

MINUTES

**NEW JERSEY HIGHLANDS COUNCIL
MEETING OCTOBER 5, 2006**

PRESENT:

JOHN WEINGART)	CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
TRACY CARLUCCIO)	
TIM DILLINGHAM)	
MIMI LETTS)	
JACK SCHRIER)	
DEBBIE PASQUARELLI)	
ERIK PETERSON)	
MIKAEL SALOVAARA)	
TAHESHA WAY)	
SCOTT WHITENACK)	

ABSENT:

ELIZABETH CALABRESE
GLEN VETRANO

PARTICIPATING VIA TELECONFERENCE:

JANICE KOVACH

The following are the minutes from the New Jersey Highlands Council meeting which was held at 100 North Road, Chester, New Jersey on October 5, 2006 at 10:00 a.m.

CALL TO ORDER:

The Chairman of the Council, Mr. John Weingart, called the 36th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:10 a.m.

ROLL CALL: The members of the Council introduced themselves.

PLEDGE OF ALLEGIANCE was then recited.

OPEN PUBLIC MEETINGS ACT:

Chairman Weingart announced that the meeting was called in accordance with the Open

Public Meetings Act, N.J.S.A. 10:4-6, and that the Highlands Council had sent written notice of the time, date and location of this meeting to pertinent newspapers of circulation throughout the State.

MINUTES OF SEPTEMBER 28, 2006:

Mr. Jack Schrier motioned to approve, Mr. Mikael Salovaara seconded, Ms. Tracy Carluccio asked that a word be corrected in the summary of the Public Availability Session on the last page, last paragraph, fourth line the word “incorrectly” should be changed to “correctly.” No further comments were received, Mr. Schrier and Mr. Salovaara accepted the change, Ms. Debbie Pasquarelli abstained, all other members in favor, and the minutes of September 28, 2006 were APPROVED.

CHARIMAN’S REPORT:

Chairman Weingart advised that since the Council’s last meeting the public has urged that the members speak louder. Mr. Weingart also advised that the Council has received written public comments in the last few days which are not in the members’ packets, and asked Ms. Denise Guidotti to make sure all members receive them. There were two sets from the New Jersey Farm Bureau and by the Pequannock River Coalition dated October 3rd as well as comments from the Reformed Bible Church.

Mr. Schrier reported that he believed the Morris County Municipal Utilities Authority had submitted a 3 or 4 page letter comment and asked if it had been received yet. Mr. Di Pirro advised he had not seen it yet and that it would be distributed to all members upon receipt.

At that time, Ms. Janice Kovach joined the meeting via teleconference. Mr. Weingart asked if any members had reports.

Ms. Debbie Pasquarelli reported that there was a meeting in Warren County sponsored by the Warren County Environmental Commission and ANJEC the week before which Deputy Executive Director Borden attended. She noted she did not attend because she was ill, but stated that the meeting was held to educate elected officials with issues relative to the Highlands Act. She reported that she heard the meeting went very well, and thanked Mr. Borden for attending and also the sponsors for holding the event.

EXECUTIVE DIRECTOR’S REPORT:

Mr. Di Pirro advised he did not have anything new to report and said Mr. Weingart could turn to the committee reports.

COMMITTEE REPORTS:

Mr. Weingart advised that the **Plan Development Committee** met that morning before the work session and reviewed contracts to advance to the Council. He advised one

contract dealt with nitrate dilution groundwater modeling, and one contract dealt with graphics design support for the draft Regional Master Plan.

CONSIDERATION OF RESOLUTION TO APPROVE CONTRACT FOR GROUND WATER MODELING (voting matter with public comment):

Mr. Borden reported that the proposed contract being recommended by the Plan Development Committee was for to develop a groundwater model to build upon the work completed by USGS to analyze background data on nitrates and to assess the relationship of land use impacts on groundwater quality and quantity. Mr. Borden advised there was one bidder, Demicco & Associates, on the Request For Qualifications (RFQ) which was published on the Council's website. He noted that it is a well respected firm with particular expertise in these issues and is recommended for approval in an amount not to exceed \$25,000.

Mr. Tim Dillingham motioned to approve, Ms. Pasquarelli seconded. Mr. Weingart asked if there were any comments.

Mr. Schrier said it troubled him there was only one bidder, recognizing the fact that it is very technical work, he wondered if the specifications were too narrowly drawn. Mr. Di Pirro said he didn't believe the particular specifications were narrow; however, the time limitation for completion of the tasks was, and said there are not a great number of firms available to do the work on the Council's timeframe.

Mr. Balzano explained there were three firms that were known to have the qualifications to provide this type of service, and only one submitted a response to the RFQ. Mr. Salovaara asked if Demicco has been examined as to any ethical conflicts, and Mr. Borden replied that staff had not identified any particular issues of conflict.

Mr. Steven Shaw, counsel for Hunterdon and Warren County, asked what the process was for seeking proposals. Mr. Borden replied that a notice was posted on the Council's website which asked for responses to its RFQ. Mr. Shaw asked for the names of the other two firms that were known to have the necessary qualifications and Mr. Borden replied that they were Mulhall and Associates and Princeton Hydro.

David Shope, Long Valley. Mr. Shope said he has heard of Demicco and said he reads about them in the newspaper. When a town wants to down zone, he said they hire Demicco. Mr. Shope said that in Hunterdon County it is vastly different as to nitrate dilution than to groundwater recharge. He said Mulhall also works on down zoning for towns. Mr. Shope said he objects to the resolution.

Mr. Weingart asked if there were any more comments and none were received.

On the prior motion made and seconded, all were in favor, APPROVED.

CONSIDERATION OF RESOLUTION TO APPROVE CONTRACT FOR GRAPHICS DESIGN SUPPORT (voting matter with public comment):

Mr. Di Pirro asked Ms. Patty Sly to present the next resolution for consideration. Ms. Sly reported that the contract recommended for approval was for graphic design support and materials necessary for a draft Regional Master Plan and the adoption of the Plan. She noted that the RFQ process advertised the potential contract on the Council's website and three bids were received. After consideration she noted the Plan Development Committee and staff recommend AKRF, Inc. in an amount up to \$25,000. Ms. Sly reported that AKRF, Inc. has worked with the Council in the past and have provided high quality work under budget. She said staff is confident they are best suited to provide the materials on schedule. Ms. Sly further advised that the other bids received were from Morello & Co. in Butler, and Peter Mills from Mountain Lakes.

Ms. Carluccio motioned to approve, Ms. Letts seconded. Mr. Weingart asked if there were any comments.

Mr. Schrier noted on the bidders' breakdown of costs sheet, that Peter Mills did not show a total amount for the task. Ms. Sly said Mr. Peter Mills did not provide a total because he could not give the total number of hours. Mr. Schrier said he understood providing the task on time was one criterion, but asked why the firm was excluded since it responded to the RFQ. Ms. Sly said the firm did not have specific experience on a project similar to the Highlands RMP, and it would take considerable staff time to get them up to speed.

Ms. Pasquarelli asked what the acronym AICP stood for, and it was explained it stands for American Institute of Certified Planners.

On the prior motion made and seconded, Mr. Schrier abstained, all others were in favor, APPROVED.

DRAFT RMP WORK SESSION TOPICS:

Mr. Di Pirro advised that Mr. Ross MacDonald and Mr. Anthony Cortese would present the first policy document which outlines costs and available funding.

Financial Component – Cash Flow Timetable

Mr. MacDonald reported that there was a request to update information which staff has completed on data received for the years 2003-2005. He also advised that updates to 2006 data will be performed after the figures are published by the Department of Community Affairs (DCA). Mr. MacDonald stated all updated information will feed into the baseline report, and advised that the cash flow objective is to maintain an inventory pursuant to the mandates of section 7 of the Highlands Act.

Mr. MacDonald noted that the first policy recommendation for the Cash Flow Timetable is an approach having four major components: 1) Planning Grants Program; 2) Land

Acquisition Program; 3) State Aid for Local Government Units; and 4) Highlands Property Tax Stabilization.

Mr. MacDonald advised that the second policy recommendation is to create the Planning Grants Program. He noted that staff has worked along with the planning unit and created a series of projections with a chart and timetable on page 4 of the policy document which lists the appropriations.

Mr. MacDonald said the chart on page 4 zeroed out the balances and noted the figures could be changed according to how implementation of the program proceeds. He said when viewing the total, the assumption can be made that there is sufficient funding to support full opt-in on the RMP.

Mr. Weingart asked Mr. MacDonald if the planning grants calculations were made by looking at the amount first and then the appropriations, or the other way around. Mr. MacDonald noted that basically the computation does work backwards, and that the end resulted in a surplus of \$5 million dollars, so there was flexibility.

Ms. Pasquarelli noted that if all expenses were not realized, the funds would not be lost. Mr. Di Pirro replied that was correct, and advised that left over funds would be banked and that the Act states specifically that the money becomes reserves. Ms. Pasquarelli asked if the estimates proved to be insufficient, what mechanism existed to request additional money for towns. Mr. Balzano reported that for the first year there is an excess of \$7 million dollars and that it is not anticipated that amount would be insufficient for the first two years.

Mr. MacDonald reported there would be no changes to the outlays over the first two years. Mr. Salovaara said the Act requires the Council to draft a program. He questioned whether the Act asks for a five year timetable as to implementation and thought the Council could concentrate on an implementation time cycle. Mr. Salovaara stated he was not against doing more but noted that section 11 directs a cashflow timetable for implementing the Act is required, and said that he would like clarification on all that the Council should be doing.

Mr. MacDonald noted there are a host of potential hard and soft costs which would be captured in the economic analysis. In terms of the cashflow statement, the Act states the Council has to provide a timetable. Mr. MacDonald noted that municipal aid has been frozen for the last few years and that it is desired to utilize better variables in the objective approaches.

Ms. Mimi Letts asked whether the Council has the opportunity to amend the timetable. Mr. MacDonald replied it could, and that one issue through conformance will be obtaining real costs which will change projections.

Mr. Salovaara suggested that 2006 projections be highlighted in the document, and that the rest of the projections should be designated in another color ink, since that category is farther into the future.

Ms. Pasquarelli asked if the Council should anticipate that every master plan has to be re-examined every five years and whether the intention was to fund plan updates in perpetuity. Mr. Borden replied as the Council updates the plan it will create updates for all. He advised that the Legislature intended long term funding for updates.

Ms. Pasquarelli asked if there was an “un-conformance” fund. Mr. Schrier noted that once a municipality conforms and opts-in to the plan and when the Council changes its master plan in six years, the municipalities will be required to re-conform. He asked what would happen if towns choose not to do so because they object to the updated plan. Mr. Di Pirro stated conformance does remain voluntary in the planning areas, and Mr. Salovaara said once you opt-in in a planning area, he didn’t believe the option exists to opt-out. He thought when the Council amends the master plan everyone would need to conform again. Mr. Weingart said the Council should have provisions to deal with this issue. Ms. Pasquarelli said she thought it could become a major issue because 88 towns will be thinking about it. Mr. Borden said the Council should address the issue in the conformance document and spell out all the details clearly.

Mr. Salovaara said that as a practical matter he doesn’t envision the Council being able to amend the plan repeatedly within the first couple years. He believed many municipalities will have great concern about expenses from RMP updates.

Mr. MacDonald advised that the next element dealt with the Land Acquisition Tracking Program, which would identify program needs and inform the land acquisition strategy.

Ms. Letts asked where the federal appropriations funds were accounted for since she did not see them in the calculations. Mr. MacDonald said the amounts are not known and therefore cannot be counted on for this assessment. He noted the assessment was done on a 3 and 8 year timetable of what is known to be available. He noted that the technical report will contain language regarding both federal and state entities for development of the program.

Mr. Schrier noted for clarification that Mr. MacDonald was referring to the federal Highlands Appropriation Act which provides for \$10 million dollars over 10 years. Mr. Schrier added that the appropriations are to be split among four states, and there is no way to know what the appropriation will be for New Jersey. Ms. Pasquarelli agreed and Ms. Letts said that she thought it ought to be mentioned somewhere in the assessment. She added that property taxes are a big issue and that real shifts in the funds could occur. Mr. MacDonald agreed and said that the number of towns that opt-in will create many variables.

Mr. MacDonald said the next policy item was State Aid for Local Government Units within the Highlands Region. He said this table dealt with part of what Mr. Salovaara mentioned as to examining the immediate future.

Mr. MacDonald noted that the fourth timetable was the Property Tax Stabilization model. He reported that the Highlands Property Tax Stabilization Board chaired by Mr. John Eskilson has held its meetings in Chester and advised that to date it has given \$88,653 to offset lost tax revenues for three towns.

Ms. Pasquarelli stated that with regard to equalization, this was not representative of market values. Mr. MacDonald stated that the market values may be reflected in that towns could say taxes should be reduced due to market values. Ms. Pasquarelli said it didn't involve the market value as much as it does ratio and that she did not agree with what was indicated.

Mr. MacDonald advised the next policy addresses the Pre-Conformance Strategy element for recommendation in furtherance of the goals and requirements of the Highlands Act to ensure successful implementation of the RMP during the Pre-Conformance period. Mr. Salovaara stated he could not sign off on the Pre-Conformance section yet.

Mr. Weingart advised that like all other sections, this would be open for public comment. Mr. Salovaara requested that it be put in boldface brackets because it is an estimate.

Ms. Pasquarelli stated that when the Council factors in acquisition costs, it will depend on whether people are grandfathered in. She said since the Council knows there will be some grandfathered in, it should be considered because the number will be higher than what is outlined. She also thought the 2% cost estimate used for school aid was too low.

Critical habitat

Mr. Di Pirro introduced Mr. Balzano and Ms. Erin Lynam to present the Critical Habitat Protection Requirements policy document. Mr. Balzano stated that Critical Habitat is part of the resource assessment which informs protection needs for threatened and endangered species of plants and animals throughout the Highlands Region. Mr. Balzano read through the first few portions of the policy document.

Ms. Carluccio pointed to the references at the bottom of the rationale on page 3, number 3 regarding the 300-foot and 1000-foot buffer. She said the word "minimum" should be inserted, and also to insert a bullet to include flexibility when species are found that require more. Mr. Balzano stated that the standard for vernal pools is 1000 feet. Ms. Carluccio noted that she was suggesting that it not be a maximum. Mr. Weingart asked Mr. Balzano how common vernal pools were. Mr. Balzano replied they were very common, and Mr. Weingart asked if they are classified as wetlands. Mr. Balzano replied some are small and are generally not mapped as wetlands. He also noted that by definition, vernal pools cannot be located anywhere near bodies of water.

Mr. Salovaara asked when the Council can anticipate knowing where the vernal pools are. Mr. Balzano replied staff has defined them and that the map is in progress. Mr. Salovaara asked whether significant natural areas should be melded with the critical resources area and wondered why they were separate. Mr. Balzano said there were reasons why they are designated different. Mr. Di Pirro advised they will both be addressed in the context of the map.

Mr. Dillingham said that a notation should be included to address that the Council could discover new information, which should be reflected in standards for protection. Mr. Dillingham asked about the difference between critical habitat and riparian areas. He offered the example that a road cut 345 feet from a vernal pool where toads are present, results in a high number of them on the road.

Mr. Salovaara said the categorization of critical areas and the definition is that they are significant for several reasons, however the subsequent language of “low significance” is contradictory. Mr. Schrier noted the references to “riparian area” should be plural and suggested the term “Highlands Habitat” and then a break down of definitions as critical, and so forth.

Ms. Carluccio said she had a problem with the section because it needs to be clearly defined and thought it was too refined. She stated they are all important areas and suggested that they be called Highlands area high-level protection resource areas. Ms. Carluccio said that in light of the fact that animals move across lands, it could be said that the areas are contiguous.

Mr. Balzano said that it was necessary to accurately depict where all the areas are to inform the Land Use Capability Map. Mr. Dillingham asked that options be kept open to create opportunities for improvements as to integrity of areas. Mr. Salovaara said he did not think gradations were needed, and that the drive of the Act at section 36 is to protect critical habitat. He read a portion of that section aloud, and said the language on its face should be taken at 100% protection of critical habitat.

Mr. Balzano noted that as a matter of clarification policy numbers 1 and 2 speak to protection of all critical habitat. Sections 3 and 4, speak to that portion of critical habitat which informs the LUCM.

Mr. Schrier said regardless of whether it is a high or low integrity area, the Council has to protect threatened species. He asked what paragraph applied to the entire Highlands resource area, and also asked if it applied in different levels to different habitats.

Mr. Balzano replied that there are species rankings, and that the rankings are done as to their level of endangerment. Ms. Carluccio said she thought the species would be ranked on levels of protections to create guidelines, and then the guidelines would be applied to the plans for the areas. If that was not the case she suggested removal of the whole section.

At that time, Mr. Salovaara said he would need to leave for another meeting. He added that he didn't see a distinction in the Act as to one species being more important than another. Mr. Schrier noted that since it could be determined where the endangered species were present, the highest level of critical habitat protection should be applied.

At that time, Mr. Erik Peterson joined the meeting.

Mr. Weingart said that the section did not pertain to what species are more critical, rather that it was regarding critical habitat. He noted that fact was not clear the way the section was written. Mr. Balzano said that some areas are more critical to the survival of the species, and then the land area was examined. Mr. Weingart noted that was not stated in the section. Mr. Balzano noted that it was not possible to capture 100% of critical habitat for the LUCM, but that 90% could be. He indicated that critical habitat is diffuse throughout the entire region.

Mr. Dillingham said that too much information may not help on this issue. Ms. Carluccio said that the Council should use the highest standard for all of them, and then determine how the standards are applied. Mr. Balzano noted that is addressed later in the document through site review.

Mr. Balzano pointed the members' attention back to policy number one and stated that any site plan that falls within the critical habitat would need to be reviewed against the danger to that species. He said in a protection zone the answer is no alterations can be made, and within a development zone, they may be allowed provided specific requirements are met.

Ms. Letts said she would like that explanation written out in the section so that people can understand it. Mr. Balzano stated the confusion could be because there are two sets of standards -- one set that informs the map and one that protects the resource.

Mr. Balzano advised that the rankings in item number 4 of critical, significant, or low significance, refer to the degree which a species survival relies on the habitat in the Highlands region. He further noted there are two distinctions of critical habitat in the region -- one is all habitat suitable based upon the known distribution of the species of concern to provide habitat, and the second is the resource area or subset which represents the most important area of the Highlands region to provide the habitat for species of concern. The resource area is a subset to help inform the map and separate lands that are most constrained. All habitats that support one or more species of concern are reviewed and not lost through site plan review.

Mr. Balzano said that there are requirements and standards for review in development zones for minimizing impacts on areas of habitat before an application for development can be approved, noting that all lands have levels of constraint associated with them. Ms. Carluccio asked how the levels of protection translate on the ground.

Mr. Balzano said the levels of protection are essentially a reduction of conflicts. Where there is the highest probability of conflict between resource protection and development activities, the highest level of protection standard will be instituted in the zone.

Mr. Shrier said that with regard to Ms. Carluccio's earlier comment that there could be species in an area that are both critically significant and of low significance in the same area, that the higher standard should be applied. Mr. Balzano noted that is exactly what is being done.

Mr. Dillingham said that by defining the habitat and core, he would not like to see the policy pull back the lines and lose the opportunity to protect what does remain. Mr. Weingart asked if this conceivably states that a site in a regional growth area could be habitat to bald eagles and the policy of the plan would be to minimize the impact to that habitat but it wouldn't prohibit development and have a buffer because the Highlands is not critical habitat to bald eagles.

Mr. Balzano said development could only occur if it can be done so without adversely affecting the species. He said that policy number one defines critical habitat as all species that are classified as threatened and endangered or considered rare for both plants and animals. Policy number two acknowledges the NJDEP landscape project as a method of defining where animal habitat is throughout the region. Policy number three acknowledges the importance of vernal pools as another element and source of information for critical habitat. Policy number four states that utilizing all the above information as a subset of what constitutes the most regionally significant habitats, will be a resource area that captures the majority of contiguous habitat for those species of most conservation concern. He noted that item number four reduces the number of species for purposes of defining the most important area, but all species are captured under policy numbers one and two.

Mr. Balzano stated that item number 5, for purposes of informing the LUCM states that endangered and threatened species are used as a regional watershed indicator which relates back to Highlands open waters and it is used as an indication of habitat quality to identify watersheds which provide habitat for species.

Mr. Balzano stated that item number 6, also for purposes of informing the LUCM, states that the map will identify and include protection needs relating back to riparian areas, and are of high ecological integrity areas of critical habitat. He advised that item number 7 of the document addresses how the resource information informs the LUCM. It also acknowledges that the Regional Protection Zone will include the most significant critical habitat resource area in the region.

Ms. Carluccio asked what the definition of concentration was for the most critical resource area as to mass. Mr. Balzano replied that the mass is the smallest area that accounts for 90% of the habitat that is necessary for those species that depend upon the region for their survival. Mr. Balzano also explained that habitats have become smaller

and more diffuse throughout the region as sprawl advances and landscapes become fragmented. Mr. Weingart said that this definition should be included in the language.

Ms. Carluccio also asked if the 90% of critical habitat areas would be shown in a map and Mr. Di Pirro said that as the staff shows the Council the map, when members want to see specifics they could be shown on an integrated basis first and then go back to specific layers.

Mr. Balzano said that item number 8 includes the standards pertaining to site plan levels. He noted that within the protection zone the goal is to prohibit any change in use of land that would be detrimental to the ecological integrity of all critical habitat for endangered and threatened species. He noted that the item also identifies opportunities where restoration or enhancement of previously impaired critical habitat areas would be appropriate.

Mr. Weingart noted the wording of the first bullet point should remove the word “alter.” Ms. Letts asked what could be done to restore a critical habitat to bring species back. Mr. Balzano said for example forest interior bird species are susceptible to disturbance and fragmentation of forest, therefore mitigation could be to plant trees in existing clearings to connect forest patches. Ms. Carluccio noted there is a wealth of data sources and studies that have been done to determine what species are in peril and what areas need to be mitigated.

Mr. Schrier said that bullet 3 under item number 8 is unclear as to plural and singular designations and noted that the word “both” should be deleted.

Mr. Balzano stated that item number 9 addressed the standards pertaining to integration into the Regional Conservation Zone of the LUCM and to prohibit uses that would be detrimental, also deleting the word “alter” as the Chairman suggested in item 8. Mr. Balzano stated the policy would also identify opportunities where restoration and enhancement of critical habitat is feasible which is required under site standards.

Mr. Balzano said that item number 10 addresses the Regional Development Zone where any changes to critical habitat that would impair the survival of species are prohibited. It also requires the use of plans and low impact developments to minimize impacts. Ms. Pasquarelli asked how that would apply to a TDR receiving area. Mr. Balzano said within the TDR receiving area if there is a forest patch in an area that is otherwise inappropriate for TDR receiving, the Council would deem that impact acceptable based upon a mitigation plan that would essentially plant trees at an alternate location.

Mr. Weingart asked if there was a difference between stating adjustments or revisions to critical habitat are conditionally acceptable provided the restoration plan is included or stating that revisions are discouraged. Mr. Balzano said operationally he did not believe there was a difference, but Mr. Weingart said it might be clearer.

Mr. Balzano said that item number 11 transitions from standards that relate to uses within a zone and are the standards that relate to all site plan applications regardless of zone. He noted there are three types of site design standards and that resource protection standards prohibit clearing of vegetation or disturbance to soils within the area designated critical habitat that would be detrimental to the survival of species of concern.

Ms. Carluccio said an addition could be made to item 11 after the words disturbance of soils to also state “or changes to surface waters.” She said that another bullet could be added under items 12 and 13 to allow for the concept of expansion of a critical habitat upon demonstration of a need for protection of a certain species.

Mr. Balzano stated that item number 12 addresses the Smart Design Standards and the requirements and protection standards which are dependent upon zone. The standards will limit development activities within critical habitat and prioritize impaired areas for restoration and acquisition.

Mr. Balzano noted that item number 13 addresses the Regional Growth Standards recommended for the RMP, including requirements for participation in Regional Critical Habitat Conservation and Management Plans as well as identifying areas necessary for improvement.

Mr. Balzano noted that item number 14 addresses the Pre-Conformance Strategies and acknowledges technical guidelines and procedures for developing critical habitat stewardship plans as part of open space plans to enable a municipality to conform. Mr. Dillingham said there are a lot of different plans and that the glossary contains many plans which are broader in site than what is considered site level. Mr. Balzano explained that the regional planning process encompasses the act of exchanging information with municipalities.

Mr. Dillingham said the two required conformance elements that would be necessary for municipalities to take on would be site planning and regional planning. Mr. Balzano said that the policy acknowledges that it might take 5 years to develop regional plans and that only local plans will apply until those regional plans can be developed.

Mr. Dillingham noted that the RMP should be a source of information and requirements that will be implemented at different levels through a number of vehicles and the language needs to be clear as to what standards apply for implementation by municipalities. Ms. Pasquarelli said she would recommend to the editing staff that it not create new jargon which could make understanding difficult without the glossary.

Ms. Letts asked about funding for municipalities when they receive applications in areas that need restoration of a critical habitat, because they do not have experts and will need to hire technical experts to develop a plan. Mr. Balzano said that conformance requirements qualify them for recovery of costs under the grant program which Mr. Ross MacDonald spoke about at a prior session. On the application level, planning boards

have a series of specialists on retainer and the Council may specify what minimum qualifications are for conformance.

Mr. Weingart said that with regard to Mr. Dillingham's earlier comment, item number 17 recommends that the Council work with DEP and the Fish and Wildlife Service to develop management plans for species of concern. Mr. Weingart asked how those plans fit in with the plans required for municipalities and counties. Mr. Balzano said that they inform the management plans under the regional 5-year protection and planning goals.

Ms. Carluccio said that she would like a bullet added to item number 16 for the restoration of an area absent an application for development so there is another vehicle for restoration of critical habitat. Ms. Letts agreed.

Mr. Balzano noted that item number 17 contained the Coordination and Consistency Considerations for consistent regulatory and permit application review with the Department as well as continued coordination of management protection plans with appropriate agencies. Mr. Dillingham said that language should be included to reflect the requirements of the programs to better outline what type of assistance is available for implementing the RMP, for example conservation and enhancement programs for wetlands buffers and grasslands.

Mr. Balzano advised that item number 18 addresses the Local Participation Considerations which require the development of educational programs for municipal officials and technical assistance as they develop critical habitat protection and restoration plans.

Mr. Weingart noted that the words "county officials" should be added to the second bullet and asked if any other members comments. Ms. Tahesha Way asked how current the list of critical habitat was. Mr. Balzano said the animals list is current to 2006, and that the plants are current through 2005.

LUNCH BREAK:

At 12:50 p.m. Chairman Weingart called for a lunch break and asked that the members reconvene at 1:30 p.m.

At 1:45 p.m. Chairman Weingart called the meeting back to order. Mr. Weingart advised that the next topic is Transfer of Development Rights. Mr. Di Pirro introduced staff attorney Mr. Jeff LeJava to present.

Transfer of Development Rights Program:

Mr. LeJava stated that the discussion and release of this policy document has been anticipated for quite some time, and advised that the staff recommendation is to identify the framework of the program to be incorporated into the RMP and Policy Guidance

document, and also to continue program development and implementation over the next year.

Mr. Weingart asked if Mr. LeJava could distinguish by context how this program is similar or different from other TDR programs. Mr. LeJava noted there are three primary TDR programs in the state, the Pinelands Development Credit Program, and two “intra-municipal” programs where transfers only occur within municipal boundaries in Chesterfield and Lumberton. These programs have been enacted over the last 25 years with the Pinelands in the 1980s, and in Lumberton and Chesterfield in the mid to late 1990s.

Mr. LeJava stated the Pinelands Commission has the authority to identify in its comprehensive management plan areas where growth was required and municipalities had to accept that growth. The Highlands Council has not been given that authority in the Act and it can only recommend where growth can be accommodated based on the LUCM and RMP. The Council must work with municipalities to designate receiving zones based on the map. This is the most significant difference between the Pinelands program and the Highlands program.

Mr. LeJava stated that the purpose of the TDR program is to serve as another land use tool to protect the unique water, agricultural, and ecological resources of the region. He noted that it also will provide a mechanism for property owners to sell the development potential of their lands where the Highlands Act has impacted development potential and serve as a catalyst to ensure proper planning for future development.

Mr. LeJava said the Act mandates that the Council create a TDR program premised upon the smart growth component and resource assessment of the RMP. Mr. LeJava noted the goal within the TDR program is to develop a program which addresses affected land owners and the development market and provide a predictable process that recognizes a fair return on the use and utility of land in the sending zones. Mr. LeJava read all the bullet points under the first section describing the goals of the TDR program.

Ms. Pasquarelli asked what is meant by efficient development. Mr. LeJava said efficient use of land is the goal as opposed to having sprawling development in receiving zones. He noted that efficient development recognizes the need for public transportation and the smart design principles that Ms. Christine Danis outlined at past work sessions.

Ms. Pasquarelli thought that the Act requires 5 units per acre for TDR receiving areas. Mr. LeJava said the Act requires receiving zone communities within the planning area to establish a minimum 5 units per acre within the zone to receive incentives, but it is not a requirement. He noted that there is a possibility that receiving zones may be identified through the LUCM that will not have that density, but they will not receive incentives for doing so.

Ms. Letts said there will be areas that are identified as receiving areas within the seven counties but outside the Highlands area, noting that data has not been applied to those

areas. Mr. LeJava said there is a provision of the Act for those areas outside the Highlands which states the Council shall work with municipalities and the State Planning Commission to identify centers designated in the State Development and Redevelopment Plan for possible use as receiving zones. Mr. Di Pirro noted that the Council would utilize the State Plan standards which are outlined in the Coordination and Consistency portion of the policy document.

Ms. Carluccio said that the State Plan may not have used the same standards to evaluate receiving areas as were used in the Highlands. Mr. LeJava noted that was true, and that these are issues staff is seeking out to gain consistency through the feasibility grant program. Ms. Carluccio suggested that a new bullet should be added indicating a goal to work with receiving areas in the counties outside the Highlands region to bring them up to the Council's standards for evaluating receiving zones. Mr. Weingart said he was not sure he agreed because it may be a challenge to get areas to come in as receiving areas and staff will already be examining 88 towns, he stated it is not likely that staff could accomplish an equal level of analysis for all other towns.

Mr. LeJava said that one requirement for receiving zones outside the region but within the seven counties is that they have to be State Plan endorsed. Mr. Di Pirro advised that staff is currently discussing a process with the Office of Smart Growth to accomplish State Plan endorsement for receiving areas outside the Highlands.

Mr. Dillingham stated that the Act states clearly what is expected of the TDR program, and noted that on page 24 section 6(n) states that conservation strategies that result in no-build zones and severely restricted areas where the resources cannot be harmed, which is the ultimate goal of the Act, but he noted that bullet 2 goes farther than what is necessary. He thought the Council's resource management goals will rely on TDR and that the concept of the program needs to be focused and support that goal. Mr. Dillingham said priority areas should be where there are clear no-build areas and people are deprived of use of their property.

Ms. Pasquarelli said that much of the discourse over the last two years has been that the TDR program is meant to be a tool in lieu of state funding for equity compensation. She asked if Mr. Dillingham's main concern is over how the Council prioritizes who is first in line to sell.

Mr. Dillingham said he is concerned over whether the Act directs the Council to compensate for any diminution in development potential anticipated prior to the Act. He stated that the best use of TDR is where the Council identifies areas where no development should occur, those should be the people to receive TDR. Mr. Dillingham stated that there will not be sufficient receiving areas for sending.

Mr. Weingart said if there are potential receiving areas in the Highlands planning area, they do not have to go through the State Plan process, and Mr. Di Pirro said that was correct. Mr. Weingart stated that on page 24 section 6(o) of the document is reasonably

clear as to the three criteria to identify sending areas, with the word “desirable” being the only one subject to interpretation.

Mr. Borden noted that the Council should not limit its focus to section 6 and that it also consider section 13 on page 27 under (f) which states that it will identify additional criteria for sending zones in the planning area that are designated for conservation. He noted the program itself is not limited by section 6 alone as to no-build zones, and is further refined in section 13 for conservation.

Ms. Pasquarelli asked if there was language in the Act which addresses equity for other than no-build zones. Mr. Borden said that sections 6(o) and (n) address those issues. He advised it states that if the Council identifies priorities through the RMP that should be direct acquisition there is an obligation under the Constitution to provide compensation.

Mr. Weingart said that there will be a need to identify a process to determine what lands should be purchased either in whole or in part and also identify what the best strategy as to where funds are available whether they be acquisition or purchase of development rights. Mr. Borden said that the policy does address a bonus system to create that mechanism.

Ms. Carluccio said the second bullet sounds broader than what is on page 24 and noted that she agreed with Mr. Dillingham because it makes it sound as if someone lost some value to their property, even if it is a little bit, they can therefore be a sending zone for TDR. She said what Mr. Borden referred to in the Act relates more to a taking.

Mr. Alstede said no matter how much has been taken he believed the Council has an obligation to pay. He said the Act is a taking and the Council has to find a mechanism to provide compensation to people. He stated he looks forward to seeing all the overlay maps of riparian buffers and endangered habitat, because he is anxious to find out that there is 4% left. He thought that every 600 foot buffer is really 1200 feet on both sides, with every 32 feet being an acre which is a tremendous amount of land to take. Mr. Alstede said TDR is the one tool the Council has that it can apply broadly to compensate because the Legislature has not provided funding and the program has to be done correctly in order to compensate people.

Ms. Pasquarelli said she agreed with everything Mr. Alstede said, however to be fair as to Mr. Dillingham’s statement, the Council has been guiding itself strictly as to what the Act has provided for, and noted that she did not realize how strict the interpretation was. She said if the Council follows exactly what is in the Act, it could be a very limited tool. She added that this TDR program has been touted over the last two years as the means to address the equity issues of landowners.

Mr. LeJava said that the Highlands Sending Zone policies are addressed in item number 2, and outlines that it will include all lands in the preservation area within the regional protection and conservation zone to the extent that those lands have had their development potential precluded or severely constrained by the restrictions imposed by

the Highlands Act. Mr. LeJava read the paragraphs below which outlined what requirements pertain to criteria for sending zones as were adopted by the Council in February combined with the zones that Mr. Balzano and Ms. Danis have developed. Mr. Alstede said that an initial item should state that the Council create a TDR bank.

Mr. LeJava read the next paragraph which stated that there is a method for determining TDR credits and development rights awarded to a property in a sending zone and determine value. Mr. LeJava noted that the manner in which credits are allocated is a key component of any TDR program. He said there are three primary ways that credits have been allocated in programs which are referenced in the second paragraph under rationale. Mr. LeJava said the first is based upon gross acreage of a given land characteristic. In the Pinelands program, credits are awarded based on the number of gross acres of a wetland or upland. He noted that the variability across the Highlands region is much greater than in the Pinelands region. Therefore, acreage would not be the most appropriate method to use.

The other allocation method considered is based on value of lost development potential. That requires determining the net lost development potential of a given parcel in a sending zone and then determining the value of that net lost development potential through an appraisal. On the receiving side of the TDR equation, a similar analysis is necessary to determine how much value has been gained by building at the bonus density permitted by TDR and examining incremental value.

Mr. LeJava stated that it becomes very burdensome on an administrative level to allocate credits based on value because of the need to do appraisals on both the sending and receiving zones. Instead, staff recommends an allocation process that focuses on the net lost development potential which is discussed in the Act under section 13. The Council would award credits and adjust for the significant variability in both real estate markets. Mr. LeJava said an adjustment would be necessary because a one acre lot in Bergen County will generally be worth more than a one acre lot in Warren County. At the same time, there needs to be an adjustment for the end use permitted on a parcel. For example, a single family detached home will have a greater value than an attached townhouse or apartment or condominium.

Mr. Alstede asked where the Act authorizes the Council to establish sending zones in the planning area. Mr. Borden said it was on page 27 under section 13(f) and Mr. LeJava then read the provision. Mr. Alstede said if planning towns do not opt-in to the RMP they cannot designate sending zones. Mr. Borden noted that section 13(f) does not mandate conformance. Mr. Di Pirro noted the TDR provisions do not require them to opt-in to have sending areas established.

Mr. Dillingham said the idea of basing the HDC value on lost development potential, that it was his understanding that real estate valuation is based on comparables and is an extremely complicated issue. Mr. Dillingham asked on a pragmatic level whether the Council will actually have a multitude of appraisers to go out to 88 towns to achieve valuation. Mr. LeJava noted that in Chesterfield and Lumberton credits are allocated

based on soil suitability for septic. He noted that other programs around the country are often intra-municipally focused, and focus on lost development potential and therefore credits are awarded for the lost number of units. Mr. LeJava said in applying this on a regional scale, there have to be adjustments for the variability which is complex, but it is fair.

Ms. Letts said that the Council could encounter a huge dilemma if it attempts to arbitrarily compare property values between counties. Mr. Balzano stated that credits are awarded that can be used anywhere throughout the region and are equalized based upon regional factors.

Mr. Dillingham stated that the Highlands program should to the greatest extent possible, allow the market to set the value of the credits. Mr. LeJava stated that was true, but like the Highlands Council, the Pinelands Commission was given the authority to establish a minimum PDC value which it set at \$10,000 per PDC, understanding that a PDC is divided into four development rights. Their focus was also only on residential, and the Highlands is also bringing in the ability to transfer commercial development or convert from residential to commercial and vice versa. Mr. LeJava noted that the values there were fairly homogenous and not as significantly different as in the Highlands Region. The desirable system is to have a mechanism to recognize variability across the region to allow the Council to meet its mandate to establish the initial value of a development right and credit.

Mr. Weingart said if the Council has a pot of money to buy development credits beginning next summer, what would be the process to follow for a property in Morris County that before the Act could have had 20 houses that now can build none. Mr. LeJava stated that the zoning that was in place would determine how many units were lost, and then the recommendation is to apply the market factor and the end use factor which would adjust for the location in the end use. Those factors are then applied to determine the number of credits the property is entitled to and the property owner then submits an application to the Council to be a sending area. Mr. LeJava stated that this process is similar to what the Pinelands applies, where property owners receive a letter of interpretation regarding how many credits their property is entitled to. The credits are not awarded to the property until the property owner places a conservation restriction on the property. The credits can then be available for sale to land trusts, a developer in a receiving zone, or to the bank.

Mr. LeJava stated that a given municipality could be examined as to assessed value to establish what the median is within the municipality across all uses and then look at all 88 municipalities to establish what the median is for the region setting up derivations from the median either up or down depending on the value of a given municipality. Mr. LeJava noted that this process is being developed with Integra. The end use factor considers the relative value for a detached single family home at different square footages compared to townhouses and apartments, as well as commercial. This process is complex, and the Council could decide to use a less complex method such as in Pinelands

by awarding credits based on how many gross acres which fit within that category. Mr. LeJava said however, that the complex allocation is more equitable and fair.

Mr. Weingart asked how long it would take for the Council to make a determination as to how much credits are worth for a landowner and whether that would simply be based on plugging in the formula. Mr. LeJava replied that was correct and that it was a calculation.

Mr. Whitenack asked regarding a scenario of a hypothetical homeowner in a sending district who now can only build one unit, could that unit be built but then still preserve their right as the Council refines the process, to come back and ask through the deed restriction for some type of a credit. He also asked if a person finds they are now in a receiving town, could that person return to a project and open it back up to purchase credits or would the process stall or terminate once someone takes action.

Mr. LeJava said on the receiving side that if there was development to this point, unless the municipality has laid out the designation process through a TDR ordinance and stated that they could develop at a greater density, the property owner could be allowed through purchasing the credits. On the sending side, Mr. LeJava said that a property owner would be allowed to exercise an exemption and still reserve the remaining development rights provided they place the conservation restriction on the property.

Mr. Schrier thought that would be a legal question and the Council would not make that determination. Mr. LeJava said he believed that it is a policy choice for the Council because there is nothing in the Act which precludes property owners from exercising their exemption. He thought the question is whether the Council would want to award credits to a property owner after they have exercised their right to develop a single family home, for example on a ten acre lot, they built the home, and noting that the zoning back in August 2004 said they could have built five homes, the question is whether the Council will allow them to participate in the program and award four credits for the other units which they could not build because of the Act making necessary adjustments.

Mr. Dillingham considered the scenario where a property owner exercises an exemption under the Act and builds a house, could they then come back and sell the residual values of the units. He asked whether after they exercise that option, and if they sell the property to someone else, are they subject to the restrictions of the Act.

Mr. Alstede said he believed there were two components, perhaps a 25 acre lot that was in a 5 acre zone and it was one lot, there was potential for it to have been subdivided into 5 lots, and under the exemptions portion of the Act there is the right to build one home for you or your family, but exercising that right does not take away the fact that there was a loss of equity.

Mr. Dillingham stated that he wanted to point out that the Act doesn't provide for compensation for loss of equity. Mr. Alstede thought it was understood by the

Legislature and the Governor that the landowners must be compensated by using TDRs and easement purchases.

Ms. Pasquarelli thought that in response to Mr. Whitenack's question regarding a property owner that had five buildable lots before the Act and then took an exemption for one of them, then its not double dipping if they receive four development credits.

Mr. Erik Peterson noted the scenario where a property owner has a 10 acre lot where three houses could have been built prior to the Act with no house on it, and it is now worth more than it was when it had three buildable lots, would the Council then allow them to sell it for more, as well as receive the two credits, which would be the double dipping issue.

Mr. Peterson said the question would then become should the credits be based upon value or number of buildable lots. If it is done by number of units the situation could arise where the double dipping occurs, and conversely another owner has a lot that has truly lost value and they are hurt. Mr. Peterson said the appraisal situation should be done dollar-wise rather than unit-wise. Mr. Whitenack said the problem is it cannot be standardized by town or region.

Ms. Pasquarelli said that there are there going to be comparables. Ms. Letts asked how long the market keeps track of comparables. Mr. Balzano stated they are tracked and retained. Mr. Alstede said that it is easy to find comparables for before the Act, but not after.

Mr. Alstede said that the Council needs to pick a date and stick with it for valuations. Mr. Weingart asked if that date would be when the person applies for credits. Mr. LeJava stated that the date when the Act was put in place would determine what the net lost development potential is as to zoning at that time.

Ms. Letts asked if the loss of appreciative value continues to grow, whether the Council would cap it with a date. Mr. Peterson said a simple process was necessary to avoid under-valuing or over-valuing because the market has cycles of appreciation and loss. He said that the Council will find that some lots became more valuable the day after the Act than they were before due to size. He thought there could be too many costs associated with analyzing values, and believes the Council should try to utilize a process that is fair and equitable.

Mr. Alstede said that the program could also approach from the standpoint like that in a demutualization of a company where all the shareholders would be awarded shares on the date of demutualization based on the premiums paid. Mr. Alstede thought the credits could then be used like stock shares. Mr. Peterson said a different outcome is reached when value is done on a lot basis versus dollar values.

Mr. LeJava pointed to the top of page 7, and read the paragraph aloud. Mr. Schrier suggested using the word encourage rather than entice. Mr. LeJava stated where the

LUCM recognizes important ecological or agricultural resources on a given parcel, it would be awarded bonus credits to encourage conservation. Mr. Balzano said it is a means to encourage stewardship of the resources within their property. He said the method proposed envisions as system for property owners to plug in their lot and block to receive the number of credits they are entitled to be based on a mathematical formula. When it is value based the whole process halts until the property owner gets an appraiser to assess values before a determination of credit can be made. In terms of implementation, there would be a provision to allow for refuting values. Mr. Schrier said all the items as to valuation are subject to appeal, and the process needs to be defined.

Mr. LeJava said that when looking at allocations based on value, the appraisal process is more an art than a science and the question arises as to differing appraisals it does slow the process.

Mr. LeJava noted that the next consideration under item number 3 on page 8 are the various policies for voluntary receiving zones. He said that it shall include all lands within the Regional Development Zone or specially planned areas. These are the areas that have infrastructure capacity and less ecological significance due to previous patterns of development. The receiving zone criteria that the Council adopted in February support utilizing metrics. Mr. Balzano said initially the definition will be broad and the policy acknowledges that TDR receiving is a product of conformance.

Ms. Carluccio noted that when the Council adopted this policy it did not have the concept of specially planned areas fleshed out. She questioned whether it would be a good idea to endorse anything that creates growth in places in the conservation area. Flexibility is necessary, but noted concern over directing everything to the specially planned areas in the preservation area where the Council has the ability to bend standards, it could chip away at the integrity of the preservation area through greater density in the highest integrity areas of the Highlands. She thought the Specially Planned Areas have to be specifically analyzed. Mr. Weingart said that including specially planned areas as receiving zones would not allow any increased density beyond what is already provided.

Ms. Carluccio said she is proposing that the Council not allow TDR receiving areas to be in the specially planned areas within the regional protection zone. Ms. Pasquarelli said that implications of not permitting it have to be addressed such as with adaptive reuse.

Mr. LeJava said staff will analyze through the LUCM and relevant data that the density being ascribed for a specially planned area can be accommodated without having any impact on the ecologic character of the area. He noted that, at the outset, the concept was not to preclude consideration of those areas.

Mr. Dillingham said that what Ms. Carluccio is concerned about is that the vision of what those areas might be is very undefined as to waivers and standards contrary to protection of the zone. Mr. Whitenack said that he appreciated the ability to not preclude consideration of areas.

On page 9 Mr. LeJava read aloud the portion that states the Council must establish a process for designating voluntary receiving zones and the criteria it would be based upon and a method for designation with municipalities.

As to Ms. Carluccio's point, Mr. LeJava stated that the Council would examine what the impacts would be on potential voluntary receiving zones. He explained that an inventory would be completed, and a fiscal impact analysis and mechanism to maintain the inventory will be created. He said a feasibility report also needs to be done at the outset to be sure that receiving zones have capacity to accept growth and that the local real estate market can bear the increased development. The establishment of a grant program is recommended to assist municipalities with these assessments.

Mr. Weingart said the Council would not accept a receiving zone that would allow development that wouldn't otherwise be allowable under the Regional Master Plan. Mr. LeJava said that was correct that the Council would not.

Ms. Carluccio said that the refinement of that answer is that as the Council looks back at the various elements and approaches certain areas such as steep slopes or significant natural areas, the Council has said you can not alter significant soils but under number two, if it is a specially planned area you can. Mr. Weingart said that they would not be allowed because of TDR. Ms. Carluccio thought that if TDR is allowed in those areas then the Council is relaxing standards in terms of density. Mr. Dillingham said that the desire to utilize the TDR programs drives the process and Ms. Carluccio does point out a detail for consideration. He noted that variances from standards should be demonstrated as to whether they can be met or not.

Mr. LeJava said that the next policy provides that the Highlands Council shall allow a planning area municipality to participate in the Highlands TDR program by adopting a municipal TDR ordinance. The ordinance would identify the area of the receiving zone, specify the bonus of TDR density that would be permitted within the zone, establish site and architectural design criteria required by the RMP, and set forth the number of credits required to develop at the bonus density. He stated the ordinance would also explain the process for recording the use of credits.

The Act requires the Council to provide technical assistance to municipalities including developing advisory or model ordinances. During the process of pre-conformance a template ordinance would be provided to each receiving zone. Municipal conformance with the RMP and/or participation in the TDR program shall include a requirement for the purchase of Highlands Development Credits for any variance directed by the participating municipality.

Mr. LeJava stated that upon adoption of the TDR ordinance, a municipality that designates a voluntary receiving zone will be permitted to assess impact fees up to \$15,000 per unit for all new development in the receiving zone. He noted that one item that should have been included in the policy paper, is a requirement under the Highlands TDR provision specifically addressing impact fees, which states that, to be able to assess

impact fees a minimum unit density of 5 residential units per acre must be met to allow the municipality to assess impact fees. Ms. Letts said she doesn't believe that is a very good incentive and noted the state is considering allowing impact fees across the state which could marginalize the impact of the incentive.

Mr. LeJava noted that the next policy would allow a Planning Area municipality to participate in the Highlands TDR program without conforming to the RMP. He said the purpose is to create demand and recognizes the need for receiving zones to be voluntary. Any Planning Area municipality that would participate in the program without conforming would not be eligible for the benefits such as assessing impact fees, and the ability to receive up to \$250,000 in enhanced planning grants.

Mr. Weingart asked why a town that wants increased density would adopt TDR rather than just change their zoning and noted the only incentive is technical planning assistance. Mr. Balzano said that the Council would cover the costs for accomplishing what they already intended. Ms. Pasquarelli asked whether a town would want to get involved with another state agency for \$100,000 and did not think that the provision makes good sense.

Mr. Di Pirro said that it relates back to whether the Council is mandating conformance, and at a recent meeting with a town the question arose where they were thinking of having a redevelopment area and TDR and wanted to know if they could do so without conforming to the plan. Since it had not been addressed by the Council we did not answer. Mr. LeJava said it was an effort not to preclude anyone from the outset for Planning Area towns that had no intention whatsoever of conforming to the RMP.

Ms. Letts noted that there will be towns that aren't in the Highlands Region at all but are within the seven counties that will be receiving areas that won't have any of the requirements or constraints so towns in planning areas should be allowed the same perspective.

Mr. Weingart said towns that are outside the Planning Area but within the seven Highlands counties can charge impact fees. Mr. LeJava said was correct, but they must meet the minimum 5 unit per acre and be State Plan endorsed to charge impact fees.

Ms. Carluccio said unless the Council believes it will not have enough receiving areas she doesn't believe there is a benefit. Mr. Balzano said that the goal is to create opportunities for increased demand in receiving.

Ms. Pasquarelli noted this is also a timing issue and could help speed up the process by creating more opportunities. Mr. Schrier says it will be very complex issue whether the Council deprives municipalities within the Highlands planning areas the opportunity to be a receiving zone.

Ms. Letts said increased density in receiving areas will create increased COAH obligations which will be a disincentive. Mr. Di Pirro stated that requirement can be built

into the development where density is being added. Ms. Pasquarelli asked what happened to the Memorandum of Agreement process with COAH. Ms. Letts said they met with us and said they would be working on this but we haven't heard the results of that work as to negative impact. Mr. Di Pirro noted that the understanding was not that the question about whether fair share requirements would be generated by new housing, but that it was more about addressing incentives and disincentives.

Mr. Weingart noted that the Council would not be able to complete its discussion of the document before 4:00 p.m., and suggested that it pick back up at its next meeting where it left off, as well as have some additional follow up on critical habitat. He stated that there were public commentators present who wished to speak on TDR in the public availability session.

ADJOURN:

<u>Vote on the Approval of Minutes</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	_____	<u> x </u>
Councilmember Calabrese	_____	_____	<u> x </u>	_____
Councilmember Carluccio	<u> x </u>	_____	_____	_____
Councilmember Dillingham	<u> x </u>	_____	_____	_____
Councilmember Kovach	<u> x </u>	_____	_____	_____
Councilmember Letts	<u> x </u>	_____	_____	_____
Councilmember Pasquarelli	_____	_____	<u> x </u>	_____
Councilmember Peterson	<u> x </u>	_____	_____	_____
Councilmember Salovaara	_____	_____	_____	<u> x </u>
Councilmember Schrier	_____	_____	_____	<u> x </u>
Councilmember Vetrano	_____	_____	<u> x </u>	_____
Councilmember Way	<u> x </u>	_____	_____	_____
Councilmember Weingart	<u> x </u>	_____	_____	_____
Councilmember Whitenack	<u> x </u>	_____	_____	_____



John Weingart, Chairman

Dated: October 26, 2006

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL PUBLIC AVAILABILITY SESSION – OCTOBER 5, 2006

At 3:55 p.m. on October 5, 2006, immediately following the meeting of the Highlands Water Protection and Planning Council, Chairman John Weingart convened a public availability session. Joining him were Ms. Debbie Pasquarelli, Ms. Tracy Carluccio, and Mr. Tim Dillingham, and Mr. Erik Peterson for a portion of the session. Mr. Weingart noted that an audio recording was being made of the comment session, and that summaries of the comments would be distributed to all Council members before its next meeting.

James Tripp, General Counsel of Environmental Defense. Mr. Tripp noted that he and Mr. David Greenblatt have been working on a GIS based TDR model for the New Jersey Highlands. He stated the model identifies potential receiving areas as to physical resources and proximity to infrastructure. The model also compiles parameters and values and depicts them in a map on a municipal and county level. Mr. Tripp said it also provides information as to acreage in receiving areas, as well as the number of units within the Planning Area, and within the Highlands counties. The model can also indicate a dollar number representing what a developer may pay for the right to use the density provided in the model. He advised that the economic value is based on real estate data obtained from 6 out of the 7 counties.

Mr. Tripp said the potential exists to generate significant dollars from high value receiving areas throughout the counties. The model does not address the equity standard applied to sending area property owners. Mr. Tripp said he believes the Highlands Act does not address that question clearly, however a TDR program could transfer equity to sending area property owners. There is a large amount of undeveloped privately owned land in both the Preservation and Planning Areas. He noted that funding can be identified over the next 5 years through public acquisition programs. TDR can be a tool to convert private dollars from developers for extra density in suitable areas to conserve additional lands.

Mr. Tripp said one scenario explored is a TDR program for the Highlands which is intra-municipal in operation, and noted that approximately two-thirds of the municipalities in the Highlands Region have both Preservation and Planning Area lands, with land of critical resource use in both. Mr. Tripp said the model addresses an allocation credit formula and analyzes the complexities of a regional unified program which is fair and equitable and efficient. Mr. Tripp thought that the diversity of the values in the seven counties is great, and that the presentation by Mr. Jeff LeJava indicated that factors would need to be adjusted and refined to address market factors as to credits. He noted that it will be very complicated but it could work.

A simplified scheme could be to have a bank conduct the business of selling development credits to developers based on a variety of market and appraisal mechanisms, and that the revenues developed are used to buy land for conservation easements in the manner that Green Acres does. Mr. Tripp said the question about incentives for municipalities has

been considered as well, and that a means for linking public acquisition funds to the TDR program could be made. TDR is meant to allow for more efficient use of public acquisition dollars. For municipalities wishing to conserve land, some portion of State funds, possibly a match, for land acquisition dollars could go into the TDR bank, for municipalities that develop good receiving area programs. There are ways to encourage municipalities to use the TDR program to conserve and protect resources.

Ms. Pasquarelli said that she is not certain of the feasibility of an acquisition bank, but thought that if State agencies were willing to change the rules to require a lower-than-usual municipal match for Green Acres and other state grants for municipalities participating in a Highlands TDR program, it could be a meaningful incentive. Mr. Tripp agreed and added that the incentive could be increased for municipalities willing to participate in a regional program in contrast to municipal programs.

Monique Purcell, Department of Agriculture. Ms. Purcell stated she wished to follow up on a comment made during the water capacity discussion about whether the Department of Agriculture had standards for irrigation. She thought it was important for the Highlands Council members to have some additional facts about agricultural water use. Ms. Purcell advised that currently agriculture uses approximately 5% of the state's water, and that as of 2006 there are 1,100 agricultural certifications and registrations statewide issued by the DEP Bureau of Water Allocation covering 100,000 acres of the 830,000 acres of agricultural land in the state.

She noted that 67 agricultural certifications are in the Highlands region, both Planning and Preservation Areas. Ms. Purcell said that she brought copies of a definition of what a certification and registration is. (Copies attached) She advised that 500 acres of irrigated land is converted to water conserving technology which includes low volume and low pressure drip irrigation statewide each year utilizing state and federal cost share funds. Ms. Purcell noted that over 75% of the funds allocated from the USDA's environmental quality incentives program and the state conservation cost share program since 1999, were for three conservation practices – animal waste storage, integrated crop management, and irrigation practices.

Ms. Purcell said farmers monitor water use through metering, water management plans, and irrigation scheduling to conserve resources and reduce costs associated with irrigating fields. She noted that water re-use includes tail water recovery systems, and the use of effluent on non-food crops is encouraged in water management plans. Ms. Purcell said that the DEP has published for readoption their Agricultural Water Use rules in July 2006 which incorporate new provisions including water reuse and water diversions that utilize the lowest quality water appropriate for the intended use.

David Shope, Long Valley. Mr. Shope provided recent pictures that he took of dilapidated barns in Bethlehem, Lebanon, Washington Township and Mansfield Township, and noted that their condition suggests the economic viability of farming in New Jersey. He asked what redevelopment opportunities exist for the owners of farms in bad condition since they cannot afford to fix them.

Mr. Shope commented about the cash flow timetable the Council had discussed, and said that he inquired at a previous meeting what portion of the realty transfer tax revenue would be available for the Highlands after the funds dedicated to beach replenishment were allocated, and asked if that was considered in the analysis because it is not indicated and thought that remains an open issue. Chairman Weingart confirmed that the Council needed to address that issue and owed him a response.

Mr. Shope commented as to TDR, that the Highlands Act requires the Council to establish an open market value, and suggested that the Council let the free market take over to establish the true value of TDR credits as soon as possible.

As to the date chosen to freeze the values of land, Mr. Shope thought that values had begun suffering depreciation even before the Highlands Act was adopted because of the anticipated effects of the Act as far back as December 2003, and asked the Council to try to find some way to recognize that point.

Robin O’Hearn, Skylands Clean. Ms. O’Hearn said she had a question and comment regarding page 9 of the TDR document, where it is stated that the Council will work with municipalities and the State Planning Commission to identify centers designated by the State Planning Commission as voluntary receiving zones for TDR. She asked if the Land Use Capability Map would supersede on a parcel that is environmentally sensitive in an existing center. As an example, Ms. O’Hearn mentioned Federal Hill which is 180 acres with steep slopes, flood plains, and she asked if the centers would automatically become receiving zones whether or not there was a parcel worthy of protection within them. Mr. Weingart responded that the Highlands Council would be considering that issue.

Ms. O’Hearn said she was pleased to see exempted projects being considered for sending areas, because there are many exempted projects to be addressed and prioritized as sending areas.

As to critical habitat, Ms. O’Hearn said staff mentioned municipalities obtaining hydro-geologists and planning experts to work on site plan levels to determine whether critical habitat was present. She noted that she believed this was unrealistic and unworkable because towns don’t do this now, and probably will not do so even if they are paid for by the developers. She thought if enforcement is left at the local level it will not occur.

Eric Stiles, New Jersey Audubon, Vice-President of Conservation. Mr. Stiles said he gives the Council and staff an “A+” for its development of solid science on critical habitat. He noted that between 1993 and 2001 he worked on the State’s Endangered Non-Game Species Program, and developed a lot of the species models which informed the analysis. Mr. Stiles said that the Council should be accredited for using contemporary and solid science.

Mr. Stiles said with regard to various discussions the Council had on critical habitat that day, that policy issue number 11 pertaining to resource protection standards stresses that

regardless of which zone you are in, for all critical habitat and any species that meets the criteria of rare and endangered species, that projects are prohibited from clearing of vegetation or disturbance of soils within the area designated as critical habitat. Mr. Stiles said that a single standard protective of the resource is the best approach regardless of which zone it is in. He noted his appreciation for the regional approach being taken since it is better than the parcel by parcel basis as to protection of riparian areas.

Mr. Stiles said that Mr. Dillingham was correct when he suggested the two tier standards of 1000 feet for vernal pools outside of riparian areas and 300 feet for pools within those areas was ecologically unsound. He advised that he was the director of the State's vernal pool project and said that it makes sense to have a single standard from the point of the vernal pool regardless of the matrix of habitat in which it is located.

Joy Farber. Ms. Farber advised that she is a concerned citizen and was on the Technical Advisory Committee for TDR. She stated that policy decisions should be made in the context of the reality of the situation. Ms. Farber said that by designing policy without clearly presented data, the Council is attempting "to hit a bulls-eye with a blindfold on." Ms. Farber said the Highlands Council needs to state up front what the scope of the program is. She said that the first consideration should be what the number of undeveloped acres is in the Preservation Area, which is the universe of the sending area.

Ms. Farber said the second consideration should be the number of acres of undeveloped or land otherwise available for growth in the Planning Area and other communities in the seven counties, which is the whole number of receiving areas in your universe. Ms. Farber said that number is not indicated. Ms. Farber said the third consideration is the rate of consumption of land in the Planning Area and seven Highlands counties. She thought this number could be the average number of acres per month being consumed. The fourth consideration Ms. Farber suggested was what the timetable for implementation is, whether it is months or years. The fifth consideration is the expected remaining acres at time of implementation after accounting for a certain number of acres per month being consumed, multiplied by the number of months to implement which will indicate how many acres are no longer available in the receiving zone. She said that number would have to be subtracted from number 2 indicating what is left, and the longer it takes to implement the program, the less land that will be available to accept density.

Ms. Farber also said it needs to be considered how realistic the TDR program is. She thought the Council needs to present the data first before making policy decisions so people can understand what its assessments are based upon. Ms. Farber said that it may become clear that there are very few viable receiving areas left when the program is implemented, and the sending areas may have to be limited to only the no development zones. She asked how the Council will make a policy decision without facts presented on a timetable. Ms. Farber noted that it is difficult for the public to follow as well.

Elizabeth George-Chenaria, New Jersey Builders Association. Ms. George-Chenaria said that she would reiterate some points made in prior letters to the Council.

- 1) She asked when the real estate analysis being prepared by Integra would be completed and available for public review. She stated it was necessary for establishing the real estate market factor and end use factor for the HDC allocation process being considered.
- 2) She asked what the benefit was of the Office of Smart Growth pilot TDR program, and its efforts in coordinating state infrastructure, capital investment, community development and financial assessment in the planning areas.
- 3) Ms. George-Chenaria commented as to the potential TDR voluntary receiving zones and suggests considering the regional conservation zone as well. Prior work sessions indicate that zone would be the middle ground and may be suitable for some development.
- 4) She encouraged the Council to utilize the TDR program as a tool to address the housing need of the Highlands Region. Ms. George-Chenaria stated that NJBA points to Section 13 of the Highlands Act which sets a specific goal to have 4% of the Planning Area land be set aside as receiving zones.
- 5) She also emphasized that Section 8 of the Highlands Act precludes adoption of the RMP until the Council recommends receiving zones in the Planning Area with associated capacity. She urged the Council to identify the receiving zones.

Courtenay Mercer, Planning Director for the New Jersey Office of Smart Growth.

Ms. Mercer commended Mr. LeJava and the staff for its work on the TDR program and offered her support for their effort. She advised there were students from the Bloustein School who accompanied her in the audience earlier, who are studying what incentives exist to promote receiving areas particularly outside of the Highlands Region but within the seven counties. She noted that Mr. LeJava spent time with them earlier that morning to talk about these areas and she thanked him for taking time to address their interest.

Ms. Mercer noted that as a matter of clarification as to towns outside the Highlands Region but within the seven counties, and the question whether they need plan endorsement to have TDR, and whether towns in the Planning Area had to have plan endorsement to do TDR, she noted that the TDR Act does require that plan endorsement be achieved to implement TDR. She also noted that the Highlands Act states that Plan Conformance is equivalent to Plan Endorsement.

Ms. Mercer said that she was satisfied with the value factor versus basing them on densities and zoning in units versus a value because it will be costly and time consuming to do appraisals on all possible parcels for TDR sending units. She noted that considering inflation and deflation and all the effects it would be very difficult to achieve on a value basis. Ms. Mercer said the State TDR Act does allow for this type of equalization and that is the direction to point the policy. Ms. Mercer said regarding the question of someone who would now receive more value on a ten acre proposal, she noted that it depends on whether the goal is conservation or if it is equity and if the goal is conservation, she stated that where parcels are important from a resource value it should be allocated credit. Ms. Mercer said it might help to identify a minimum lot size but stated she had no suggestion as to what that size would be.

Regarding questions over exemptions for single family units and whether they should participate, Ms. Mercer stated precedent has been reached in the Chesterfield case, and that it was determined one credit had to be retained for the house on the property.

With regard to special planning areas in the preservation area, Ms. Mercer noted that if the RMP allows density in the area, even if the municipality might be zoned lower at the present time there is nothing to preclude them from upzoning. She stated that public input needs to happen early and often as to TDR.

Julia Somers, Highlands Coalition. Ms. Somers stated that the Coalition had prepared a paper last spring and that she brought copies to distribute to any members who may not have already seen it. (Copy attached) She noted that she had an item to add for the Council's consideration which is when preserving farmland through the TDR program, that it also consider implementing a mandatory limit on impervious coverage on those preserved lands.

Nancy Chambellan, Warren County Environmental Commission. Ms. Chambellan said that she had concerns about the fact that previous designations of PA1, PA2 and town center were not established in consideration of natural resources for the LUCM. She noted that the RMP is also being developed as blind to the line with regard to established growth patterns that have not considered land capability realities in the past. Ms. Chambellan stated as to page 10 of the TDR paper, in seeking receiving areas in the non-Highlands PA1, PA2 and designated centers, she asked that the Council be true to the land capability principles wherever the TDR receiving areas are established.

Ms. Chambellan stated as to page 12 regarding allowing Highlands municipalities who do not opt-in to the RMP to be a Highlands TDR receiving area, she thought the Council should guard against creating a policy dilemma complicit in jeopardizing resources where municipalities fail to opt-in and conform to land capabilities. Ms. Chambellan urged the Council to retain TDR as an incentive for conformance to the RMP.

Wilma Frey, New Jersey Conservation Foundation. Ms. Frey pointed to page 12 of the TDR paper and the issue over allowing a Planning Area municipality to participate in TDR without conforming to the RMP, that they should be required to conform. Ms. Frey suggested that the TDR program should not amount to "the tail wagging the dog" and that protection of the Highlands is the reason for the Highlands Act, Highlands Council and the RMP. She added that she thought that section should be removed from the document.

Ms. Frey said that as to purposes of the TDR program, she believed they should be broadened and offered that it should be mentioned this is a potential conservation mechanism to preserve sites with existing development approvals. She noted that it should address sensitive sites currently exempted from the Highlands Act because it is in the planning area or town center and that it should be stated that a landscape of unfragmented forests, watersheds and farmland are the goal of the Act. Ms. Frey said this would be a basis for legal support for the Council's utilization of its no development

zone. The conservation purposes of the TDR program should be clearly stated. On page 3 as to goals, the impact of the TDR receiving areas on the surrounding areas should be stated. She believed that impact was the concern Ms. Carluccio was pointing out. Ms. Frey said it is difficult to gauge the impact without mapping indications as to specially planned areas, and the number of areas is a significant factor. Ms. Frey said the desire is not to have the Highlands area pock-marked with intense developments in the planning area. She noted the Highlands resource area was the whole Highlands and not the Preservation Area versus the Planning Area. Allowing development in the Preservation Area is to be very restricted and very carefully considered. Ms. Frey said that a planning structure which is too complex requiring oversight over every site plan would create enormous amounts of work and noted that the conservation goals have to be clearly stated and followed in the RMP.

Candace Ashmun, Pinelands Commission and PDC Bank Board. Ms. Ashmun complimented the staff and Council on the difficult work it has done on TDR in particular and stated that she knows from her long experience on the Pinelands Commission how hard it is and offered to commiserate. Ms. Ashmun stated that it is worth the work. She stated that at about 60,000 acres have been protected in the Pinelands with deed restrictions without spending any money. She noted many have been retired without being used in the receiving areas for many reasons. Ms. Ashmun stated her program is totally market driven which is different from the Highlands. She asked the Council to remember to look long term, perhaps 20 years from now, the value that was lost 20 years before on a piece of property. She stated that the owners may be cheating themselves by saying the value has to be set in 2006 or before the Act was passed. Ms. Ashmun said the Council needs to consider what the effect is going to be on landowners.

She also stressed that this work is terribly staff intensive and the work necessary to establish the number of Highlands credits determined is hugely intensive. Staff members have to go on site and search the deeds, and find out what is really developable land on a property and then it is turned over to a bank and it becomes equally intensive and the amount of paperwork involved is horrendous. She thought the Council should keep in mind the expense of running a TDR program. Ms. Ashmun said she couldn't understand from the paper whether the initial number of HDCs established for a piece of land sunsets or not and noted that Pinelands do sunset every two years because people change what they do to their land. She noted that fact also intensifies the labor involved, and stated she would leave the Council to its struggles.

David Piefer, Association of New Jersey Environmental Commissions. Mr. Piefer said the cash flow timetable needs to be carefully considered if the Council wants to encourage the private donations of land. He noted the IRS does not recognize previous appraisal and that any deduction claimed under the IRS rules by a landowner would be disallowed if that basis was used in the appraisal. Mr. Piefer said the point is to encourage as much private donation as possible, and the Council would not want someone to be caught thinking they will have a tax deduction when they don't. Mr. Piefer also suggested extending the appraisal period beyond the statutory limit and echoed what Ms.

Ashmun said as to thinking long term. He noted that leveraging private support is substantial related to TDRs because if someone wants to donate development rights, they would need the value in order to claim a tax deduction acceptable to the IRS, and based on an old date, they are blown out. He asked the Council not to encourage people to do so, and suggested it also be careful of extending the date. He asked if the Council had a giant data base of all the zoning and DEP regulatory programs in place for seven counties and 88 towns. Mr. Borden said it did.

As to the stewardship responsibility and the funding needs for the purpose of enforcement, Mr. Piefer stated the Council should not leave it up to the municipalities and suggested guaranteeing it in perpetuity on an endowed basis and not an annual allocation. As to bonuses for resource values, he noted it could be said that we paying for what we already have and that water is a trust resource. In specially planned areas, Mr. Piefer reminded that one of the uses for brownfields is conversion to greenfields and said the matrix in which the brownfield sits should be examined to determine if it could become greenfield. Mr. Piefer noted as an example the Combe Fill South Landfill, a Superfund site, which is on the headwaters of Trout Brook draining into Hacklebarney State Park and the Black River. The specially planned areas are not just to be developed, but more for restoration of a region.

Helen Heinrich, Farm Bureau. Ms. Heinrich said she would like to follow up on a comment she made one week ago about the transportation studies being conducted, and said since agricultural viability is mandated in the plan, the Council's transportation consultants should examine the plan made as part of the Route 206 farm belt study in Burlington County. She said that DDR received a transportation study and met with farmers to find out what problems existed as to intersections and roads as to weight limits on bridges. She noted this type of approach should be taken in the Highlands as well, so that the movement of farm goods to market can proceed better. Ms. Heinrich stated that two important issues for farmers were discussed at the meeting, one is that TDR is a major concern since it is a tool to preserve equity and conservation of land. She stated it is important because there is no funding source to count on. Ms. Heinrich stated the Farm Bureau would provide future comments and suggestions.

As to the critical habitat she stated that the landscape project maps are not accurate because an insufficient amount of ground truthing has been done. She also stated that there are too many critical resource stewardship management plans and said they might be named better in order to help people tell them apart.

Since no other members of the public wished to comment, Mr. Weingart offered thanks for the comments received, and the public session ended at 4:55 p.m.

New Jersey Department of Agriculture

Memo

To: Highlands Water Protection & Planning Council

From: Monique Purcell

Date: October 3, 2006

Re: Agricultural Irrigation Water Use

The NJDA offers the Council the following information regarding water used for irrigation purposes by the agricultural industry in New Jersey.

- Agriculture uses approximately 5% of the state's water.
- As of 2006, there are 1,100 agricultural certifications/registrations statewide issued by the DEP Bureau of Water Allocation, covering approximately 100,000 acres of agricultural land, out of the 830,000 acres of land in agricultural use.
- There are approximately 67 agricultural certifications/registrations in the Highlands Region.
 - A **certification** is issued to grant a person the privilege to divert 100,000 gallons or more of water per day from ground and surface water sources for agricultural, aquacultural or horticultural purposes for a 5-year period.
 - A **registration** is issued if a person has the capability to divert 100,000 gallons of water per day from a source or combination of sources, but whose usage is less than 100,000 gallons per day for agricultural, aquacultural or horticultural purposes.
- 500 acres of irrigated land is converted to water conserving technology (low volume/low pressure, drip irrigation) statewide each year utilizing state and federal cost-share funds.
- Over 75% of the funds allocated from the Environmental Quality Incentives Program and state Conservation Cost-Share Program (\$2.5 M since 1999) were for 3 conservation practices, including animal waste storage facilities, integrated crop management and irrigation practices.
- Farmers monitor their water use through metering, water management plans and irrigation scheduling to conserve the resource and reduce costs associated with irrigating fields.

- Water reuse, including tailwater recovery systems and the use of effluent on non-food crops is encouraged in water management plans.
- The DEP's proposed amendments to the Ag Water Use Certification rules (N.J.A.C. 7:20A) that were published in the July 17, 2006 New Jersey Register incorporate new provisions including water reuse and water diversions that utilize the lowest quality water that is appropriate for the intended use.



State of New Jersey

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JOHN R. WEINGART
Chairman

DANTE DI PIRRO
Executive Director

JON S. CORZINE
Governor

Regional Master Plan Development Council Work Session – October 5, 2006

PUBLIC COMMENT SHEET

The Highlands Council welcomes public comment. Members of the public are invited to comment here or electronically by e-mailing the Council at rmppcomments@highlands.state.nj.us.

Name: ANDREW DRYSDALE Phone: 908-234-1079
Title: PROPERTY OWNER - PRESERVATION AREA
Address: 32 E. FOX CHASE RD, CHESTER, NJ
Location of Property (if different from above):

My comments relate to:

- Transfer of Development Rights Program Cash Flow Time Table
 Critical Habitat Other _____

Comments:

VERNAL POOLS - WE ONCE HAD A
METAL HORSE TROUGH WHERE WATER
WAS LEFT IN IT FOR A FEW SUMMER
MONTHS - POLY WOGS HATCHED OUT IN
THAT TANK AS DID MOSQUITOES. ANY
LOW PLACE THAT IS IMPERVIOUS CAN
BECOME A VERNAL POOL! PLEASE
STOP THIS NONSENSE!



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My comments relate to:

- Transfer of Development Rights Program Cash Flow Time Table
 Critical Habitat Other _____

Comments:

PRE-HIGHLANDS ACT LAND VALUES ARE
THE ONLY VALUES THAT SHOULD BE
CONSIDERED. ANY OTHERS ARE EITHER
TOTALLY UN-REAL OR ARE MARKET
VALUES THAT HAVE BEEN SEVERELY
AFFECTED BY THE ACT!

New Jersey Highlands Coalition Principles for TDR

Summary. A Transfer of Development Rights ("TDR") program is a potentially useful land use mechanism to help achieve the goals of the Highlands Water Protection and Planning Act ("the Act") when used appropriately and in conjunction with other tools. The overall success of the TDR program will be judged by its ability to provide maximum environmental protection for all sending and receiving parcels, with minimum environmental cost to receiving parcels. Therefore, the designation of potential sending and receiving areas must be based on the Resource Assessment, the capacity analysis and the Land Use Capability Map that are integral parts of the Regional Master Plan (RMP). Prior to implementing a TDR program, in order to understand its potential scope and utility and what range of transferable credits and economic values it should consider, the Council must undertake an analysis of potential build-out in the preservation area and critical resource areas, based both on pre-Act capacity as well as conditions established under the Regional Master Plan.

Potential Utility. A NJ Highlands TDR program has the potential to assist in achieving the goals of the Act in a number of ways. These include:

- Providing a potential conservation mechanism for sites with existing development approvals within the Preservation Area currently grandfathered under the Act.
- Providing a potential conservation mechanism for environmentally sensitive sites on which projects are currently exempted from the Act because they are within the Planning Area or a designated Town Center;
- Furthering the goals of the Act by helping to achieve a landscape of unfragmented forests, watersheds and farmland, fostering connectivity among networks of preserved land and minimizing sprawl development by focusing developing in receiving areas that are most appropriate for growth as defined by the RMP's resource assessment and capacity analysis;
- Helping to achieve land preservation and farmland protection by providing equity and enhanced marketing opportunities to property owners in the sending areas and no development zones;
- Providing a legal basis for severe restrictions on the use of property; one objective of the TDR program should be to provide legal support for the Council's utilization of its no development zone as well as sending area authority.

Basic Principles. A NJ Highlands TDR program must:

- Designate potential sending zones in the Preservation and Planning Areas, and receiving zones in the Planning Area and Highlands Counties, based on the findings of the Resource Assessment, capacity analysis and Land Use Capability elements of the Regional Master Plan, and thus help to achieve the forest land preservation, farmland protection and water resource protection goals of the Act;
- Include a capacity analysis of the natural and built infrastructure of potential receiving areas in the Highlands Counties outside the Highlands area.

- Designate exempt or grandfathered project areas within the preservation area or critical resource areas as sending areas with appropriate incentives;
- Designate areas of significant natural resource value within the Planning Area, especially lands adjacent and contiguous with the Preservation Area, as sending areas;
- Prioritize potential receiving areas that already are developed and that have sufficient existing sewer, water supply and other necessary built and natural infrastructure to support and sustain development and/or redevelopment at additional densities;
- Use incentives to encourage municipalities to explore TDR ordinances consistent with the Statewide TDR program that would transfer development to municipalities outside the Highlands counties;
- Maximize opportunities for receiving zones in appropriate areas outside of the Highlands Region in Highlands Counties;
- Designated potential receiving areas must demonstrate that new or existing infrastructure necessary to support its higher densities, including ground and surface water supply and wastewater infrastructure and transportation, will be sustainable and have minimal environmental impacts outside of those areas;
- Require that the only means of increasing pre-Highlands Act densities in Planning Area municipalities, or other growth/redevelopment areas will be through opting-in to the RMP, and the increased density be achieved solely through transfer of development rights from Highlands sending areas.
- Ensure that receiving areas are designed to the highest possible standards to ensure negligible impact on natural resources while generating economic values that will support the effective use of no development zone authority and sending area designations;
- Ensure that when development rights are severed in a sending area, all remaining rights in the subject property should be conditioned in perpetuity to ensure, *at a minimum*, conformance with the Highlands Water Protection and Planning Act, DEP Rules developed pursuant to the Act, and the Regional Master Plan, or stricter requirements of the governing municipality.
- Designate no development zones as sending areas recognizing however that a mechanism must be established to facilitate fee simple acquisition for priority parcels including but not limited to those parcels appropriate for park expansion, public access or recreation purposes.
- Require that any new sewer construction or extensions in the Highlands region and adjacent areas to require the purchase of TDR credits.

June 21, 2006

Pequannock River Coalition

P.O. Box 392, Newfoundland, NJ 07435 (973) 492-3212

www.pequannockriver.org

October 3, 2006

Mr. Dante DiPirro, Executive Director
New Jersey Highlands Council
100 North Road
Chester, NJ 07930

Dear Mr. DiPirro,

We have reviewed the Policy Considerations for Water Availability, dated September 26, 2006 and released to the Council on September 28th. Our comments and concerns are outlined below:

In Staff Policy Recommendation #1 the rationale describes adjustment of the Low Flow Margin of Safety through multiplying this figure by 1.02. There is no basis provided for this adjustment and no information on how this new concept was developed. The staff must provide additional information and justification.

Staff Policy Recommendation #2 provides a table showing thresholds for Ground Water Availability based on characteristics of the watersheds. With no mapping provided of the various zones it is difficult to comment on this approach. However, we must underline the overriding imperative to restore Highlands water quality and quantity. For this reason any waterway currently listed as "impaired" by the NJDEP must be placed in the most restrictive category regardless of its physical location. There are few (if any) water quality impairments that are not worsened by reduction in base flow. Waterways with documented water quality problems cannot sustain any reduction in flow without negative consequences, and therefore cannot be expected to provide additional groundwater while meeting the tenets of the Highlands Act. As a conservative measure these waterways should receive the highest level of protection.

Staff Policy Recommendation #3 describes the calculation of Net Ground Water Availability by subtracting consumptive water uses. This calculation ignores the issue of water diversions from reservoir systems, stating that this issue is covered through the placement of waterways draining to surface water intakes or reservoirs in the most restrictive Ground Water Capability category. We strongly recommend that an additional analysis be performed using actual gauged base flows for waterways affected by reservoir diversions wherever they are available. Examples include Wanaque River at the Wanaque Reservoir outlet, Pequannock River at Macopin, and the Rockaway River below Jersey City Reservoir. This analysis would enlighten the Council by emphasizing the enormous degradation of base flows occurring in these waterways and will help to discourage inappropriate growth in contributing watersheds.

Finally, discussion of two vital issues has been relegated to the "Technical Basis" section of the document. These are 1) incorporation of the impacts of impervious cover on recharge, and 2) employing a method such as R2Cross in establishing minimum flows. Although we recognize the Council's time and staff limitations in producing the current RMP, these items absolutely must be included in the "5-year Resource, Protection and Planning Goals."

Please contact me if I can provide any additional information.

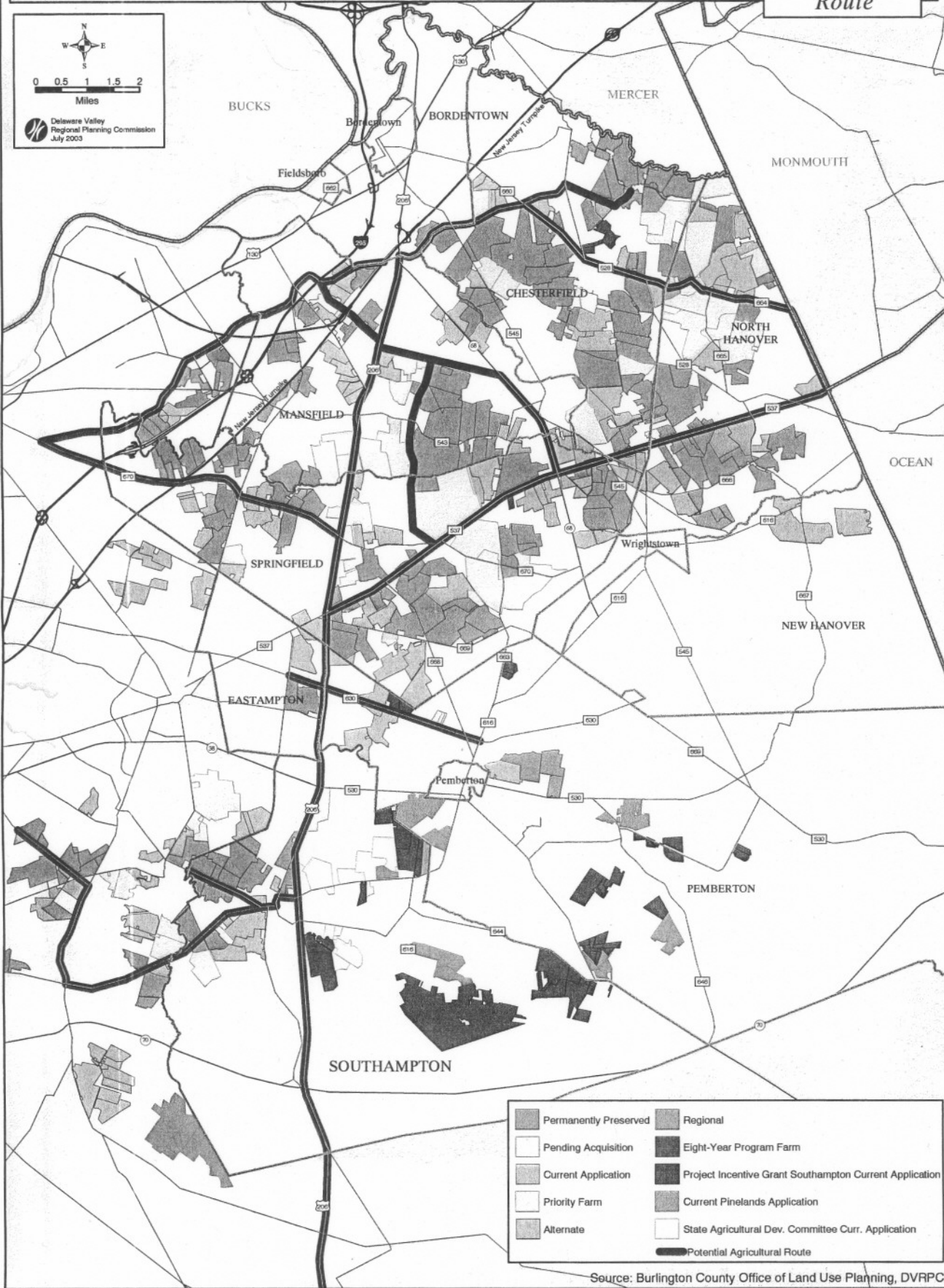
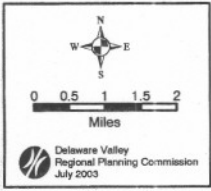
Sincerely,

Ross Kushner
Executive Director

cc: E. Filippone, PRC
L. Jackson, NJDEP
D. Pringle, NJEF
J. Somers, NJ Highlands Coalition
E. Stiles, NJAS
J. Tittel, NJ Sierra Club
J. Weingart, NJ Highlands Council

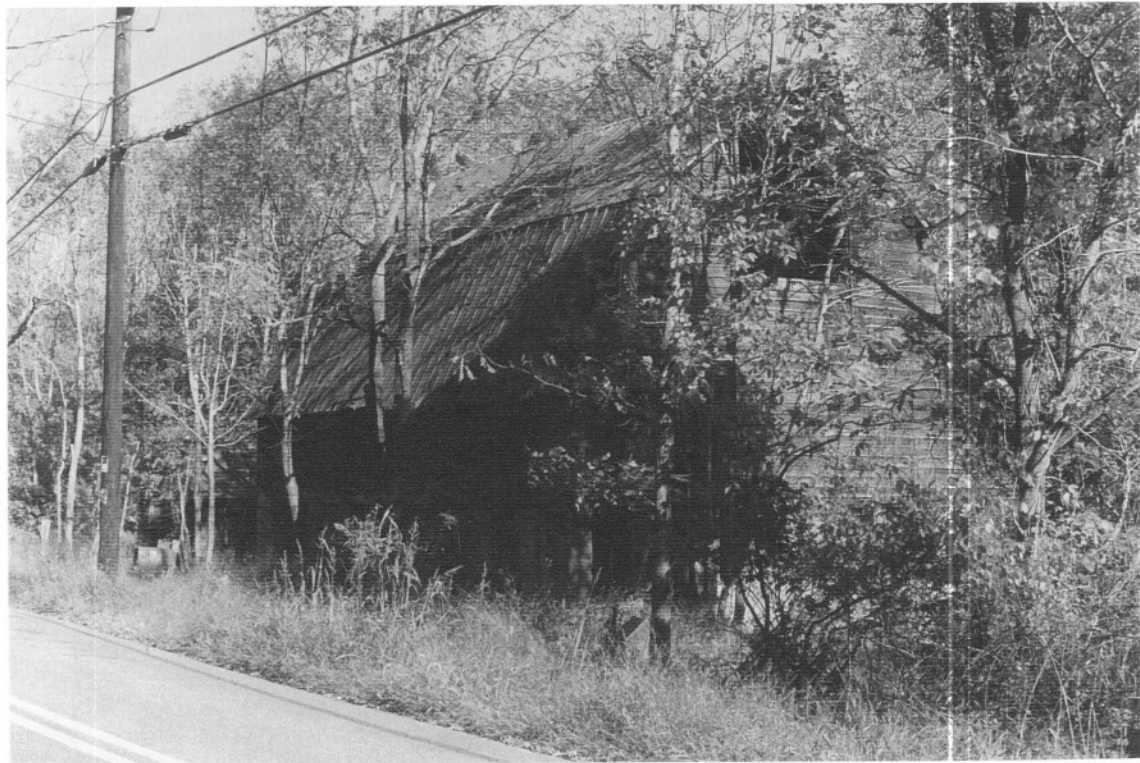
US 130/ Delaware River Corridor Extension US 206/ Farmbelt Corridor Transportation and Circulation Study

Map 8:
Preserved
Farmland and
Agricultural
Route

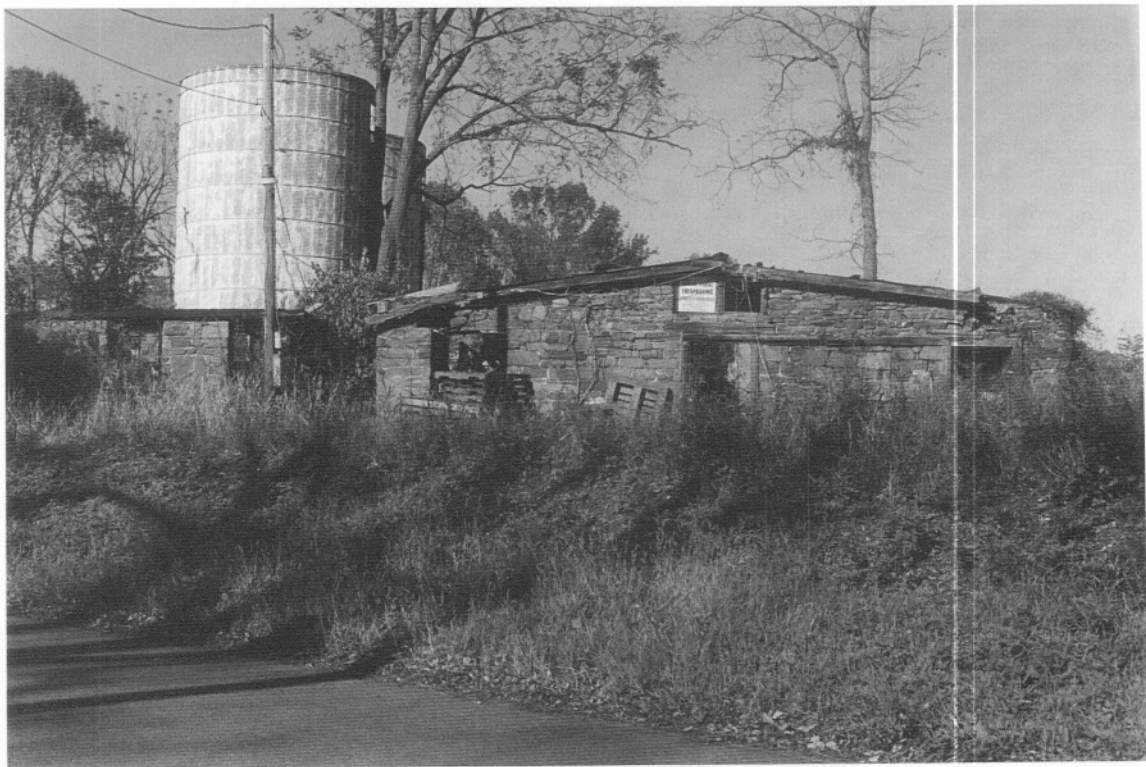


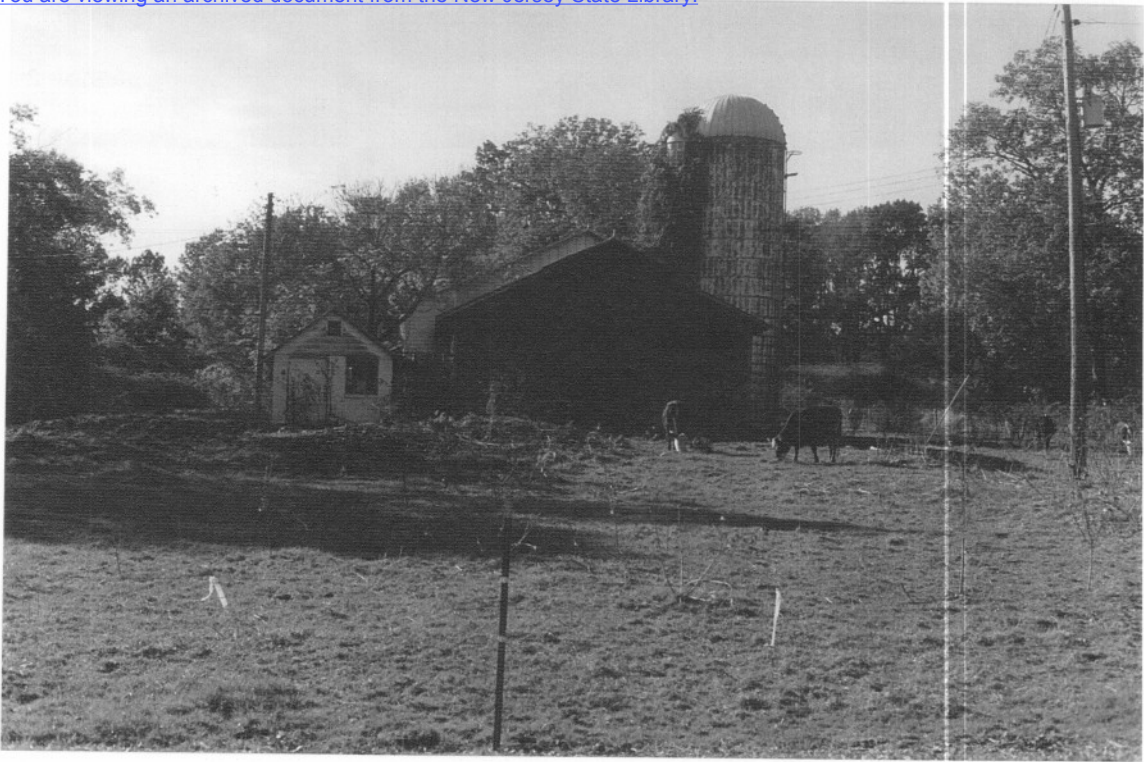
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|-----------------------|---|
| Permanently Preserved | Regional |
| Pending Acquisition | Eight-Year Program Farm |
| Current Application | Project Incentive Grant Southampton Current Application |
| Priority Farm | Current Pinelands Application |
| Alternate | State Agricultural Dev. Committee Curr. Application |
| | Potential Agricultural Route |

Source: Burlington County Office of Land Use Planning, DVRPC.











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