

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 15, 2010

PRESENT

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

CALL TO ORDER

The Chairman of the Council, Jack Schrier, called the 93rd meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:07 am.

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.

APPROVAL OF MINUTES OF MARCH 4, 2010

Ms. Kovach introduced a motion to approve the minutes. Mr. Richko seconded it. Ms. Carluccio abstained. Mr. Holtaway abstained from the Borealis portion of the Minutes. All other members present voted to approve. The minutes were APPROVED 9-2.

ACTING CHAIRMAN'S REPORT AND MEMBER'S REPORTS

Acting Chairman Schrier asked if anyone had comments regarding the Tewksbury JCP&L substation. Hearing none, Chairman Schrier then read the following statement for the record:

"The proposed New Jersey Central Power and Light (JCP&L) electric substation plan was the subject of a July 15, 2009 Amended Decision issued by NJDEP. In NJDEP's conditional decision, NJDEP required JCP&L to submit to the Highlands Council the landscape plan for review and approval as this is "necessary for the project to achieve consistency with the goals of the Highlands Act." The Highlands Council staff is presently reviewing the JCP&L landscape plan and on March 31, 2010, released an invitation for written comments regarding the plan from the public or interested parties. As this matter is in litigation and the public comment period extends until April 19th, please be advised that, while additional public comments may be presented during the Public

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Comment portion of this meeting, Council members should refrain from discussing this pending matter.”

Mr. Holtaway commented that he attended the Tewksbury meeting on March 23, 2010 and felt it was good that a Council member and staff attended. He thanked the Council for the opportunity.

Ms. Letts commented that she had the opportunity to attend Leadership Morris about the Highlands. Ms. Letts commented that the conference was very well received and she was happy to talk about the progress the Council has made to date.

Mr. Alstede asked whether we heard back from the NJDEP about the definition of the ownership entities and how that relates to Exemptions 1 and 2. Mr. Borden responded that staff does not have definitive word and are having ongoing discussions with NJDEP on Highlands Land Use Ordinance which includes those exemption issues and staff hopes to resolve both issues. Mr. Alstede also had a question about the status of the Attorney General’s review on deed of easements. Mr. Borden commented that staff received the Attorney General’s review on deed of easements on April 9th and are updating to incorporate those changes. Mr. Borden anticipates that those documents will be finalized this week and staff will send a copy to Council. A copy will be available to the public on the Council website.

Mr. Alstede asked if staff is putting the pressure on NJDEP. Mr. Borden responded that the Council staff continues to work with NJDEP on the issues of exemptions and the proposed delegation of exemptions authority to conforming Preservation and Planning Area municipalities.

EXECUTIVE DIRECTOR’S REPORT

Plan Conformance Reviews

Ms. Swan updated the Council on Plan Conformance Petition reviews. Fifty-six (56) municipalities and five (5) counties have submitted Petition documents for Plan Conformance. Of the 56 municipalities who submitted Petition documents, 38 municipalities were deemed complete and 18 requests for additional information have been sent. Additional Planning Area petitions are expected between now and June.

After a Petition for Plan Conformance is deemed to complete, the Petition documents are posted on Highlands Council website. Draft Consistency Review and Recommendations Report will be issued by Highlands Council Executive Director to the municipality or county for a review period of 45-90 days. Public information on Plan Conformance Process will occur through the Plan Conformance Petition Tracking Sheet. The Tracking Sheet, which is on the Highlands Council Website, includes the Date a Petition is received by the Highlands Council, Administrative Completeness, Consistency Review and Recommendation Reports, Municipal/County Review Period, Public notice and public comment periods and Highlands Council meetings to review Petitions. Ms. Swan showed what the Tracking Sheet looks like and how interested parties can click on a town or county name and view all documents posted on the Highlands Council website for their review.

Highlands Development Credit (HDC) Allocations, Hardship Determination and HDC Bank Update

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Public Notice and HDC Estimator Tool were posted on the Highlands Council website November 2009 to advise and guide landowners. HDC Allocation Applications for the 1st round hardship consideration were due by March 15, 2010. HDC Allocation and Hardship Determinations were then worked on by staff.

Ms. Swan then continued with her presentation to give the timeline for HDC Certificate. Public Notice was given in February 2010. HDC Certificate Application for the 1st round hardship consideration is due by April 15, 2010. On May 6, 2010 HDC Bank Board will rank hardship applications according to HDC Bank's established priorities. Executive Director may be authorized to issue letters of offers to purchase HDCs and deed of easement if accepted by the landowner.

Out of Sixteen (16) HDC Allocation applications received through April 5, 2010; 1 application was for a property located in the Planning Area and is ineligible for consideration at this time. Of the 15 applications for property in the Preservation Area, 9 applications sought to be reviewed under the hardship criteria established by the Highlands Council and the HDC Bank; to date 4 applications have satisfied the hardship criteria. One (1) application sought review under the Highlands Act priority for just missing to qualify for Exemption #3; that application did demonstrate that it qualifies for priority. Eleven (11) applicants have received an allocation letter from the Highlands Council with 10 of the properties receiving an allocation of HDCs. The 11th property is subject to a prior deed restriction that already severed any development potential.

Mr. Alstede wanted to know what timeframe is established to prove hardship. Mr. Borden responded that there is no set date established for the hardship proofs. On the issue of Exemption #3 applicants qualify for the exemption or do not. The statute specifies if you did not have one of the NJDEP permit exemptions than that would qualify you for almost meeting the exemption which allows the application to be priority.

Ms. Letts wanted to know what the primary reason is for hardship. Mr. Borden responded to say the primary reason is a major issue of financial concern, such as personal bankruptcy or major medical conditions) resulting from the Highlands Act.

Consideration of Highlands Redevelopment Areas

Highlands Redevelopment Area Proposal – Heath Village

Ms. Swan introduced the Resolution regarding a proposed Highlands Redevelopment Area Designation for Heath Village Retirement Community. She specified that the Highlands Act provides for relief for any area identified by the Council for possible redevelopment that is either a brownfield site designated by the NJDEP or a site at which at least 70% of the area is covered with impervious surface. A waiver is then considered by NJDEP of any provision of a Highlands permitting review on a case-by-case basis for these designated areas. This is a two-step process.

Ms. Swan continued with her presentation for the Heath Village project. Heath Village is a senior living campus with assisted living and in-patient care facilities located in Washington Township, Morris County. Heath Village site consists of several contiguous parcels within the Preservation Area: Block 20, Lots 56, 57, 58, 72 and 74, totaling 164 acres. The proposed Redevelopment Area is located entirely within Lot 72 (53 acres). The applicant is petitioning the Highlands Council for a

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Highlands Redevelopment Area designation in the Preservation Area using the 70% impervious surface criterion.

Many of the buildings date back to the 1960s, so there is a need to replace the existing buildings and construct new buildings. Proposed redevelopment activities include razing 8 existing residential structures and replace them with 4 new buildings, and construct 4 new one-story attached units to replace an existing single-family home. Construction and associated disturbance will occur over areas that have been previously disturbed, many of which are considered impervious. No disturbance is proposed of the natural resources that exist on the site.

Staff analysis of the proposed Highlands Redevelopment Area petition and field visits to the site yield the following findings of impervious surface: Calculations of 70% were verified; existing impervious surface equals 636,979 sq ft, allowable Highlands Redevelopment Area equals 909,197 sq ft; and proposed redevelopment area equals 909,197 sq ft.

Two (2) buildings encroach into a (previously preserved) HOW buffer. Building 'D' will be entirely within an already disturbed HOW buffer, with approximately 70 ft. of buffer remaining. Increased water demands from a Current Deficit Area are proposed, which is inconsistent with the RMP. Appropriate mitigation is required. A waiver would be required from the Highlands Council (in the Highlands Redevelopment Area approval) and NJDEP (through the HPAA process) for these issues.

Ms. Swan then reported on the timeline of the Heath Village project. The comment period on draft staff report and draft consistency determination closed on April 6, 2010. Three public comment letters were received, including one from the applicant. One commenter wanted HOW buffer and water deficit mitigation plans available for public review and comment prior to the Council hearing. Applicant comment stated that buffer mitigation recommendations should be less prescriptive to allow for flexibility during design and permitting. Staff report and Consistency Determination (CD) were revised to correct factual updates regarding stream classification (C1-TM, not C2-NT) and method of recharge for the Building D roof runoff, and to clarify the buffer recommendation language. A revised staff recommendation report and consistency determination was posted on Council website on April 8, 2010.

The staff recommendation is to approve the proposed Highlands Redevelopment Area designation subject to the following conditions:

1. That the applicant develops a HOW buffer mitigation plan, to mitigate potential impacts from Building 'D' to the wetlands and associated buffer. Mitigation may include buffer enhancement of the adjacent detention basin with a vegetated filter strip, enhancements to the riparian buffer along the stream corridor, or other similar means. Any mitigation plan must be approved cooperatively by the Highlands Council and NJDEP. The mitigation plan must also be maintained in perpetuity with appropriate deed restrictions;
2. That the applicant mitigates the additional consumptive water demand with on-site recharge. The applicant has proposed utilizing rooftop runoff into recharge basins to satisfy this requirement, which should be incorporated into their stormwater management plan;
3. That the remainder of Block 20, Lots 56, 57, 58, 72 and 74 outside of the proposed Highlands Redevelopment Area be deed restricted to prevent future development and that

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the deed restriction recognize any existing easements for the access to water tower and for implementation of potential forest stewardship plans;

4. That the construction of sewer lines and laterals within the Tier 1 Wellhead Protection Area must prevent exfiltration of untreated sewerage into ground water (e.g., using PVC pipe with viton gaskets and water-tight joints tested to HMUA standards for exfiltration); and
5. That the project be designed to incorporate low impact development techniques and other Best Management Practices where feasible, including stormwater management 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.

Acting Chairman Schrier left the meeting.

Ms. Swan commented that in the absence of the Acting Chairman, the Treasurer presides over the meeting. Treasurer Cogger continued with the meeting and asked for a motion on the Resolution.

Ms. Kovach made a motion on the Resolution, Ms Letts seconded it.

Acting Chairman Schrier returned to the meeting.

Ms. Carluccio asked if the C1 tributary is named. Ms. Swan answered that it was an unnamed tributary. Ms. Carluccio wanted a review as to the force of staff's mandatory nature of recommendations for these various conditions to NJDEP. Ms. Swan responded that staff works in coordination with the NJDEP so that there is early coordination on redevelopment area designations. Staff has had pre-meetings with NJDEP to make sure NJDEP is comfortable with staff recommendations because it is up to NJDEP as to whether or not a waiver is granted for the Preservation Area from the Highlands rules. Ms. Swan further stated that in order to make sure the applicant is set up for success; we work in advance with the NJDEP.

Ms. Carluccio continued to comment that she has seen a lot of work has been done to minimize the impact on the resources so improvements are being made through the process. Ms. Carluccio asked how staff has made out on these mandatory recommendations conditions so far with NJDEP. Ms. Swan responded by saying that staff recommendations are mandatory because the Highlands redevelopment designations is conditioned upon reaching these mandatory conditions. Mr. Borden stated that arguably NJDEP can be more stringent because they have to grant waiver relief in accordance with their regulations. Ms. Carluccio stated that she does have many concerns because the site is a very sensitive area. She is concerned about the lack of specificity of the staff's analysis.

Ms Swan asked staff engineer James Hutzelmann to address Ms. Carluccio's concerns. Mr. Hutzelmann stated that from a feasibility standpoint, he asked the applicant to submit recharge data which is used in the New Jersey Groundwater spreadsheet which is used by engineers in stormwater management plans. It was determined after review of the data provided by the applicant that there is sufficient impervious area to generate the runoff, and the soils and landcover have enough recharge to accept the runoff into the basins. Mr. Hutzelmann stated he verified the calculations. The applicant at this time is not asked to provide permeability testing, but would have to provide this testing for their stormwater management plan design based on field test data.

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Ms. Swan noted that the applicant and their engineers were in the audience.

Mr. Francis asked about remaining lands owned by the applicant contiguous to the parcel in question. Ms. Swan replied that that area would be conservation deed restricted.

Public Comment on the Resolution (Heath Village)

David Peifer – ANJEC – Mr. Peifer had no particular comment on the Heath project. He is, concerned about how karst is treated in staff reviews, particularly with regard to redevelopment area evaluations. According to RMP mapping prepared by the Highlands Council, the bulk of the proposed redevelopment area is underlain by carbonate rock. The remainder is underlain by Precambrian rock. The two rock types are separated by a major fault. Mr. Peifer further commented that the NJDEP mapping shows this fault, however the Highlands Council mapping does not show it. Mr. Peifer submitted a written testimony for the record.

Wilma Frey – New Jersey Conservation Foundation. Ms. Frey wanted to comment on the recommendation that the remaining lands be deed restricted. In concept it is good and Ms. Frey was very pleased to see those large tracts are deed restricted, but Ms. Frey further commented that there needs to be something in the language that the holder of the deed restriction needs to be identified before the project moves forward. Ms. Frey personally recommends that it not be the municipality.

David Shope – Mr. Shope commented that Heath is a place where old people go. Mr. Shope also was curious as to how much the additional layers of bureaucracy have cost the applicant for this project.

Deborah Post – Ms. Post commented that this project is a dense cluster housing which Council advocates. Ms. Post further added that Council should not deed restrict this land and should allow Heath to expand and provide the excellent care that they do to a segment of our population that needs it.

Mr. Cogger commented that the municipality should be the holder and partner of the deed restriction and involved in this process and spoke to the benefits of this approach.

Ms. Letts followed up on Mr. Cogger's comments to emphasize the need to register restrictions as she has seen properties years later have been developed in areas that were to be protected because there was no proof of the restrictions.

All members present voted. APPROVED 10-1.

Acting Chairman opened up the meeting to a work session period.

Work Session – Map Adjustment and Center Designations

Ms. Swan acknowledged that the Byram Township and Pohatcong Township officials and professionals were present at the meeting.

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Plan Conformance

Petitions for Plan Conformance, as part of the Petition process, Council requested that municipalities and counties include the following:

- RMP Updates (factual revisions issued by Staff)
- Map Adjustments (policy changes to the Land Use Capability Map approved by Council)
- Center Designations (areas for designated growth approved by Council)

RMP Updates

As the RMP was created at a regional scale, RMP Updates provides a process for using new, updated, or additional information to update the numerous components of the RMP including the Land Use Capability Map series and other RMP maps.

Policy 6G1: To develop a program for RMP Updates for all substantive components of the RMP, based upon the receipt of new, corrected or updated factual information and verification by the Highlands Council, when and where necessary to improve the accuracy of the RMP.

As a result, the most current data will be used during Plan Conformance. To date, RMP Updates have primarily addressed recent construction and clearing, new open space purchases, and updated infrastructure information. Many RMP Updates were identified during the Highlands Municipal Build-Out process where information was verified at a block and lot level. RMP Updates will be reported out to the Council as they are approved by staff. In addition, the Council's website will track and post all RMP Updates. Council was shown the results of a RMP Update for Lebanon Borough to include areas that had been developed since the creation of the Highlands Regional mapping layers.

Map Adjustments

Map Adjustments are issued by the Council to address policy issues raised during Plan Conformance. Map Adjustments allow for the adjustment of the RMP's Land Use Capability Zone Map to authorize the extension of infrastructure and the loss of Highlands resource areas.

- Objective 6G2b. Map Adjustments proposed to change Protection and Conservation Zones or the Environmentally-Constrained Sub-Zones may be approved by the Highlands Council where it find that the petition does not result in deleterious impacts to the affected or adjacent Land Use Capability Zones or to RMP policies and objectives applicable to adjacent or nearby lands and:
 - Complies with the intent and purposes of the Highlands Act and the RMP and demonstrates that Highlands resource protection and smart growth planning principles have been addressed;
 - Will result in no net loss of Highlands resources or resource values (including but not limited to water availability, water quality, Critical Habitat and agriculture) within the Region or as appropriate, within any HUC 14 subwatershed, such that on the whole, the results equal or exceed the resource protections provided by the RMP;
 - Map Adjustments will under no circumstance result in the allocation of water or waste water capacity in excess of that available in any HUC 14 subwatershed.

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- Cannot appropriately or adequately be addressed via other options, such as: Waivers under the Highlands Act, Exemptions from the Highlands Act, RMP Updates Program.
- Where a petition seeks the creation or extension of an ECZ, it must demonstrate that the area in question can accommodate ECZ appropriate development.
- **The Council will look most favorably upon ECZ petitions that create a meaningful opportunity to provide affordable housing; improve the balance of housing and employment; and promote the use of alternative modes of transportation, and transit.**

Pohatcong Map Adjustment Example

Numerous Map Adjustments were proposed in Petitions for Plan Conformance seeking to adjust the Land Use Capability Zone Map from the Protection and Conservation Zones to the Existing Community Zone. The issues include longstanding municipal development plans or affordable housing plans. As an example, Pohatcong Township's Petition includes requests for Map Adjustments. The Township is seeking conform for the Planning Area, however in order not to jeopardize the Township's Substantive Certification from COAH, Map Adjustments are requested to address a Court ordered affordable housing project where sewer capacity has been specifically reserved. The 8,792-acre township has lands in both the Planning and Preservation Areas.

- 1,210 acres (14 percent of the total) in the Planning Area.
- 7,582 acres (86 percent of the total) in the Preservation Area.

Project area consists of Planning Area Block 93 Lots 4 and 5 which together comprise a total of 170 acres; representing LUCM Conservation Zone Subzone -Environmentally Constrained; the property is currently leased with mostly row-crop corn production.

The project area includes Agricultural Resource Area, Carbonate Rock , Critical Habitat (*Note: Landscape Rank 4 – Upland Sandpiper habitat status requires NJDEP review), Highlands Open Water buffers, Tier 1 , 2 & 3 Wellhead Protection Areas and TMDL Compliance.

The project is in the Township's Affordable Housing zoning district, which is the product of prior round affordable housing litigation and a key component of the Township's current Affordable Housing Plan and remains under court jurisdiction. Project has received preliminary subdivision and site plan approval for both parcels, which would permit the creation of 401 single-family lots, two apartment buildings containing a total of 44 low and moderate-income affordable units, and one lot for future retail use; standards for development are regulated by the court settlement agreement. The project would be served by an extension of sewer and water utilities representing a 152,550 gpd wastewater demand from the Philipsburg STP that requires a NJDEP WQMP Amendment approval; Public Water is via Aqua NJ Water Co. and is unconstrained in accordance with the RMP.

Pohatcong project (Hamptons) 2008 local approved site plan:

- Preliminary subdivision and site plan approval allows for:
 - 401 single-family lots, two apartment buildings containing a total of 44 low and moderate-income affordable units, and
 - one lot for future retail use.

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- Would result in 81% developed lands and 19% undeveloped lands
- Project would generate 152,550 gpd of wastewater
- Disturbed area is 81% Carbonate Rock
- Disturbed area is 83% Critical Wildlife Habitat (*Note: Landscape Rank 4 – Upland Sandpiper habitat status requires NJDEP review)
- 42% disturbed Highlands Open Water buffer area
- 100% disturbed tier 1 WHPA; 84% disturbed Tier 2 WHPA and 73% Tier 3 WHPA

Consistent with NJDEP rules (N.J.A.C. 7:38) the Highlands Council did a Consistency Determination ON September 23, 2008 for Pohatcong's proposed Water Quality Management Plan (WQMP) amendment to NJDEP. The project was found to be inconsistent but is now revised to respond to those issues.

Highlands Council Findings	Project Response
Extension of utilities across full property not associated with cluster	Revised project provides 73.5% open space lands
Water Availability constraints	RMP update-no constraint
Stormwater recharge and design concerns	LID required: DEP and RMP Stormwater BMP's required
Karst Topography	Geotechnical site investigations required
T&E Habitat (standard of no net loss)	Critical Habitat conservation and Management Plan will be implemented and land deed restricted
TMDL for pathogens; water conservation measures	Stream Corridor Restoration Plan
Wellhead protection areas – Tier 1	Utility lines must be water tight

As revised, it includes 242 residential units, consisting of 44 apartments to be deed-restricted for low/moderate income households, 122 single family homes, 76 town homes, and no future retail use with a total projected wastewater flow of 69,750 gpd representing an 82,800 gpd reduction. The project proposes 45 acres (26% developed lands) of clustered development as compared to 170 acres as approved, with the remaining 125 acres (73.5% of the area) preserved as open space, may be used for agricultural purposes contingent on Farm Conservation Plan to protect grassland species. Target of providing no net loss of Critical Habitat. The proposed Map Adjustment involves approximately 40 acres of land in the northwestern corner of the tract and an additional 5 acres of land in the southeastern corner of Block 93 Lot 5, which the municipality seeks to adjust from LUCM Conservation Zone- Subzone EC to Existing Community Zone; the remaining portion approximately 76 acres, would remain as Conservation Zone- Subzone EC lands with a deed restriction from further development. All of Block 93 Lot 4, approximately 48 acres of Conservation Zone – Subzone – EC lands, would remain as such with a deed restriction from further development. Disturbed area is 26 % Carbonate Rock, 28% Critical Wildlife Habitat (*Note: Landscape Rank 4 – Upland Sandpiper habitat status requires NJDEP review), 6% disturbed Highlands Open Water buffer area, 73% disturbed tier 1 WHPA, 3% disturbed Tier 2 WHPA and 0% Tier 3 WHPA.

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Ms. Sawn noted that no formal action by Council is required today. This is part of a Plan Conformation application. This is the Council's first opportunity to discuss a Map Adjustment and consider their approach. From Pohatcong's perspective the Map Adjustment request is critical for them because their Fair Share Plan depends on it. Their decision as to whether or not they will conform in their Planning Area is contingent upon this request.

Ms. Schrier commented that this workshop is helpful for the applicants to know where Council might stand on this issue.

Mr. Cogger stated that the ratio on affordable housing is 1:5 which is mandated so he is confused as to what Pohatcong's round 3 obligations would be and how this development effects that obligation. Mr. Borden stated that this is a prior round obligation that was a result of long standing litigation. Pohatcong has a court master overseeing this project. The Court ordered that sewer capacity be reserved for this project and the NJDEP ordered that other wastewater areas served in Pohatcong be pulled back out of this sewer service area.

Ms. Swan acknowledged that the court master is in attendance.

Mr. Francis had a question on affordable housing regarding when developments take that 70% which will be undeveloped and put that property in conservation, does that take that property out of inventory for the affordable housing mix. There would be a definite advantage to doing that.

Ms. Swan stated that the build-out analysis, completed by the Highland Council should Pohatcong conform for the entire municipality, those projections would then be based on the Highlands RMP under affordable housing obligations.

Mr. Richko wanted to know the approximate distance from the development is to the Delaware River. He also asked as to why the town decided to have in their plan more single family homes than townhouses.

Ms. Swan stated that she assumes there were economic reasons. Ms. Swan acknowledged that the professional planner for Pohatcong is in attendance.

Ms. Carluccio was concerned about the Alpha Grasslands. Grasslands are very important not just in Pohatcong Township and in the region but also to the Delaware River, it is known that they are a vanishing habitat. Ms. Carluccio continued to ask if anyone has done calculations on the percentage of grasslands in the area being lost because of this development.

Mr. Van Abs commented that no calculation has been made but that calculation can certainly be done. Mr. Van Abs continued to say that a portion of the grassland is currently corn and that the idea behind the mitigation plan is to make it grasslands to improve the critical habitat.

Ms. Carluccio commented that it is an easy conversion to go from active agricultural to grassland, but once we build on it, it is hard to get back. Ms. Carluccio stated that the plan was a lot better than last time but that it is still a permanent impervious surface with dense development

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Mr. Alstede asked how much of the area is grasslands now. The response was that the area is currently farmed as corn. Mr. Alstede questioned the issue of habitat given the current agricultural use of the area. Mr. Borden responded by saying that the landscape project mapping is potential habitat, so the landscape does not always show all existing habitat. In this particular case the alpha grassland is part of a big state preserved grassland site southwest of this particular site and is a well known area where there is existing grassland habitat and is a priority national heritage site and it is adjacent to this site.

Mr. Alstede responded to say that new habitat is to be created because someone thinks a bird habitat is more important than the agricultural use and he expressed concern about the economics of farming.

Ms. Swan referred back to the consistency determination on this project and commented that the revised project is to respond to the Council's findings. The Council had determined that a Critical Habitat conservation and Management Plan would be implemented and land deed restricted.

Mr. Alstede questioned the loss of habitat if it is not currently there. The response was that it was the loss of potential habitat under the landscape mapping. Mr. Alstede stressed that he was concerned about people being forced to abandon agriculture to create habitat for a bird. The Council talks about the importance of maintaining agriculture but these projects do not support continuing agriculture.

Ms. Swan stated that the applicant revised the project to respond to Council findings and the municipality asked staff to consider the Map Adjustment. Prior to this revised application the entire site would have been developed. So staff is trying to respond to prior Council findings and work with the municipality to achieve a Map Adjustment that Council would consider.

There was a discussion between Ms. Carluccio and Mr. Alstede about the relative merits of retaining agriculture and protecting critical habitat.

Public Comment

Frank Banisch commented that he understands both sides of the previous exchanges. Mr. Banisch has been the master of this case in Pohatcong close to ten years. A 1996 court order called for 529 units including the 44 apartments and single family homes to be built on the entire property. Property was originally zoned for approximately 1,100 units and remained in place for decades. Mr. Banisch met with Ms. Swan and Mr. Borden about a year or more ago regarding this project. Highlands staff went through the same process with application and came up with a series of findings and Mr. Banisch felt that what was presented today is the most compelling accommodation that can be shown. Mr. Banisch felt that what is being considered is a win-win situation and that given the fact that the proposer of the development is willing to lose the number of units and satisfy environment concerns shows him that Council is on the right track. The alpha grassland issue is a valid one and uniquely valuable to the area and once they are gone, will not be back. Mr. Banisch commented that what Mr. Alstede addressed to Council should be considered and the interests of agriculture can coincide with the grassland habitat, which will also be a win-win situation.

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Councilmember Richko asked Mr. Banisch why there were more single family homes considered than town houses. Mr. Banisch commented that single family homes were in there because of the market analysis by the developer.

Ms. Swan commented that the Delaware River is ¼ mile from the site.

Ms. Letts asked if this area is all in the Planning Area. Ms Swan responded that this development is all in the Planning Area. Ms. Letts responded that the municipality does not have to have our approval. Ms. Swan responded to say that Pohatcong does not need to conform for the Planning Area. Pohatcong only needs to conform for their Preservation Area.

Mr. Schrier stated to Council that the reason for this work session is to see if Council is inclined to approve this.

Mr. Francis stated that this is a very good idea for smart planning. Part of smart planning is looking at the big picture and how that open space can be used for both grassland habitat and agriculture. Mr. Francis would be opposed to losing agriculture in this project area.

Ms. Swan referred back to a slide which read "The project proposes 45 acres of clustered development as compared to 170 acres as approved, with the remaining 125 acres (73.5% of the area) preserved as open space, may be used for agricultural purposes contingent on Farm Conservation Plan to protect grassland species...".

Mr. Alstede and Ms. Carluccio continued to comment on their concerns on profitable agriculture and grassland habitat.

Mr. Schrier mentioned that the general question is on Map Adjustment. Mr. Schrier then asked Council if anyone is adamantly opposed to this plan.

Ms. Carluccio stated that she is opposed. No other member of the Council indicated any opposition to the proposed map adjustment.

Mr. Schrier moved to the Center Designation portion of the work session.

Center Designation

Ms. Swan continued with her work session presentation on Center Designation.

The Highlands Act anticipates the use of center designation in section 10 "encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof" and also in Section 11 "issue model minimum standards for municipal and county master planning and development regulations outside of the preservation area, including density standards for center-based

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development to encourage, where appropriate, the adoption of such standards; and Act provisions for center based growth”

Ms. Swan commented that at this point only one center in the Highlands has not expired and that is the Byram Center. It expires on May 19th under the State Plan.

The Highlands Region includes 20 previously designated centers. Municipalities may seek the designation of centers, consistent with the criteria in the State Plan, through Plan Conformance

Highlands Center types include:

- Regional – economic, social and cultural center. Population centers/county seats/business centers (Newton)
- Town – traditional centers of commerce/government. Core of commercial services and employment
- Village – compact, primarily residential with neighborhood goods and services and public facilities. Rural villages should be surrounded by natural areas
- Hamlet – located primarily in rural areas at local crossroads to support existing character and promote local facilities and are intended for preservation of historic settlements and as a means to support local and regional eco/agri-tourism initiatives;

Highlands Regions water supplies used are used in State Plan Urban Centers Newark and Jersey City. The following policies and objectives in the RMP support Centers:

- Policy 6F6: To encourage new population growth, where desired by the municipality, and development in the ECZ is in the form of center based and mixed use development.
- *Objective 6F6a, 6D3b and 6C1a* Center based development initiatives shall be planned within the Existing Community Zone, Conservation Zone and Protection Zone at densities appropriate to the Zone, the community character, the State Development and Redevelopment Plan and the use of septic systems or community wastewater systems.
- Policy 6F6: To encourage new population growth, where desired by the municipality, and development in the ECZ is in the form of center based and mixed use development.
- Policy 6O2. To promote, where appropriate and permitted by Land Use Capability Zone, center-based development approaches that address a mix of housing types, support mixed uses, and implement compact development.
- Policy 9A3. To encourage land use development and redevelopment practices that promote center-based growth and mixed-use development and offer alternative modes of transportation as a means to reduce automobile dependency...

Byram Township is a 14,505-acre township and is almost entirely in the Preservation Area. 98% of the township is in the Preservation Area; 233 acres (2%) are in the Planning Area. Byram has an existing Center approved by the State Planning Commission that is expiring and as part of the Petition for Plan Conformance Byram is requesting extension/renewal of their Center.

Byram had created a Smart Growth Plan in 2002 which included the following

- A two-phased mixed –use development and redevelopment town center approach that met COAH obligations

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- Identified a Village Center (approx. 60 acres) as core development area
- Phase 1 - mixed-use (addressed COAH Round 1 & 2 obligation of 44 units), townhomes, civic uses and a max. of 110, 000 sq. ft non-residential uses via a contractual sewer agreement for 40,000 gpd from MSA
- Phase 2 – 94 single-family homes based upon future sewer availability
- Revitalization of Route 206 Corridor and pedestrian, trail and bike features
- Recognized Lubbers Run protection area as a Greenway Project

Byram Township and Highlands Council staff worked together to consider the proposed center as part of a conformance application for the township.

In recognition of the existing and impending expiration of the State Plan Center designation, 10 years of sound local planning and community support, sewer contracts and COAH needs the Highlands Center designation request was evaluated in support of full Plan Conformance for the municipality. A review of Highlands resources, surrounding land uses, supporting documents and discussions with the municipal officials and its professionals resulted in a consensus based plan that supports resource protection, is within sewer allocations and meets local housing, civic and economic development needs. The process resulted in a conceptual Form Based Code Zone map for the Village. The entire Planning Area land was studied and shown as developable/redevelopable and resource protection areas. Site concepts included the recognition of the surrounding developed areas, the approved DOT project area, steep slope areas, Highlands Open Water buffers, Lubbers Run, prime groundwater recharge areas and critical habitat. The conceptual site layouts were designed to maximize contiguous areas of Highlands resources and groundwater recharge, protect Lubbers Run and HOW buffers and minimize disturbance of severe slope areas. The revised center utilized Phase 1 only consistent with available infrastructure. The plan incorporates the 44 outstanding COAH Round 2 units, mixed use with apartments, townhomes and single- family homes, civic space, parkland and Highlands Environmental Resource Sites.

Ms. Swan acknowledged Council staff but in particular staff member Chris Danis as the lead on Center Designation planning areas.

Mr. Visioli embraced Byram's efforts and spoke about form based code and its benefits to a community. Mr. Richko commended staff and Byram Township on this plan. It covers all bases. Mr. Holtaway spoke about centers. This Council should make the process as easy as possible. This is an excellent example and Council should grant the center designation. Mr. Vetrano stated that Byram Township has been steadfast in their determination to see this through. This is probably one of the bright spots to see something done by this Council, our staff, town officials and town professionals etc. Ms. Letts suggests to Mr. Schrier that a vote be taken on this.

Mr. Francis stated that this is definitely a good example of good planning. Mr. Francis also asked if there was any thought to making this a TDR receiving zone. Ms. Swan says that this plan caps Byram's available sewer capacity and thus TDR would not be used in this case. Mr. Francis continued to add that we need the flexibility to at least entertain the use of TDR. Ms. Swan responded to say that revisions in the future can be made if there is additional available capacity. Ms. Carluccio referred back to the capacity analysis required by the Highlands Act. Ms. Carluccio stated that staff and town should be congratulated on this tremendous effort.

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Mayor Oscovitch thanked everyone for the kind words and the work the Highlands staff and everyone else has done on this plan.

Mr. Schrier asked for a show of hands to support this plan. Majority of the members were in agreement. Mr. Schrier also stated that this is not a done deal, but is another step along the way. Mr. Schrier commented on how refreshing the meeting has been especially with the new members and their involvement in the discussion.

Public Comment

Julia Somers – NJ Highlands Coalition. Ms. Somers commented that this was a fascinating meeting today and rewarding to see the attention to goals in the RMP being met. Ms. Somers congratulated everyone on Byram. Regarding Pohatcong, the project had a tortured history, but this is a huge improvement. She asked how do you achieve no net loss? This area is a National Heritage grassland site. Agriculture will not be stopped on this site. Council gains a great deal by compromising and returning this site to agriculture that encourages grassland species. Ms. Somers thanked Ms. Swan for the huge amount of effort on her part.

Helen Heinrich – Farm Bureau - Ms. Heinrich stated that this was a fascinating meeting and that Council should have more work sessions. In regards to Pohatcong, Council should involve the Department of Agriculture because questions will be asked regarding the no net loss of agriculture.

Deborah Post – Ms. Post stated that Pohatcong planning is a very expensive process and not available to the average landowner. Ms. Post also mentioned about the grassland concern and that it is very expensive to maintain grasslands and that agriculture should not be eliminated.

Messrs Alstede, Cogger and Visioli left the meeting.

Wilma Frey – New Jersey Conservation Foundation. Ms. Frey stated that there are means to provide Pohatcong with funding to do grassland enhancements and maintenance.

Mr. Vetrano left the meeting.

Monique Purcell – NJ Department of Agriculture. Ms. Purcell had heard both sides and agrees with Mr. Francis, Ms. Somers and others that both issues can be addressed. Ms. Purcell stated that there are Federal programs to assist in habitat protection. Both grassland and agriculture can work together and can be resolved. Ms. Purcell congratulated Byram Township and others regarding their development plans.

David Shope – Mr. Shope spoke about water rates. He expressed an opinion about corn. He further spoke about his opinion of the Act.

Hal Danielson – Mr. Danielson stated that Highlands Council is destroying agriculture areas and business.

Acting Chairman closed by sharing with the Council that they should read the special April issue of National Geographic magazine about water.

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Mr. Holtaway made a motion to adjourn the meeting, Ms. Kovach seconded it and the meeting was adjourned at 12:45 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: 5/20/10

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

<u>Vote on the Approval of the April 15, 2010 Minutes</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			✓			

Eileen Swan
Executive Director
NJ Highlands Council
100 North Rd.
Chester NJ

RE: Karst Issues

Dear Ms Swan:

ANJEC is developing a concern about the administrative handling of karst issues by the Council (staff), particularly with regard to redevelopment area evaluations. By definition, these areas contain either previously disturbed ground or large amounts of impervious surface and are being programmed to accept high density development.

Where these areas are located over carbonate rock, there is an increased potential for karst related problems to arise. Because activities may take place over a long time frame (project phasing) it is essential that the condition of the carbonate rock be evaluated as early as possible to guide the development process. It is also important to note that use of LID techniques and stormwater BMPs may lead to future problems if certain techniques are employed over karst terrain.

Proper geophysical evaluations, at an absolute minimum, must be a prerequisite for a finding of consistency with the RMP's carbonate rock provisions.

1. Brantwood Terrace: recent sinkhole formation in an established neighborhood.

Policy 1K3: To establish and maintain inventories of karst features and subwatersheds that drain directly to Carbonate Rock Areas in the Highlands Region

Below is an article discussing the opening of a sinkhole in Mansfield Twp along Brantwood Terrace, an established residential area served by sewers.

Massive sinkhole in Mansfield Township proves hard to fill

By [Tom Quigley](#)

March 17, 2010, 8:16PM



[View full size](#)

Courtesy of Mansfield Township Public Works Department
Concrete is poured into a sinkhole this week off Brantwood Terrace in Mansfield Township.

A Mansfield Township resident out for a stroll Sunday morning, beneath the remaining clouds of a drenching four-day rainstorm, came upon a cavernous sinkhole.

One township official described the giant sinkhole on [Brantwood Terrace](#), off Route 57, as the biggest he's seen in an area crisscrossed by underground limestone deposits and an old mineshaft.

The hole measured about 25 feet deep, not counting the so-called throat that meanders deep out of sight.

"It was 15 feet wide and 18 feet long," said Brent Sliker, Mansfield Township public works manager. **"We put a double layer of safety fence around it and police came by every hour or so."**

The concrete trucks arrived Monday. Workers used a fire hose attached to a nearby hydrant to power wash the interior of the hole.

The sinkhole exposed a gas line and water main, prompting township officials to notify Elizabethtown Gas Co. and Hackettstown Municipal Utilities Authority officials, who monitored the fix-up. No ruptures occurred.

"We poured the first load (of concrete) and it just disappeared," Sliker said. **"The same thing happened with the second load."**

It took five truckloads of wet concrete just to fill the throat, Sliker said. He said an ingredient is added to make the setting concrete expand to fill the crevices.

Workers on Tuesday built a ramp to enable them to reach the far side of the hole and backfill it with layers of fill, stone and soil.

By today, only a large mound of dirt was visible, Sliker said. Workers plan to monitor the site as the dirt settles.

The collapse took place in the front yard of a home near the road after a period of heavy rain. There are no curbs or catch basins at the location. Note that the collapse exposed both water and gas mains that luckily did not rupture. The hole was quite large (approximately 15x18 feet at the surface. Five truckloads of concrete were poured into the opening in an attempt to seal it. It was then covered with backfill.

By reference to the NJGS on-line map data, the location appears to be in the Lower Beekmantown formation. This formation is known to develop sinkholes. Although there is a reference to an old mine, this is highly unlikely at this location.

Despite the fact that the opening was associated with heavy rainfall, it remains unclear if the opening was due to strictly subsurface events, a fluctuating water table, percolating concentrated run-off, or water main leaks.

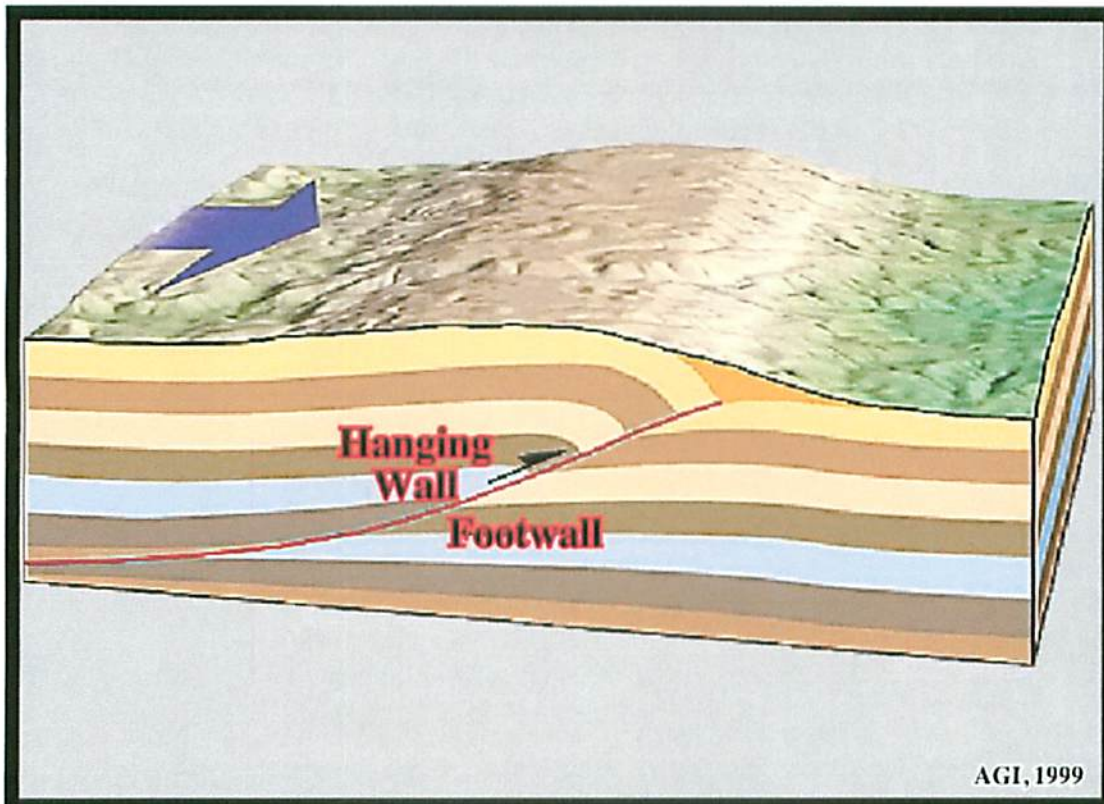
However, the point is that more serious consequences were only narrowly avoided. This situation illustrates that development above karst conditions may be damaged by sinkholes and subsidence years and even decades after installation is completed.

Data from sinkhole occurrences is vital to implementing Policy 1K3. We see no effort on the part of the Council to collect these data or to establish procedures for doing so.

Heath Village

According to RMP mapping prepared by the Highlands Council, the bulk of the proposed redevelopment area is underlain by carbonate rock. The remainder is underlain by Precambrian rock. The two rock types are separated by a major fault, the Musconetcong Thrust Fault.

Thrust Fault



Such faults thrust one geologic formation over another. In this case the older Precambrian rocks lie atop the younger carbonate (Leithsville Limestone). The colluvium that forms at the base of the slope is often an important recharge area and may be highly permeable. The fault and the broken rock associated with it often provide rapid connection to groundwater.

By reference to the NJGS digital mapping, the carbonate rock is the Leithsville Formation. The Leithsville formation is very prone to the development of solution cavities and channels. Areas where Precambrian rock overlay carbonate rock are prone to increased solution activity at the rock juncture. This often results in the formation of large

voids and, in some cases caves. At this site this issue is of heightened concern due to the susceptibility of the Leithsville formation to solution channeling and development of voids. **The Draft Staff Report does not mention “carbonate rock” or “karst”** nor does it mention the presence of the fault.

According to the Council staff, the applicant states that there is a very thick overburden in the area and a number of borings have been made (for other projects). We have no reason to doubt this statement. However, the presence of a thick overburden is not cause for complacency about sinkhole formation.

Quite the contrary; *“One common misunderstanding arises from the presumption that there is a deep overburden, there is less potential for sinkholes to form. While there is a certain logic to this assertion, the reverse is often true. A thick soil overburden will provide greater opportunity for infiltration and dispersion of infiltration. However, in low permeability soils, infiltrating water tends to concentrate along discontinuities in the soil. The greater depth of soil will require a longer period of time for a sinkhole migrating from bedrock to reach the ground surface. But the size of the sinkhole that can open in deep soil overburden is much larger than would open where there is shallower soil cover.”* (Byle, Michael J. P.E., F ASCE), Stormwater Infiltration Practices in Karst, p.6 (attached)

No evidence is presented about the referenced borings. It is highly unlikely that previous boring were placed in the context of a proper karst investigation. Given the fact that the applicant relies heavily on recharging stormwater to the soil system, the nature of the carbonate rock beneath the bulk of the site must be known before such facilities are designed.

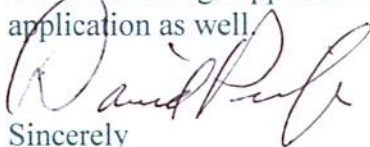
Overall, the staff treatment of the potential karst conditions present at the Heath Village site is not in keeping with the specific goals, policies and objectives of the RMP.

We have seen no evidence of mapping of the “and areas that drain surface water into the carbonate rock area as required in **Policy 1K2**

Without a specific subsurface investigation at the site, data cannot be developed to inform Policy 1K3.

Without knowing “where karst features have been identified” the prohibitions of **Objective 1K4e** cannot be rationally evaluated.

IN sum we feel that there has been considerable “hand waiving” about the karst issue on the Heath village application. We have similar concerns about the Borealis compounds application as well.



Sincerely
David Peifer
Highlands Project Director
ANJEC