

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF JANUARY 21, 2010

PRESENT

JACK SCHRIER)	ACTING CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
MIMI LETTS)	
MICHAEL FRANCIS)	
TRACY CARLUCCIO)	
JANICE KOVACH)	
BILL COGGER)	
CARL RICHKO)	
ROBERT HOLTAWAY)	

ABSENT

GLEN VETRANO)
JAMES VISIOLI)

CALL TO ORDER

The Acting Chairman of the Council, Jack Schrier, called the 91st meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:06 am. He welcomed the new Council Member Carl Richko, former Mayor of West Milford.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

Acting Chairman Schrier 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.

SWEARING IN OF NEW COUNCIL MEMBER

Acting Chairman Schrier administered the oath of office to Carl Richko, who is the new Council Member from West Milford, Passaic County. He was appointed by Governor Corzine upon the recommendation of the President of the Senate and is a public member.

APPROVAL OF MINUTES OF December 17, 2009

Ms. Kovach introduced a motion to approve the minutes. Mr. Cogger seconded it. Mr. Vetrano was absent. All other members present voted to approve. The minutes were APPROVED 9-0.

CHAIRMAN'S REPORT

Acting Chairman Schrier spoke of his admiration for John Weingart who had been the Council's Chair since its inception. He described John's leadership as exemplary and how his demeanor enabled meetings to be run smoothly. He further stated that John will be missed. He expressed his pleasure in serving on the Council. He thanked Council members for their service, expressed appreciation to the staff and thanked the public for their attendance at meetings.

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The Acting Chairman made some opening comments and gave Council Members the opportunity to make comments. Mr. Schrier stated that being on the Highlands Council was one of the highlights of his career. He stressed the need to address the fair compensation to landowners and, as set forth in the Highlands Task Force Report and the Highlands Act, the Council needs to address economic viability in the Highlands Region.

Mr. Francis stated that he wants to fairly compensate landowners in the Region and supports the expansion of TDR statewide.

Ms. Letts said that John Weingart did a tremendous job bringing the Council together on a complex mission. Staff did a fantastic job, but now we must deal with equity issues and improve the economy in the Region.

Mr. Cogger spoke of his admiration for John Weingart and stated that he had good spirit and wisdom. He also said that he has concerns for, not only large landowners, but those with small properties and is concerned about their equity.

Ms. Carluccio stated that the Highlands Act was passed to protect water and that the passage of the Act was the best thing for New Jersey as clean water enhances property values. She noted that the Act has been upheld the New Jersey Supreme Court. She mentioned that the Council is progressing with the TDR Program in its efforts to insure what it does is fair and just.

Mr. Holtaway stated that the Council needs to come up with a process that the public can live with, that the Regional Master Plan can be understood and that the public can utilize it and feel confident about it. The process of government should not be frustrating and every effort should be made to avoid the duplication of work and the creation of a bureaucratic process.

Ms. Kovach said that she saw what had happened with growth in Hunterdon County and not all of it was good. In working on the Council she values the respect the Council Members have for each other and the audience and stated that the Council should continue to put aside differences to get the work done.

Mr. Richko said that as a new Council Member he would be listening and learning but was sure he would have things to say in the future.

Mr. Alstede stated that he personally objects to the Highlands Act but he respects the legislative process and we have to implement remedies through the legislature and make it fair. He wants the Council to address the exemption process which is too long and needs to be streamlined. Additionally he looks forward to having vacancies on the Council filled by Governor Christie and looks forward to establishing a relationship with the Governor's Office.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan welcomed new Council Members Carl Richko and James Visioli. She explained that Mr. Visioli was not able to attend today's meeting due to conflicts.

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Highlands Plan Conformance

Ms. Swan stated the Council will continue to advocate for a TDR bill that allows Highlands TDR credits to be transferred statewide and for a bill to extend the dual appraisal program. She will provide updates to the Council on these issues.

Plan Conformance Reviews

Ms. Swan updated the Council on Plan Conformance petition reviews and an update on a redevelopment application by Borealis. In the presentation on Plan Conformance it was explained that seven modules were designed to assist municipalities to achieve basic Plan Conformance and staff worked with municipal professionals to get their input. In the case where a document was missing staff worked with the municipality to get the document or helped prepare the document in order to avoid a letter of incompleteness. Some completeness review letters are being sent to mayors today. Once a Completeness Determination is made the materials submitted will be posted on the Council website after the municipality has 10 days from mailing to review.

56 municipalities' submitted documents supporting a Petition for Plan Conformance, Mansfield and Independence are the only municipalities with Preservation Area lands that have yet to submit a Petition. Wharton and Parsippany-Troy Hills submitted the seven modules for Plan Conformance but have not submitted a Resolution to conform. High Bridge, a Planning Area community, submitted an ordinance.

Highlands Project Review

The first Highlands Redevelopment Area Designation was approved by the Council for an applicant in West Milford. The second part of the process is that a waiver is necessary from NJDEP. Highlands staff are assisting applicants through the process and were present at a pre-application meeting on January 20, for the West Milford applicant.

Ms. Swan went over the application for a Highlands Redevelopment Area Designation from Borealis LLC (a plastics manufacturing company in Mansfield Township in Warren County. These plans include the expansion of the facility and a driveway and storage building. The applicant is petitioning the Highlands Council for a Highlands Redevelopment Area Designation in the Preservation Area using the 70% impervious surface criteria. The staff draft report and draft consistency determination was posted on the Council website on January 15, 2010. Comments may be provided on or before January 29, 2010, to James Hutzelmann. The draft may be revised to incorporate public comments.

This application may be reviewed at the next Council meeting on February 18, 2010. Staff is recommending approval of the proposed Highlands Redevelopment Area designation subject to the following conditions:

1. A Highlands Open Water protection area mitigation plan to ensure no net loss of water quality and buffer value, through mitigation of the impacts from prior agricultural uses and of the proposed impervious container staging areas.
2. The design of the Highlands Open Water protection area mitigation plan shall also ensure no net loss of habitat value for the grasslands species of concern through improvement of habitat on the remainder of Block 1307, Lot 6.
3. The remainder of Block 1301, Lot 1 and Block 1307, Lot 6 outside of the proposed Redevelopment Area must be deed restricted to prevent future development.

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4. Stormwater management must utilize LID techniques and non-structural measures to the maximum extent feasible. Natural hydrology and vegetation should be used to the maximum extent possible to achieve required stormwater performance targets. A directly-connected discharge to the C1 stream must be avoided.
5. No modification to the water allocation permit or NJPDES permits be granted for an increase in flows for either, or for an increase in pollutant loadings or concentrations for the latter.

Additional conditions require that the applicant submit the following finalized plans and supporting analyses for review by the Highlands Council during HPAA application process with NJDEP:

1. Highlands Council consistency determination regarding any proposed modifications to their water allocation permit, as required under Section 74 of the Highlands Act, and regarding any proposed modifications to their NJPDES permits, as required under N.J.A.C. 7:38-1.1;
2. Borealis should provide information that no increased pollutant loadings will occur in the wellhead protection areas through an increased discharge (i.e., no increased NJPDES discharge limits for any pollutant). Borealis should also provide an Operations and Contingency Plan regarding the facility's discharge prevention plans regarding any hazardous materials stored or handled on-site, to meet Tier 2 requirements of the RMP; and
3. Prior to extension of the rail sidings over carbonate rock formations, Borealis should provide either 1) geotechnical investigation that karst topography and associated hazards do not exist at the site, or 2) demonstrate that the proposed rail improvements do not constitute an unacceptable risk of discharge or risk to public safety

With reference to the Highlands Open Water protection area mitigation plan and the plan's impact on lands currently in agricultural use, Mr. Alstede questioned why revegetation of those lands to enhance the functional quality of the stream was recommended instead of considering using agricultural techniques such as those developed by the USDA NRCS to achieve those results. Ms. Swan stated that revegetation was considered by the applicant as a mitigation strategy and that the staff did not prohibit continuing agriculture so long as the resulting mitigation plan protected the stream. Any stream enhancement methodology, including agricultural methods in order to maintain the agricultural use, will be considered by staff. Ms. Swan committed to contacting the applicant to clarify.

TDR Update

At the request of Mr. Alstede, there was a discussion as to how and when the three Council Members positions on the Highlands Development Credit Bank would be replaced since Messrs. Whitenack, Weingart, and Peterson were no longer members of the Council. Ms. Swan stated that the Chair of the Council appoints those seats but that the HDC Bank would not be meeting until early May. As a result, it would be appropriate to wait for the Governor to appoint the remaining members of the Highlands Council and designate the Council Chair before the Council made recommendations for the HDC Bank board members. Acting Chair Jack Schrier agreed that he would be more comfortable that any appointments be made at that time.

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TREASURER'S REPORT

Mr. Cogger stated the Highlands Council budget is on target as of year-end, and noted that the Council does not yet have recent bills yet for legal services.

RESOLUTION

A resolution was considered to commend Chairman John Weingart for this leadership and dedication to the Highlands Council and the Council's mission. Public comments were taken and Mr. Weingart was commended by Julia Somers, Elliot Ruga, Monique Purcell, Helen Heinrich, and Wilma Frey. Monique Purcell read a letter commending John Weingart from Secretary of Agriculture Doug Fischer. Deborah Post and David Shope also made comments but declined to commend.

The resolution was motioned by Ms. Kovach and seconded by Ms. Letts. All other members voted to approve. The resolution was APPROVED 9-0.

PUBLIC COMMENTS

Monique Purcell – NJ Department of Agriculture – Ms. Purcell suggests regarding the Borealis project review, that if a project location is in an agriculture priority area, it would be helpful to have an agriculture representative attend the meetings which take place around the project. There are ways in which agriculture can still occur while protecting natural resources. She stated one of the goals of the Highlands Act is to protect agriculture and she would like to offer alternatives to the landowner.

Helen Heinrich - Farm Bureau – She commented on the Borealis project and advised the Council that comments would be submitted from the Farm Bureau, the Warren County Agriculture Board and others. Farming in New Jersey consists of little pieces of property put together. This piece of property at Borealis is essential to the person who is renting it and there are ways to protect it. There are grassland birds on the property now as a farm and more consideration should be given to continue the lease on property and continue agricultural operations. She suggested that the Council write a letter to advance the dual appraisal bill. Landowners were extremely disappointed that the bill was withdrawn. Farmers would like to see the bill extended statewide, but if the bill is limited in scope to preservation in the Highlands, that would be very important to farmland preservation efforts.

David Shope – Mr. Shope states he has a farm in the Highlands Preservation Area. He is disturbed that the Highlands Council feels that the issuing of exemptions falls within the purview of the Highlands Council. He also states the Highlands Council is in the sixth year and there is no reimbursement to landowners. Mr. Shope asked if Council Members were paid to attend meetings. He stated Borealis is a foreign-owned company and can leave any time so why is the Council considering the application for redevelopment. Mr. Shope also stated a farmer is not a particularly good career path and quoted statistics for earnings per acre for farmers in some New Jersey communities.

Deborah Post – Chester Township landowner – Ms. Post stated she lost 5 million dollars because of the Highlands Act. She is not happy with the Highlands Act and she wants re-pricing of Highlands Development Credits at a 5 to 10 percent discount of the appraised fair market value, to defray what has been lost to landowners.

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Julia Somers – New Jersey Highlands Coalition – She welcomed Mr. Richko as a new Council Member. Additionally, Ms. Somers wants the Council to revisit the issue of “what is a taking” so new members would understand the issues surrounding takings.

Elliot Ruga – New Jersey Highlands Coalition - Asked how Council was working with Mansfield Township to have the Preservation Area of the Township conform to the Regional Master Plan as required by the Highlands Act. Mr. Ruga also thanks Councilmember Richko for his service.

Dave Peifer – ANJEC – Recommends developing a land use history of Borealis site or a Phase I Environmental Analysis and to review previous testimony from Mansfield WWMP. Mr. Peifer recommends for karst testing by USGS. He also agrees with Mr. Alstede’s comments regarding the use of agricultural methodologies for stream enhancement and discussed good conservation practices among all farmers along this tributary of the Musconetcong. Mr. Peifer also welcomed the new Council Members.

Jack Schrier reiterated that the three minute timeframe for public comments is a guideline and that on this occasion he had allowed comments to go over that time since it is the first meeting he is chairing. He firmly stated that personal attacks by name will not be tolerated and the speaker will be cut off. He spoke of the need for civility and stated that arguments can be made in a civil manner.

The meeting adjourned at 12:10pm.

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Date: 3/4/10

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

<u>Vote on the Approval of this Resolution</u>	<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 Holtaway			✓			
Councilmember Kovach		✓	✓			
Councilmember Letts	✓		✓			
Councilmember Richko			✓			
Councilmember Vetrano					✓	
Councilmember Visioli			✓			
Councilmember Schrier			✓			



TRUE COPY





State of New Jersey

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DOUGLAS H. FISHER
Secretary

January 20, 2010

John Weingart, Chairman
Highlands Water Protection and Planning Council
100 North Road
Chester, NJ 07930-2322

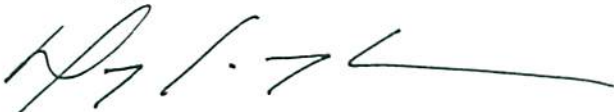
Dear Chairman Weingart:

I want to take this opportunity to thank you for your tireless efforts in serving as Chairman of the Highlands Council over the past five years.

Throughout the long and arduous process of developing the Regional Master Plan, you ensured an atmosphere of respectful and constructive debate that was vital in objectively addressing the wide range of complex issues.

Thank you again for your dedication, and all the best to you in the future.

Sincerely,



Douglas H. Fisher