He noted that his organization represented the interests of low income residents to State agencies and the courts. They had filed a September 23, 2009 request asking Executive Director Swan to consider staying her 8-20-2009 email that transmitted to the mayors of the Highlands instructions on how to prepare and follow the Module 3 process. He noted that it was his understanding that the Council did not prepare those instructions and that it was his view that the Council was the only body that could adopt what he described as rules. He asked the Council to grant the motion to stay and to allow the validity of the rules be litigated at the Appellate Division. He commented that his organization had many problems with how the Highlands Council and COAH have handled affordable housing. He focused on the narrow issue of whether there is a likelihood of success on the merits of its appeal with the Appellate Division of Ms. Swan's issuance of the Module 3 instructions. He believes that these are regulations that require a notice and comment process including publishing in the New Jersey Register. He also noted that the second reason that the stay be granted was that these instructions were issued by a staff person without proper authorization by

the Highlands Council. He made additional comments that he believed that the Highlands Council had ignored the requirements of the Administrative Procedures Act (APA) and enabling legislation. He commented that the process that had been followed by the Highlands Council was not transparent.

Eliot Ruga, New Jersey Highlands Coalition

He spoke to his New Jersey roots. He commented that he had provided comments to COAH that were considered and it is COAH's belief that they followed APA regulations and did not agree to the motion to stay. He recommends the stay not be granted.

David Shope, Long Valley

He commented that as a result of Executive Order 114, there had been exclusionary zoning to exclude some lower income people from the area by having lower COAH obligations. He noted that he had heard the Executive Director of COAH comment that units not being built in one area would not be built elsewhere. He supports the stay.

Julia Somers, New Jersey Highlands Coalition

She commented that this stay being discussed is an attempt to overturn Executive Order 114. She urged that the stay be denied.

Kevin Walsh, Fair Share Housing Center

He disagreed with Ms. Somers' comments and said that his position was there should not be any further units of affordable housing in the Highlands, however, the need does not disappear. There is no plan by Highlands Council or COAH for the reallocation. He recommended that the units be reallocated near to transit. He noted that there was an obligation of 13,000 units in the third round and prior round obligations.

Mr. Borden continued with a summary of the 8 page resolution as follows with a recommendation to deny the stay request. He noted that FSHC in seeking a stay request has to meet a four part test – likelihood of success on the merits, suffering irreparable harm, relative hardships to the party bringing the action, and whether the public interest is harmed. The primary test is the likelihood of success on the merits. He pointed out that FSHC is misunderstanding the actions of the Highlands Council as the Council adopted, as part of the Regional Master Plan, a stringent requirement that all conforming municipalities prepare a Fair Share Plan and Housing Element. This will ensure that Highlands municipalities meet the current and prior round obligations including those municipalities not participating in COAH currently. He noted that the Council started providing planning dollars in the form of grants for municipalities to take an affirmative role in addressing their constitutional obligations. The FSHC argues that the Administrative Procedures Act was violated by the Council. Mr. Borden pointed out the Highlands Act required an extensive public process in the adoption of the RMP and the Council prepared two drafts of the RMP, two comment/response documents and held nine public hearings. He believes that for all intents and purposes, the requirements of the Highlands Act exceed the protections of the Administrative Procedures Act and that FSHC has not met the test in terms of success on the merits.

The next test of irreparable harm was addressed by Mr. Borden noting that FSHC is seeking to provide affordable housing, but asking that the Highlands Council stop giving grant dollars to municipalities to analyze affordable housing. He believes that the grant dollars are essential to municipalities meeting those obligations in weighing the benefits of this action. In terms of the

public interest, Mr. Borden believes that the planning dollars should move forward to continue to address the constitutional obligation. COAH denied the stay request. He recommended that the Council deny the stay request.

Mr. Weingart asked Mr. Borden to clarify that the Council did not send the Module instructions and asked why the Council was being asked to take action. Mr. Borden commented that the Council did adopt a resolution in December of 2008 create the \$7.5 million 2009 Plan Conformance Grant Program. Part of the 2009 Plan Conformance Grant program was the delegation of authority to the Executive Director to implement mechanisms to facilitate grant funding and keep the municipalities on schedule. He noted that the Plan Conformance schedule of December 2009 sets a statutory deadline for municipalities in the preservation Area. Also that the Planning Area deadline for filing with COAH for municipalities that had received an extension was established for June 2010 by COAH. As a procedural matter on the stay request, the Court rules require that the agency that must make the stay decision according to Mr. Borden.

Ms. Carluccio introduced a motion to approve the resolution. Ms. Kovach seconded it.

Mr. Schrier asked if the Highlands Council needed to act. Mr. Borden recommended that the Council take the action. Mr. Weingart then asked for a vote.

Mr. Vetrano and Ms. Way were absent. All other members voted to approve the resolution. The resolution was APPROVED.

Chairman Weingart read a portion of a resolution that had been adopted by the Township of Mt. Olive and signed by the Council President complimenting Executive Director Eileen Swan.

Mr. Alstede asked Mr. Borden if there had been any progress with the NJDEP in defining "Property Owner". Mr. Borden indicated that he had had a telephone conference with the Attorney General's office and hoped to report resolution soon.

GENERAL PUBLIC COMMENT

Julia Somers, New Jersey Highlands Coalition

She offered her congratulations to Ms. Swan on the Mt. Olive resolution. Her organization is part of the Keep It Green organization. She invited anyone who wanted to come to one or both Press Conferences on endorsement of Ballot Question #1 on Oct. 22 at 2:30 pm Monksville Reservoir and Oct. 29 12 noon at Teetertown in Hunterdon County.

Mr. Schrier left the meeting.

David Shope, Long Valley

He spoke about studies on equity with monkeys and people. He expressed his opinion that there was no sense of fair play for Highlands landowners. He also cited a study (Whitehall) in England with findings that the lower you are on the social economic ladder the more prone you are to poor health. He maintained that the Highlands Council has created a public health problem for landowners and farmers with the bureaucratic measures that are a part of the process. He did not agree with Mr. Cogger's comments about the 10 to 1 return on investment as being a fair rate of return. He noted that the United States Department of Agriculture shows a return on equity of \$348

per acre for farmers and also that the development potential elsewhere outside the Highlands was 82% so that has not been paid for in the Highlands. He believes the Highlands is like a colony of the State.

Chairman Weingart thanked Ms. Calabrese for her service to the Highlands Council.

The meeting was adjourned at 3:03 pm.

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: 11/13/09

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 Carluccio			✓			
Councilmember Cogger			✓			
Councilmember Francis			✓			
Councilmember Kovach		✓	✓			
Councilmember Letts			✓			
Councilmember Peterson						✓
Councilmember Schrier	✓		✓			✓
Councilmember Vetrano						
Councilmember Way			✓			
Councilmember Whitenack			✓			
Councilmember Weingart			✓			

Real Estate

'Very affordable prices,' but many limitations, for Highlands tract

NAI Hanson marketing 360 acres in protected region of North Jersey

BY EVELYN LEE

NAI JAMES E. HANSON, a Hackensack-based commercial real estate brokerage firm, announced last month that it is marketing a 360-acre tract of vacant land spanning parts of Franklin, Hamburg and Hardyston in Sussex County.

As a result of the Highlands Act, which limited new development in northwestern New Jersey when it was passed in 2004, "land in this area is now available at very affordable prices," said John Schilp, senior vice president and sales agent for the property.

The tract encompasses three separate parcels, the firm said. The first comprises 14 acres of residentially zoned vacant land in Hamburg and 17 acres of vacant land in neighboring Hardyston Township. The latter portion is zoned as a minimum impact development district — where development is constrained by environmental issues, such as steep slopes and flood plains — and includes a billboard sign on Route 23.

The second parcel, which has frontage on Route 23 in Franklin, is composed of 76 acres of farmland-assessed wooded land — a type of property with a very low real estate tax assessment — that is located in the Highlands Planning Area, where development is permitted. The front-



Aerial view of a 360-acre tract of vacant land in Franklin and Hamburg boroughs and Hardyston Township.

age is zoned highway commercial; the remainder is zoned for three-acre single-family residential development, where each residential lot must be at least three acres in size.

The third parcel, which comprises approximately 257 acres of farmland-assessed wooded and open vacant land in Hardyston, is zoned as a minimum impact development district in the Highlands Core Preservation area, where development is severely restricted. The property, however, could be used for two large residential estates, farming or hunting, Schilp said.

The 360-acre property has an aggregate value of more than \$2 million: about \$1.1 million for the 257-acre site, \$760,000 for the Franklin Borough parcel and \$150,000 for the smallest parcel, he said.

But before the Highlands Act was signed by then-Gov. James McGreevey, Imperatore Sussex Partnership L.P., the property owner, received two unsolicited offers ranging between \$8 million and \$10 million, Schilp said. The higher offer came from a developer looking to construct residential and commercial buildings on the site, while the lower offer came from a church group that wanted to establish a retreat on the property.

"Neither use could be accomplished today, because the Highlands Act prevents it" — which has led to a 60 percent to 80 percent loss in value for the property, he said. The partnership declined the offers, though Schilp said he was not familiar with their reasons for doing so.

A 2007 study by Holzhauser & Holenstein

LLC, a real estate advisory services firm in Newton, said vacant and minimally developed properties located within the Highlands region lost an average of 70 percent to 80 percent of their values as a result of the Highlands Act.

The legislation prevented some \$80 billion of real estate development from occurring within the preservation area, with about \$15 billion of that directly tied to a loss in land value, the study said.

But "there's no substantial information to really be able to draw any conclusions on values," said Eileen Swan, executive director of the New Jersey Highlands Council, which developed and oversees the Highlands Regional Master Plan. "It's too early to understand the true effects of the Highlands Act."

In the planning area of the Highlands, "the full effect of the act isn't in place until a town makes the decision to conform" to the regional master plan, she said.

The preservation areas are required to conform, and must submit a conforming petition by Dec. 8, she said. Planning areas are not required to conform, and do not have a deadline to file a petition if they decide to do so, but 74 of the 88 municipalities in the Highlands Region are working with the council toward conformance, she said. ♦

E-mail to elee@njbiz.com