



State of New Jersey

Highlands Water Protection and Planning Council
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MEMORANDUM

To: RMP Amendment Committee
From: Lisa J. Plevin, Executive Director
Subject: RMP Amendment Committee Meeting of March 30, 2021
Date: April 9, 2021

The RMP Amendment Committee met on Wednesday, March 30, 2021 at 3:00pm via Zoom video conference.

Committee Chair Alstede called the meeting to order at 3:01pm. A roll call was taken.

RMP Amendment Committee Members present: Council Chair Richko, Committee Chair Alstede, Members Dressler, Holtaway, Sebetich, Van Abs, and Vohden.

Highlands Council Staff Members present: Lisa J. Plevin, Christine LaRocca, James Humphries, and Annette Tagliareni

Also present: Lauren LaRusso, Senior Counsel, Governor's Authorities Unit

Updates

Ms. Plevin provided an update on Council Staff's Regional Master Plan (RMP) implementation projects that were developed based on the recommendations approved by the Highlands Council in the 2018 Monitoring Program and Recommendation Report (MPRR). An overview of the completed projects is as follows:

- RMP Amendment Procedures – adopted September 2018
- Highlands Redevelopment Procedures – adopted March 2019
- Plan Conformance Procedures – adopted July 2019
- Highlands Council Project Review Procedures and Standards – published to Council website 2019
- Lake Management Planning – completed and ongoing

- Critical Habitat Plan Guidance - completed
- Regional Zoning Map Update - completed
- TDR Receiving Area Implementation Guidance – draft complete

Ms. Plevin also provided projects that are currently underway:

- Interactive Environmental Resource Inventory
- Rutgers Stormwater Project
- Function Ecosystem Valuation and Peer Review/Field Testing
- Sustainable Economic Development Plan
- Highlands Trail

Transfer of Development Rights (TDR) Program Overview

James Humphries gave an overview of the TDR Program and Ms. Plevin noted the Chief Counsel's legal memorandum provided to the full Council in response to questions raised during recent Council meetings.

Committee Chair Alstede asked if the 4% referred to at N.J.S.A. 13:20-13(c) is a mandatory percentage and if so, have we sufficiently identified these areas. Mr. Humphries responded that the 4% is a goal and explained the process used to identify these areas in the RMP.

At this time, Member Vohden requested an opportunity to provide comments to supplement his comments from the last Council meeting and Committee Chair Alstede allowed him to do so. Mr. Vohden referred to sections of the Municipal Land Use Law at N.J.S.A. 40:55D-154 and 156 and questioned whether the Council's TDR program was compliant. He also urged the Council to continue working on the TDR program and specifically work to identify the full 4% of land area referenced in N.J.S.A. 13:20-13(c).

Christine LaRocca clarified that the Highlands Council's actions and existing TDR program are in conformance with the Highlands Act and have been judicially upheld. Ms. LaRocca acknowledged that the Council's TDR program is not working, but whether the Council elects to continue to work on TDR is a policy question, not a legal question. Ms. LaRocca added that N.J.S.A. 40:55D- 154 and 156, the statutes referred to by Member Vohden, are part of the Municipal Land Use Law (MLUL) and are not applicable to the Council's TDR program.

Member Vohden expressed additional concerns about potential future litigation and urged the Council to take action on TDR in the interests of landowner equity.

At this time, Committee Chair Alstede asked other members if they had anything to add to the discussion.

Member Holtaway commented on issues of the delineation of sewer service areas (SSA), large lot development, and increased density regarding the TDR Program. He noted that there are similar issues related to municipal average. Regarding the Act and TDR Program, Member Holtaway concluded that those who wanted to assist landowners created the TDR program, but forces in the Highlands who did not want an increase in density made the program voluntary.

Committee Chair Alstede asked how to solve this issue since we do not have the funding and suggested perhaps revisiting the Corporate Business Tax.

Member Van Abs noted four (4) TDR programs currently in the state:

- Pinelands Commission – mandatory
- Burlington County – farmland – mandatory
- Highlands Act - voluntary
- State TDR Program

Member Dressler left the meeting at 3:42pm.

Member Van Abs added that besides the Pinelands Commission and Burlington County, there has not been a successful TDR Program in the state. Member Van Abs also commented on water and sewer capacity regarding some Highlands municipalities, in particular, municipalities who have changed or are changing their capacities. He suggested that this could perhaps open them up for potential TDR receiving areas that were discounted before. Mr. Humphries responded that it is unlikely, adding that the reason for the reluctance of Highlands municipalities to become receiving areas is not infrastructure, but usually economic factors.

At this time, there were discussions regarding the different markets/economies which have impacted various municipalities' ability to be a TDR receiving area.

Council Chair Richko presented a summary of the discussion:

- Legislative action would be necessary to make the TDR Program mandatory;
- The Council is presently compliant with all TDR provisions in the Highlands Act, but noted that other TDR Programs are successful due to the market driven incentives;
- When doing outreach to Planning Area municipalities, the Highlands Council staff can further emphasize and encourage consideration of the TDR program. They can also work to further evaluate the reasons why Highlands Region towns may not be in favor of being designated a receiving area.

Mr. Humphries added that TDR Program is one avenue to compensate landowners. There is also the Open Space Partnership Program, Corporate Business Tax, and State Land Preservation programs.

Ms. Plevin noted that the Council has funded \$27M for land preservation/landowners.

In conclusion, Committee Chair Alstede stated that Council needs to get funding which is not an easy solution. He closed the discussion by asking the Committee members to reflect on the TDR program and continue to brainstorm ideas.

Municipal Impervious Surface Calculation

Committee Chair Alstede reported that the last topic for discussion is a concept which provides a means to transfer impervious surface from an area in a municipality to another area in the same municipality. Committee Chair Alstede questioned whether we have the authority to do this, and whether the concept has validity.

Ms. Plevin responded that Council staff received a specific inquiry and shared staff's response to the Committee that this concept is not permissible under the Highlands Act. Mr. Humphries added that a Highlands Preservation Area Approval (HPAA) from NJDEP would not be possible without a waiver. At this time there was some further discussion on this issue. The conclusion was that there is no simple solution and the Council lacks authority to approve such requests from municipalities.

The RMP Amendment Committee adjourned at 4:08pm.