HIGHLANDS DEVELOPMENT CREDIT BANK
MINUTES OF THE MEETING OF MARCH 5, 2009

PRESENT

SCOTT WHITENACK	)	CHAIRMAN
SUSAN CRAFT	)	DIRECTOR
DALE DAVIS III	)	DIRECTOR
KENNETH KLIPSTEIN	)	DIRECTOR
THEODORE MAGLIONE	)	DIRECTOR
RALPH SIEGEL	)	DIRECTOR

TELECONFERENCE

MICHAEL HALPIN	)	DIRECTOR
ERIK PETERSON	)	DIRECTOR

ABSENT

JOHN WEINGART	)	DIRECTOR

CALL TO ORDER
The Chairman of the Board, Scott Whitenack, called the 2nd meeting of the Highlands Development Credit Bank Board of Directors to order at 1:04 pm.

ROLL CALL
The members introduced themselves.

OPEN PUBLIC MEETINGS ACT
Chairman Whitenack 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 Development Credit (HDC) Bank had sent written notice of the time, date, and location of this meeting to pertinent newspapers of circulation throughout the State and posted the same on the Highlands Council website.

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES of February 2, 2009. *Mr. Klipstein introduced a motion to approve. Ms. Craft seconded it. Mr. Weingart was absent. All members present voted to approve. The motion was APPROVED.*

CHAIRMAN'S REPORT
Chairman Whitenack said that he would defer his report until later in the meeting.

EXECUTIVE DIRECTOR'S REPORT
Ms. Swan introduced staff members who were attending the meeting – Dan Van Abs, Senior Director of Science and Planning, and two of the planning staff – Maryjude Haddock-Weiler and James Humphries.

She gave a brief overview to the board of the plan conformance modules. To date, she noted that 71 of the 88 municipalities were working with the Highlands Council on plan conformance. She described the process for build out and the verification process that the municipalities and Highlands Council staff are undertaking. She explained that the municipal build out analyses are key to the TDR process as the resulting information will be based on capacity and that information will be very important for identifying potential receiving zones. Ms. Craft asked if the build out would include Highlands and NJDEP restrictions and Ms. Swan indicated that it would include both. Ms. Swan continued with a discussion of the aggressive schedule necessary so that towns could meet statutory and regulatory deadlines. She noted that two new towns had expressed interest in participating in the TDR grant program.

She also summarized the $1,000,000 grant program and water use consultant that was approved at the last Highlands Council meeting. It is a two pronged approach – one half of the funds for a consultant to undertake 10 pilot projects and the other half for municipalities to receive grants to start working on a water management plan.

Ms. Swan alerted the board that Mr. LeJava will be giving a detailed discussion on the framework of the TDR program and how it is structured at the next HDC Bank Board meeting on April 2. Chairman Whitenack asked if the valuation methodology would be discussed and Ms. Swan stated that it would.

PRESENTATIONS

I. PINELANDS COMMISSION

- **Larry Liggett, Director of Land Use and Technology, Pinelands Commission**

Chairman Whitenack introduced Larry Liggett from the Pinelands Commission who is the Director of Land Use and Technology. Mr. Liggett expressed the regrets of John Stokes, Executive Director of the Pinelands Commission, who was to give this presentation.

Mr. Liggett began his power point presentation with a discussion of the sending and receiving areas. There are nine distinct management areas, three of them are sending areas: the Preservation area which is primarily wooded; the Agricultural production area consisting of dry agricultural crops; and the Special Agricultural Production area containing the blueberry and cranberry operations that require wet growing conditions.

Mr. Liggett then spoke about the program's receiving areas. He explained that they are for residential development only and explained the two problems the Pinelands program has had in implementing the receiving areas: 1) how to structure zoning and 2) the difficulty with municipalities effectively discouraging developers from applying density bonuses.

Mr. Liggett noted that the Pinelands Development Credit Bank Act (PDC) did not become law until 1988 even though the program began in 1981. He described the chief functions of the PDC Bank as providing financial certainty; serving as a central clearinghouse, providing education and outreach, and conducting recordkeeping. He spoke to the reliance on the private market to make the process work with the bank purchasing very few rights at less than market value as a last resort in hardship cases.

He reviewed the current status of the program: almost 6,000 rights severed, more than 1,000 rights retired through special public purchases and nearly 60,000 acres preserved with 90,000 more to be protected. Looking to the future for enhancements, Mr. Liggett summarized some of the measures being considered for program enhancement, including designating additional sending and receiving areas, mandating PDC use for residential development, lowering PDC use as densities increase, having no PDC obligation for affordable housing units, and allowing PDC's to increase business development above 0.5 ISR. He mentioned the need for additional legislation to accomplish some of the new initiatives and noted that the recent ethics ruling presented challenges for the program.

There was then a brief discussion about the valuation and definition of rights under the Pinelands program. Mr. Liggett stated that the initial value of a right was $2,500 based on the lowest use (apartment building). The valued peaked at around $35,000-$37,000 and rights are now transacting at $18,000 per right. Several board members commented on the differences in valuation outside the Pinelands. The discussion turned to the capitalization of the bank and its role. Mr. Liggett described the key role of the bank as educational and also noted that the bank funding was reauthorized every couple of years

Mr. Halpin asked if there was an effort underway to expand the receiving zones outside the Pinelands and Mr. Liggett commented that they had looked at the possibility, but that option was not being pursued at this time. A question on how to get receiving zones to comply was raised by Mr. Maglione and Mr. Liggett spoke to the monies allocated for sewer projects and that his organization renegotiated with municipalities regarding the extent of receiving areas when they came before the Pinelands Commission with zoning requests.

Mr. Liggett also commented about water availability being a constraint. Some discussion followed about whether it is necessary to secure water availability first or whether the development approval should be secured first. Chairman Whitenack thanked Mr. Liggett and asked him to think about development credits being transferred back and forth between the two organizations.

II. PINE BARRENS CREDIT PROGRAM

- James T.B. Tripp, General Counsel, Environmental Defense Fund

Mr. Tripp began his power point presentation with an overview of the Long Island Pine Barrens Protection Act. He explained that the purpose of the Act is to protect the largest remaining Long Island Pine Barrens region located in Suffolk County, which serves as the groundwater recharge area for an aquifer that supports 1.8 million residents. The region in total is 110,000 acre and is comprised of three towns – Brookhaven, Riverhead and Southampton. The structure of the Commission included authority for joint land use review, permitting and enforcement authority along with local municipalities.

Mr. Tripp used a description by an economist, Jim Nicholas, to characterize the transfer of development process as transferring equity to property owners in the sending area. He continued with a summary of the building blocks of the program including the goals, statutory foundation, allocation formula and seed funding of $5,000,000. He commented that the allocation formula used was based on 1995 zoning and that environmental constraints were not taken into account. He also described the value of a credit as it related to the value of the land in the receiving area making the point that for a program to work, the value of the land and quality of the land in the receiving area are key to saving developers money by not having to pay as much using credits as opposed to buying the property outright.

He noted that the "as of right" redemptions were key to making the program work. He summarized that right under the plan explaining that each town must designate as-of-right receiving areas with enough capacity to absorb all Pine Barrens Credits (PBCs) that could be issued to sending area properties in that town. A PBC entitles the redeemer to an increase in intensity or density of development in a receiving area. He continued with an overview of how the process worked – common rules for all three towns, but the three towns operate three distinct TDR programs. He also mentioned that the "non as-of-right redemptions were at the discretion of each individual Town Board and could be residential, commercial, industrial or other, e.g. redemptions through the County Health Department as septic "credits".

Mr. Tripp turned the presentation to the methodology of the initial credit value and stated that for each town the value represented 90% of the low end or a range of estimates. He noted that at program inception, the clearinghouse offered to purchase PBCs at the base price. Mr. Tripp also discussed initial capitalization of the clearinghouse and explained that it was important to establishing program credibility. However, when asked whether the program would have functioned without the funding, he stated that he believed the marketing and oversight functions of the clearinghouse were the real keys to the program being successful and continuing to operate.

The next area of discussion was the determining the allocation of PBCs to eligible properties. The overview presented by Mr. Tripp included the steps necessary to effectuate those credits – application for a letter of interpretation (LOI); applicant acceptance or appeal; recording of easement to actually receive the credits.

Lastly, Mr. Tripp summarized the program achievements over the course of its 14 years. He stated the program has protected 1,750 acres of the 13,000 identified for preservation by the Pine Barrens TDR program. He explained that, since the program's inception, the initial $5 million capitalization has been paid back to the State of New York through the sale of PBCs and that the clearinghouse still retains a balance of $3.2 million. He would like to keep the program running in order to redeem all the credits and maintain high value in the receiving areas. He also mentioned that working with the towns and their planning boards regarding the transfer of additional infrastructure was very important to ongoing success of the program as well as encouraging towns not to grant changes in zoning without requiring PBC redemption.

III. CHESTERFIELD TOWNSHIP: A CASE STUDY

- **Susan E. Craft, Executive Director, State Agricultural Development Committee**

Ms. Craft began by thanking Mr. Liggett from the Pinelands for giving TDR a beginning in New Jersey. She gave an overview of the beginning of the pilot program with Burlington County passing TDR legislation in 1989 that led to the 2004 statewide legislation being passed.

She defined TDR as a clustering of development on a township-wide, not parcel specific basis that transferred development potential from one parcel to another. The results are to preserve land from which development potential is transferred and increase development density on land to which development potential is transferred. She continued by reviewing the elements of the TDR program:

resource protection (sending area), allocation of development potential (evaluating environmental constraints), and the transfer mechanism that utilized the county clerk for all recording of credits and sales.

She noted that the community spent significant time planning for development in the receiving area due to the need to focus on infrastructure and value creation. She stated that the master plan and TDR ordinance were adopted in 1997. However, it was 2004 before the first certificates of occupancy were issued for homes in the receiving area.

Mr. Craft's presentation continued with slides showing the location and character of the area in Burlington County where the receiving and sending areas are situated. Ms. Craft depicted the area as rural and the importance of the community "buying" into the program. She noted that the developers decided what portion of the project they wanted to build and showed slides of the design and layout of the project as well as some of the area already completed.

She then gave an overview of the sending area statistics (7,525 acres) and a description of the allocation methodology including the credit allocation formula. She also reviewed the receiving area statistics (570 acres) discussing the density and design. She mentioned that a consultant to Burlington County had estimated that the beginning valuation of a credit would be between $18,000-$24,000 and that upon initial credit transactions, the value was around $23,000. Ms. Craft stated that credit values had been as high as $60,000 per credit.

CONSIDERATION OF RESOLUTION FOR ADOPTION OF THE BYLAWS –Voting matter with public comment

Mr. Klipstein introduced a motion to approve the bylaws. Mr. Davis seconded it. Mr. Borden discussed the preparation of these bylaws noting that the Highlands Council Resolution creating the bank passed in June, 2008, and that the resolution established the general functions and operations of the bank. He also explained the steps in the drafting the bylaws and that the staff used the State TDR bank and the Pinelands Development Credit bank bylaws as models. He also mentioned that because two members of the bank are appointed due to their positions with the State, they may have designees. Ms. Craft asked if the membership was consistent with the Highlands Council resolution and Mr. Borden said that it was consistent. There were several questions regarding the role of the Treasurer. Mr. Borden explained that the Treasurer monitored expenditures of bank operations, would be the point person for any audits and would provide oversight of the expenditures of the Executive Director. Ms. Swan added that for the Highlands Council, the treasurer, Bill Cogger, worked with her to review any RFP's and bills.

Ms. Craft asked how recusals and abstentions would affect voting. Mr. Borden said that he did not anticipate a significant number of recusals and that this board was a nine member board requiring an affirmative vote of 5, not a majority of members present. Ms. Craft asked about the disposition of the minutes of these meetings. Mr. Borden explained that the minutes of the HDC Bank board would be provided to the Highlands Council for review and that the Highlands Council could take affirmative action by vetoing the minutes of the HDC if there were an issue with the HDC Bank Board minutes. If there was no action by the Highlands Council, then the minutes would be as presented. The Governor's office would have the opportunity to review the HDC bank board minutes as a part of the Highlands Council materials, but the HDC Bank Board minutes would not be submitted directly to the Governor's office.

Mr. Siegel asked if the HDC Bank Board minutes would invoke a Governor's veto period because the bank would be dispersing funds. Mr. Borden replied that the Governor could veto inaction by the Highlands Council. He also noted that the Attorney General's office had been consulted regarding the bylaws. Mr. Halpin asked about the number of signatories required on a check and Mr. Borden stated that there will be one – the Executive Director – consistent with the Highlands Council approach.

PUBLIC COMMENT ON THIS RESOLUTION

David Shope, Lebanon Township

Mr. Shope asked if the HDC bank was a separate entity created by the Highlands Council and Mr. Borden did indicate that there was no financial interchange between the two entities. Mr. Shope objected to the salaries being paid for by the Highlands Council.

Deborah Post, Chester Township

She raised an objection to the HDC bank not having a distinct staff or operations procedures.

There was a roll call vote taken. Mr. Weingart was absent, Mr. Siegel abstained. All other members voted in the affirmative. The resolution was *APPROVED*.

CONSIDERATION OF RESOLUTION FOR ELECTION OF OFFICERS –Voting matter with public comment

Mr. Peterson introduced a motion to nominate Mr. Maglione as Vice Chairman and Mr. Halpin as Treasurer. Mr. Siegel seconded it. There was a roll call vote. Mr. Weingart was absent. All members present voted in the affirmative. The resolution was *APPROVED*.

CHAIRMAN'S REPORT

Chairman Whitenack's discussed the HDC Bank's committee structure. He spoke about the two committees that would be working committees of the Board: 1) Policy and 2) Finance. The Policy Committee develop the HDC Bank's operating procedures as well as its acquisition policy. The Finance Committee will review the operating and capital budgets and examine the financial mechanism of how the HDC Bank will function. He mentioned that all members are welcome to attend committee meetings. He then announced his committee appointments as follows:

Policy Committee – Chair Mr. Klipstein
Mr. Davis, Mr. Maglione, Mr. Weingart and Mr. Whitenack ex-officio as members

Finance Committee – Chair Mr. Halpin
Ms. Craft, Mr. Peterson, Mr. Siegel and Mr. Whitenack ex-officio as members

Mr. Whitenack finished his report by commenting that he would look to staff for timelines and to assist with requirements for accomplishing the goals of the HDC Bank in much the same way that the staff has supported the Highlands Council.

PUBLIC COMMENT

David Shope, Lebanon Township

Mr. Shope commented that the program should be structured so that the sending area value was not lowered. He noted that the Long Island model offered two government choices and no private ones. He took issue with the list of preferred properties being confidential. He believes the intention of the HDC program is to offer less than the market value.

Deborah Post, Chester Township
She noted that the Long Island program tied the initial credit value to 90% of the fair market value of properties in the sending areas and that the HDC program is offering 25% of fair market value. She expressed her concern about the PBC bank having any funds left. She raised the Highlands Task Force estimates of replacement value to landowners in the preservation area as significantly higher than the funds that are to be expended.

Richard Longo, Boonton Township
He mentioned the average age of farmers as 57 and noted he was 70. He wants the HDC Board to be fair to landowners.

Mr. Whitenack announced that the next meeting will be April 2nd at 1 pm.

The meeting was adjourned at 3:30 pm.

I certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Development Credit Bank Board Meeting.

DATE: 4/6/09

NAME: Paula M. Dees
Paula M. Dees, Executive Assistant

TRUE COPY

Vote on the Approval of these Minutes	**Motion**	**Second**	**Yes**	**No**	**Abstain**	**Absent**
Director Craft		✓	✓			
Director Davis			✓			
Director Halpin	✓		✓			
Director Klipstein						✓
Director Maglione						✓
Director Peterson						✓
Director Siegel			✓			
Director Weingart			✓			
Director Whitenack			✓			