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JACK J. SCHRIER
Acting Chairman

EILEEN SWAN
Executive Director

MEETING AGENDA

Thursday, March 4, 2010 - 1:00 p.m.

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – JANUARY 21, 2010
6. ELECTION OF OFFICERS
7. ACTING-CHAIRMAN'S REPORT (and Council Member Reports)
8. EXECUTIVE DIRECTOR'S REPORT
 - a. Update on Highlands Plan Conformance
 - b. Update on Highlands Project Review
9. CONSIDERATION OF RESOLUTION –*Highlands Redevelopment Area*
Designation for Borealis, Mansfield Township, Block 1301, Lot 1 and Block 1307, Lot 6 -
(voting matter with public comment)
10. CONSIDERATION OF RESOLUTION –*Highlands Redevelopment Area*
Designation for West Milford Municipal Complex and Public Library, Block 7903, Lots 13,
14, 15, 16 - (voting matter with public comment)
11. PUBLIC COMMENTS (*please note – the Council requests that public comments be limited to three (3) minutes per person. Questions raised in this period will not be responded to at this time but, where feasible, will be followed up by the Council and its staff.*)
12. EXECUTIVE SESSION (if deemed necessary)
13. ADJOURN

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF MARCH 4, 2010

PRESENT

JACK SCHRIER) ACTING CHAIRMAN

KURT ALSTEDE) COUNCIL MEMBERS

MIMI LETTS)

MICHAEL FRANCIS)

GLEN VETRANO)

JANICE KOVACH)

BILL COGGER)

JAMES VISIOLI)

CARL RICHKO)

ROBERT HOLTAWAY)

ABSENT

TRACY CARLUCCIO)

CALL TO ORDER

The Chairman of the Council, Jack Schrier, called the 92nd meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:07 pm.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

Acting Chairman Schrier announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

SWEARING IN OF NEW COUNCIL MEMBER

Acting Chairman Schrier administered the oath of office to James Visioli, a new Highlands Council Member.

APPROVAL OF MINUTES OF JANUARY 21, 2010

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

ELECTION OF OFFICERS

Eileen Swan read an excerpt from the New Jersey Highlands Council Bylaws, Section 3. Other Officers of the Council. Acting Chairman Schrier asked for nominations for a Vice Chairman. *Ms. Kovach made a motion to nominate Councilmember and Acting Chairman Jack Schrier as Vice Chair.*

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Ms. Kovach commented that it has been a pleasure of serving with him for the past five years and he has served with honor and dignity. She continued to say that Mr. Schrier has been an advocate for the Highlands Act, the Council, and staff amidst all of the changes in the last several months and has stepped up to the leadership role.

Ms Letts commented that since Jack served on the Highlands Task Force he has the distinction of having worked longer and harder than anyone else to protect the Highlands and our water. *Ms. Letts seconded the motion. Mr. Schrier abstained. All other members present voted to approve. APPROVED 9-0.*

Acting Chairman Schrier asked Council for a nomination for Treasurer. *Ms Kovach made motion to nominate Bill Cogger for Treasurer. Ms Letts seconded it. Bill Cogger abstained. All other members present voted to approve. APPROVED 9-0.* Mr. Cogger commended Ranji Persaud for his efforts which make the role of Treasurer easier.

ACTING CHAIRMAN'S REPORT AND MEMBER'S REPORTS

Acting Chairman Schrier had nothing to report at this time.

Ms. Letts had a question about the TDR program being extended to the entire state and was it passed. Ms. Swan reported that she would address it in her Executive Report.

Mr. Cogger had a question about the bill before the Assembly for dual appraisal. Ms. Swan commented that it was for the extension of the dual appraisal process for the entire state and it was withdrawn. Ms. Swan has since testified before the Senate Environment and Energy Committee and did mention the dual appraisal extension. She expressed confidence that Senator Smith would look into it again for the Highlands Region because of the impact up here. She also plans to speak before Chairman McKeon and the Assembly of Environment and Solid Waste Committee and will continue to advocate for the extension on the Council's behalf. Mr. Cogger then asked if there was any news about Green Acres and any monies set aside for Highlands. Ms Swan commented that there was no specific amount set aside for the Highlands. The division of those monies is between Open Space under the Green Acres program and farm preservation under SADC as well as cultural and historic preservation.

EXECUTIVE DIRECTOR'S REPORT

Plan Conformance Reviews

Ms. Swan updated the Council on Plan Conformance Petition reviews. Fifty-six (56) municipalities have submitted Petition documents for Plan Conformance by December 8th and all have received responses from the Highlands Council. These 56 submissions covered 95% (395,660 acres) of the Preservation Area and 35% (153,942 acres) of the Planning Area, for a total acreage of 549,602 (or 64%) on the Highlands Region. Planning Area petitions and resolutions are voluntary submissions and not binding until Council action and municipal ordinance. Of the 56 municipalities who submitted Petition documents, 25 municipalities were found to be complete and posted on Highlands Council website. The process moving forward will be that, for complete submissions, Draft Consistency Review and Recommendations Report will be issued by Highlands Council Executive Director to the municipality for municipal review. During the Municipal Review Period, a municipality may then amend Petition to address issues in the Draft Report. Thereafter, the process will include a Public Notice, the issuance of a Final Report, and Council consideration. Submissions

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from 29 municipalities were deemed incomplete and Council letters to these municipalities specified which additional information is required. Preservation Area municipalities were given 45 days to provide requested information; no deadline was required for Planning Area municipalities. Five municipalities have already submitted requested information. Submissions from two municipalities (Wharton and Parsippany-Troy Hills) will be deemed complete if the municipality adopts a resolution to petition the Highlands Council, as Planning Area lands they are not required to conform. Ms Swan reported that the Town of High Bridge has adopted the first ordinance authorizing conformance by a Planning Area municipality.

Regarding affordable housing, municipalities were asked to submit to the Highlands Council a draft Housing Element and Fair Share Plan by March 1, 2010 in order to have adopted plans completed by the June 8, 2010 extension deadline established by COAH. To date 35 municipalities (including Independence, Wharton and Chester Borough, which have not yet petitioned for conformance), either submitted draft Housing Element and Fair Share plans to the Highlands Council, or were not required to submit additional information, as their Module 3 petition submission included sufficient information. These plans are being review by staff for completeness. Highlands Council staff is working with other municipalities on their housing plans encouraging them to move forward with the plans and get them to us as soon as possible so they can stay under the protection of COAH.

Planning Area municipalities do not have a deadline to submit Petition documents and thus many of the municipalities that submitted a Petition just for the Preservation Area may still submit a Petition for the Planning Area (approx. 130,000 acres). Eighteen (18) Planning Area only municipalities continue to work under a Notice of Intent (over 65,000 acres). They are: Milford, Chester Borough, Hanover, Mendham Borough, Mendham Twp., Mine Hill, Morris Plains, Mountain Lakes, Riverdale, Pompton Lakes, Bernardsville, Franklin Borough, Hamburg, Alpha, Belvidere, Frelinghuysen, Phillipsburg, and Washington Borough.

RMP Updates/Map Adjustments

To date, thirteen (13) municipalities submitted more than 100 requests for RMP Updates or Map Adjustments. Twenty-seven (27) requests were found to be RMP Updates thus far, the information submitted will be incorporated into the Highlands spatial database. Updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. An RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted. Sixty-eight (68) requests to date were found not to be RMP Updates. Municipal information provided on current and existing land conditions was consistent with that of the Highlands Council. Municipalities may provide more information to support their original request and/or may make use of other policies of the RMP to propose a change in LUCM Zone, including the Map Adjustment program or a Highlands Center designation. Fourteen (14) requests required more information, and the municipality was asked to provide that information. Highlands's staff is getting ready to send out those letters.

Legislative Update

Eileen Swan reported that, on February 8, 2010, the Senate Environment and Energy Committee unanimously released a bill, S-80, which would authorize any municipality outside the Highlands Region to establish receiving zones for the Highlands TDR Program. The bill was sponsored by Senators Bob Smith, Christopher Bateman, Robert M. Gordon, Jennifer Beck and James Beach. On February 25, 2010, the Assembly approved its version of the bill, A-602, by a vote of 62-10-3. The

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bill was sponsored by Assemblymen Erik Peterson and John F. McKeon and co-sponsored by Assemblyman Reed Gusciora. Ms. Swan reported that she did testify for both on the Council's behalf. It is a step forward for land owner equity issues and giving the Council the opportunity for a more robust TDR program.

Mr. Schrier commented that he had a request from a municipality who had concerns about scarce resources order. What is the process? Ms Swan reported that scarce resource constraint order was placed by COAH on all Highlands municipalities as a result of the granting of an extension for affordable housing planning. The rationale was so that development would not occur during that period and use up the resources which would then not be available for affordable housing. COAH did exclude all the exemptions under the Highlands Act from this resource restraint and once municipalities submit their affordable housing plans those restraints would be lifted. Another way is to prove that there are no scarce resources and ask COAH for a waiver for that particular project. Highlands Council has no authority to lift COAH's order.

Consideration of Redevelopment Areas

Highlands Redevelopment Area Proposal - Borealis

Mr. Holtaway recused himself from the Borealis Highlands Redevelopment Area Resolution consideration.

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

Ms. Swan continued with her presentation for the Borealis project. Borealis operates a plastics manufacturing facility in Mansfield Township, Warren County. The applicant is petitioning the Highlands Council for a Highlands Redevelopment Area Designation in the Preservation Area using the 70% impervious surface criteria. Block 1301, Lot 1 (33.1 acres) contains the existing plant and Block 1307, Lot 6 (9 acres) in undeveloped and currently used as agricultural lands.

The redevelopment project will increase materials storage and handling capability at the site. The delineation of the Highlands Redevelopment Area boundary will allow for the construction of a paved 27,200 square foot container-staging area on Block 1307, Lot 6, and on Block 1301, Lot 1 the construction of a new building, additional railroad tracks, additional storage silos, and miscellaneous improvements such as stormwater management. Of the 42 acres of the property, approximately 6 acres of new disturbance are contemplated.

Staff analysis of the proposed Highlands Redevelopment Area petition and field visits to the site yield the following findings of impervious surface: Calculations of 70% were verified; existing impervious surface equals 638,879 sq ft, allowable Highlands Redevelopment Area equals 912,704 sq ft; and proposed redevelopment area equals 912,704 sq ft. The container staging area encroaches into approximately 100 feet of Highlands Open Waters (HOW) protection area. Nearly the entire HOW buffer area is currently used for agriculture. The HOW buffer is also identified as critical habitat for grassland birds. A waiver would be required from the Highlands Council (in the

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Highlands Redevelopment Area approval) and NJDEP (through the HPAA) process for these issues.

Ms. Swan then reported on the timeline of the Borealis project. The comment period on draft staff report and draft consistency determination closed on January 29, 2010. One public comment letter was received from the New Jersey Farm Bureau, encouraging continued use of agriculture in the HOW buffer area. Staff report and CD were revised to clarify that buffer mitigation plans can incorporate soil and water conservation practices to achieve enhancement of water quality and riparian habitat while retaining agriculture uses at the discretion of the landowners. A revised staff recommendation report and consistency determination was posted on Council website on February 8, 2010.

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

1. A HOW protection area mitigation plan be implemented to ensure no net loss of water quality and buffer value, through mitigation of the impacts of the proposed impervious container staging areas. Implementation and maintenance of the mitigation plan should be a permanent condition of the conservation easement. Future agricultural practices, if retained at the discretion of the landowner, should incorporate appropriate soil and water conservation practices into the required HOW and critical habitat mitigation plans and be maintained as long as agriculture continues.
2. The mitigation plan shall also ensure no net loss of habitat value for the grasslands species on concern through improvement of habitat on the remainder of Block 1307, Lot 6, unless the applicant successfully rebuts the presence of such species.
3. The remainder of Block 1301, Lot 1 and Block 1307, Lot 6 outside of the proposed Highlands Redevelopment Area must be deed restricted to prevent future development, but will allow for continued agricultural uses with the establishment and maintenance of appropriate soil and water conservation measures;
4. Stormwater management must utilize LID techniques and non-structural measures to the maximum extent feasible. Natural hydrology and vegetation should be used to the maximum extent possible to achieve required stormwater performance targets. A directly-connected discharge to the C1 stream must be avoided;
5. No modification to the water allocation permit or NJPDES permits may be granted for an increase in flows for either, or for an increase in pollutant loadings or concentrations for the latter, without Highlands Council determination of consistency with the RMP. Eileen Swan commented that they are not requesting either.

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

- The Highlands Council provide a CD regarding any modifications to their water allocation permit and regarding any proposed modifications to their NJPDES permits, when and if proposed;
- No increased pollutant loadings will occur in the wellhead protection areas through an increased discharge (i.e., no increased NJPDES discharge limits for any pollutant). Borealis should also provide an Operations and Contingency Plan regarding the facility's discharge

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prevention plans regarding any hazardous materials stored or handled on-site, to meet Tier 2 requirements of the RMP.

- Prior to extension of the rail sidings over carbonate rock formations, Borealis should provide either 1) geotechnical investigation that karst topography and associated hazards do not exist at the site, or 2) demonstrate that the proposed rail improvements do not constitute an unacceptable risk of discharge or risk to public safety.

Ms Swan noted that Borealis does a tremendous amount of work on water conservation. They have done work in the city of London using the plastics that they manufacture to thread into the aging infrastructure of London City to prevent leakage and to save water usage for that city. They also do philanthropic projects in cooperation with another European company called Borouge. As an example, in a village in India that had a polluted central well where the villagers went to get their water and the people were suffering from skeleton and dental issues Borealis/Borouge piped water through a system to villagers houses to assist them and prevent disease. They also train their staff in water conservation.

Mr. Schrier made a motion on the Resolution, Mr. Cogger seconded it.

Public Comment on the Resolution (Borealis)

David Peifer – ANJEC – Mr. Peifer had no particular concerns except that at the January meeting he made verbal comment about a couple issues that were not accurately represented in the minutes, so he submitted his written request to correct the minutes for the record. He wanted to recommend to Council that when they proceed with similar applications in the future that they make requirements for: Land Use History/Phase I Environment Audit Requirements; Carbonate Rock (Karst) Features and Project Phasing; Carbonate Rock Mapping and Contributing Areas; and policy issues. Mr. Peifer further stated that he felt Council should hold off on this application due to the absence of a conformance Petition from Mansfield Township. Mr. Peifer submitted a written testimony for the record.

Ms. Letts commented that getting a history for redevelopment projects is a good idea. Mr. Schrier added land use is municipality's issue and Ms. Swan stated that the Council did look at existing activities on the site and took that into consideration.

Helen Heinrich – Farm Bureau – Ms. Heinrich thanked the Council for their attention to her concerns expressed at the last meeting and is particularly happy that Council staff will refer landowner or project administrator to NJDA early on if agricultural issues are involved. She did express concern for farmers if landowners do not want the farming to continue.

Monique Purcell – NJ Department of Agriculture – NJDA are satisfied and do appreciate that the staff reached out to landowner/applicant. He is now aware of his options in terms of whether he wants to create habitat or keep it agricultural and NJDA are happy to work with him.

David Shope – Mr. Shope commended Borealis for their patience. He stated that they do have options and they could move elsewhere and that other applicants may not have the patience and

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may move elsewhere. Mr. Shope was in favor of what Borealis wants to do and it will not harm the area.

Hal Danielson – Mr. Danielson added onto Mr. Shope's comment to say that the time it takes for approvals often is very detrimental to any type of business. He stated that it is important to encourage businesses to stay and flourish in our State and not throw up any obstacles for them.

Ken Wieceoreck – President of Borealis Compounds – Mr. Wieceoreck stated that he was hesitant to say anything else further about Borealis based on the fair presentation of Ms. Swan. He thanked the staff for their assistance with working with Borealis on this process. He much appreciated it and understood some of the objections and also some of the support all presented in such a professional manner. Borealis are exploring all mitigation processes and are very open to the continuation of agriculture. Ms. Purcell has provided them with the opportunity to explore alternatives and support agriculture and they are very interested in pursuing that. Mr. Wieceoreck also stressed the importance that Borealis places on the environment. They have invested significantly with capital investments to minimize their water usage on site and additionally clean the water that is used in the facility further. They have little or no impact on the environment as is.

Mr. Holtaway had recused himself. All other members present voted to approve the resolution. APPROVED 9-0

Mr. Francis was very pleased with the decision. He stated that this should be a model of what the Highlands Council, the NJDEP or any other state agency should be working on given the state of the economy and rate that we lose businesses we look at redevelopment in a positive matter and not discourage people. He said that everything should be on a case-by-case basis with the interest of environment, our water and businesses in mind.

Mr. Holtaway returned to the meeting.

Highlands Redevelopment Area Proposal – West Milford

Ms. Swan summarized the Resolution for the West Milford Municipal Complex and Public Library Resolution (Block 7903 Lots 13, 14, 15, and 16: West Milford).

Mr. Cogger made a motion. Ms. Letts seconded it.

Ms Swan commented that there had been a more lengthy time period working with the Borealis facility and part of that was because they were unsure of exactly what they wanted to do on their site but they were encouraged to make sure that they had all available redevelopment area such that all future activities could be done on the site. She reiterated that the Highlands Redevelopment Area approval is a two-step process between Highlands and NJDEP and rather than going out ahead on these projects and designating them and then sending the applicant to NJDEP, the Council staff wants to make sure that whatever we are recommending to the applicant has been shared with NJDEP so that the applicant is set up for success. The Highlands Council does not want to make the applicant go through a costly experience only to find they do not get through the waiver process. Council staff stays with the applicant and are the advocate for the applicant through the process. Regarding West Milford project, Highlands staff went with the applicant to NJDEP to advocate on the applicant's behalf and help with the process. The work that we do at the Highlands Council assists with the application for the waivers with NJDEP so we do not have duplications of efforts.

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Ms. Swan reported that a pre-application meeting was held on February 1, 2010, with an initial informal meeting held previously. West Milford came to the pre-application meeting armed with their application because they did not want to lose any time. Hence, Ms. Swan spoke with Acting Chairman Schrier and asked if we could proceed to consider the application on March 4th even though the public comment period was closing on February 26th which would give staff very little time to turn the materials around. The Acting Chair agreed that the effort should be made and the Mayor was advised that if no significant comments were received the matter could come before the Council at the March meeting. The Mayor was pleased with the opportunity.

Ms Swan then continued with the PowerPoint presentation of the project regarding West Milford application (Block 7903 Lots 13, 14, 15, and 16: West Milford). The tract is mostly developed with municipal buildings, cell tower, small retail store, and small dwelling (majority of tract in Existing Community Zone). The Township proposes a Highlands Redevelopment Area to accommodate a public library and associated parking area in the western portion of the tract. Ms. Swan commented that West Milford is one of five municipalities entirely in the Preservation Area thus very difficult to find a place where you could build a library they need. Ms Swan then showed a diagram of the site. Currently in the municipal building they have staff working in the basement. Those staff will be placed in the existing library which will be better working conditions. No new staff, septic or water conditions will be required (no more people coming on the site). She stated that the existing library only has approximately 1/3rd of the space it needs to house the expansive book and media collection according to the Township. Currently, people cannot browse in the library and there are no children reading or other clubs sessions because the space is just not available there. A new public library will be designed to meet the State standards for a community the size of West Milford. The Highlands Act calls for the RMP to "promote compatible ... cultural uses and opportunities within the framework of protecting the Highlands environment." The redevelopment area is approximately 25,500 sq. ft library that currently features small retail store and maintained lawn area and the proposed disturbance is approximately 1.5 acres. The impervious surface requirement is 70% and existing impervious surface is 166,190 sq ft, allowable redevelopment area is 237,414 sq ft and Ms Swan concluded that the proposed redevelopment area is a little under that at 237,384 sq ft.

The proposed project entails encroachment into a Highlands Open Waters (HOW) buffer. The applicant has done an on-site delineation which addressed:

- On-site wetlands delineation
- Proposed development avoids on-site wetlands
- There is encroachment into the wetlands buffer that is currently disturbed and is upgradient from proposed development.

The encroachment would not result in a net impact to the functional value of the buffer and qualifies for a waiver. Because of the wetlands, the applicant turned the building so they would avoid any impact on those wetlands.

Ms. Swan further noted that the staff recommendations to approve the proposed Highlands Redevelopment Area designation with the following conditions:

- NJDEP Letter of Interpretation/HRAD determines that the encroachment into the HOW buffer will occur down gradient from the buffer.

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- HOW buffer encroachment shall be entirely within a previous disturbed area that would not result in a net impact to the functional value of the buffer in conformance with Policy 1D4; qualifies for a waiver.
- The remainder of property outside of the proposed Redevelopment Area will be protected via conservation restriction.

Ms. Swan further stated for the next step (the HPAA with waiver issued by NJDEP), the applicant shall supply stormwater management plan that incorporates low impact development techniques.

Two days ago staff met with the Mayor and her professional at the NJDEP to see if there were any other issues to address and felt that meeting went very well and are confident that this project will move forward.

Public Comment

Andrew Gargano is a resident of West Milford. He is also a Library Board Trustee member, Planning Board member and its Chairman, but attending today as a private citizen. Mr. Gargano stated that the current library is 3,000 sq ft which serves 29,000 residents. For many years the library board had been trying to build a library but have been up against various restrictions. He continued to say that they embrace the Highlands Act and that this plan presents an opportunity to expand the municipal complex so it can be ADA compliant and have a library that can serve 20,000 residents with 4,000 student population. The nearest decent library is approximately 10 miles for students and seniors and this is an opportunity to do an upgrade without hampering any forested areas. It is a good proposal for the present property owner who is 90 years old and will live out the rest of her days in her own home as the library can be built without disturbing the home. West Milford wants to have the first LEEDs certified library in NJ and have a library which will serve the population efficiently. Mr. Gargano thanked Ms. Swan and the staff who have been very helpful and attended the NJDEP with West Milford was very magnanimous of the entire Council. He appreciates everything staff and Council have done for them.

Mayor Bettina Bieri of West Milford thanked the Council for their very hard work and willingness to work with them on this tight timeline. West Milford is the largest community in the Highlands Region and completely within the Preservation Area with over 80 square miles (only about one-third of the land is developable even before the Highlands Act). The Mayor stated that this is an excellent project which they have looked to build for 15 years as it will expand on the municipal complex and allow them to be ADA compliant within their municipal building while still providing a state-of-the-art library for their residents. It is a vital project to a green community and the only option. The Mayor thanked everyone and sincerely hoped (aside from their application) that the Highlands Council can continue their wonderful work and wishes the Council the best in the future.

David Shope – Mr. Shope commented on the list of attendees of the Library meeting in NJDEP and the associated costs. He was concerned by this example and questioned the cost of things in New Jersey.

All members present voted to approve the resolution. APPROVED 10-0

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Mr. Schrier expressed his satisfaction at having two projects approved in one day. He then opened the public portion of the meeting.

Public Comment

Hal Danielson - Mr. Danielson spoke about the concerns of landowners. He made comments about Chief Counsel and Deputy Executive Director Borden and his work prior to serving the Council. He also spoke about property owned by Ms. Swan. He expressed his belief that the entire Act should be overturned.

Ellen Hendershot referred to her land in Bethlehem Township as she owns 120 acres in the Preservation Area. She described her property and how the Highlands Act had a substantial impact on it. She referred to an article by the New Jersey Conservation Foundation about protection of water and commented that she was concerned about compensation. She expressed concerns about the TDR program as she felt it wasn't concrete enough. She also expressed concerns about property taxes which she said had gone up even after the Act.

Hank Klumpp - Mr. Klumpp described how he spoke with Governor Christie on 101.5 and that the Governor agreed with him about landowner equity issues. He further made comments which were submitted in writing for the record. Mr. Klumpp thanked everyone for letting him speak and welcomed the new members of this Council and Ms. Swan for her presentation. He expressed support for the Redevelopment projects.

Gerry Kalb from Tewksbury Township brought his wife and some neighbors to discuss the JCP&L substation project in Tewksbury. He described the project and he brought a poster to show his residence and the effect of the project. He described the area where the project is to be located, a historical district and a designated scenic road. The area on Fox Hill Road is 7.5 acres of which 90% is wetlands. He expressed his concerns over safe access to his home if there is an emergency. There is one way in and one way out of his property (400 ft. gravel road).

He read from a Tewksbury First Aid and Rescue Squad letter that states that the safety of the flag lot on 6 Fox Hill Road will be jeopardized by the location of the substation. Mr. Kalb appealed to the Council to help.

Deborah Close from Tewksbury Township also spoke about the project. She spoke about the mission of the Highlands Act. She spoke about her historic home and the impact of this substation. She was concerned for the safety of their lives and neighbors, wetlands, the height of the substation, the historic district and scenic roads. She asked the Council to uphold the goals of the Highlands RMP and deny JCP&L's application because as contrary to all that the Highlands preserves.

David Shope - Mr. Shope submitted a letter which he wrote and gave to editors of newspapers. The same letter was sent to Governor Christie, and submitted to New Jersey Water Supply Authority. In the letters he proposes a rate change (increase) for landowner compensation. He submitted other materials pertaining to the Highlands Task Force, comments by Jeff Tittel about the Highlands and a letter on the impacts of the Highlands Act from a political scientist, hired by Warren County for a lawsuit.

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Andy Drysdale addressed the Council on his concerns about the Act and stated that he believed it to be unnecessary and that it should be overturned.

Mary Kalb also spoke about the JCP&L project as her driveway will be right next to the substation. She read an excerpt from a letter from NJDEP referring to the plan to screen the substation. She also read an excerpt from closing arguments of John Biehl an attorney for JCP&L at the time. "JCP&L submits it would not be possible however to comply literally with the mandate to screen all equipment from view...." She spoke about the concerns about safety and access.

Mr. Holtaway stressed concerns about hearing public comment for an application that is not before the Highlands Council. The Council has not received an application on this and should refrain on commenting. Ms. Swan asked Chief Counsel Borden to bring the Council up to date on this matter. Mr. Borden stated the NJDEP did issue an exemption determination with a condition and that JCP&L provide a landscape design for review and approval by the Council. He advised that a notice has been filed against the Highlands Council even though the Council has taken no action to date. He specified that the only jurisdiction the Council has is at this point is to review a landscape plan to screen the substation.

Mr. Holtaway remained concerned about hearing testimony for an application which is not before Council and stated that Council had to be careful not to violate the rights of an applicant by hearing evidence prior to their presence. Mr. Borden reiterated that the Council has yet to receive a complete application so urged the Council to not comment on anything at all.

John Holt lives at 2 Fox Hill Road in Tewksbury Township. He had a procedural question regarding a letter sent on February 8th to Commissioner Martin and Eileen Swan giving them a 30-day notice under the Environmental Rights Acts. He asked if the Council received this letter.

Mr. Borden stated there is a provision under New Jersey law which allows third parties to act as a private attorney general on behalf of the environment. He specified that as this Council has yet to take any action, the matter was referred to the Attorney General's office.

Mr. Holt asked Council to get involved. He then read excerpts from his submitted comments. He mentioned that there will be a meeting on March 23rd and asked that a Council member be present at the meeting.

Ms. Swan assured the Council that she had advised Acting Chair Schrier about this issue.

Deborah Close questioned the application of BPU rules with reference to the screening as the rules were not referenced.

Mayor Bettina Bieri (West Milford) - Mayor Bieri spoke in support of the Highlands Act and protection of the residents. She emphasized the need to protect critical and vital resources. The Mayor stated that she is a CPA by trade and that land is an investment and other people invest in other ways with no guarantee of a profit, or a large profit, or a certain dollar profit. This has nothing to do with the Highlands Act; it has to do with the real estate market. Ms. Bieri further stated that it is unfair to expect government and certain legislation to compensate for every loss there is because there will always be losses. She hopes the Highlands Council can continue to do the good work that

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF MARCH 4, 2010

they do protecting our land and environment. Ms Bieri closed her comment by noting that it is ironic that half the room wants to abolish the Highlands Act and half of the room begs Council to enforce it.

Angela Holt - Ms. Holt wanted to know what safety has to do with water protection and is asking the Council to protect them.

David Shope – Mr. Shope commented on rainfall and questioned what the Act is really about.

Ms. Kovach made a motion to adjourn the meeting, Mr. Holtaway seconded it and the meeting was adjourned at 3:34pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 4/15/10

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant



<u>Vote on the Approval of the March 4, 2010 Minutes</u>	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			√			
Councilmember Carluccio					√	
Councilmember Cogger			√			
Councilmember Francis			√			
Councilmember Holtaway					√	
Councilmember Kovach	√		√			
Councilmember Letts			√			
Councilmember Richko		√	√			
Councilmember Vetrano			√			
Councilmember Visioli			√			
Councilmember Schrier			√			



Requested Minutes Corrections
ANJEC
Council Meeting of 1/21/10

ANJEC respectfully requests that the Council Minutes of Jan. 21, 2010 be corrected to more accurately reflect the verbal testimony of David Peifer, Highlands Project Director. We make this request since the comments made relate directly to the Borealis application before the Council today.

I recommended that any karst testing protocol developed by the applicant be reviewed by the NJGS. The Minutes incorrectly indicate that I requested testing by the USGS. The intent of this comment is to assure that the RMP policies regarding karst are properly addressed.

I agreed with Mr. Alstead that agricultural techniques could be used in the HOW area but rather than confining the view to the applicant's small property, I suggested that a sub-watershed approach be used to encourage such practices along the entirety of the tributary.

Finally, and most important, I raised the issue of processing a redevelopment application in the context of a non-compliant municipality (Mansfield Twp.) as a matter of future interest.

David Peifer
No Opportunity at meeting for public participation
on Minutes

**Testimony
of
The Association of New Jersey Environmental Commissions
on
Borealis (Redevelopment) RMP Consistency Determination
March 4, 2010**

Prepared and Presented by
David Peifer
Highlands Project Director
ANJEC
(973) 539-7547
dpeifer@anjec.org

The Association offers the following comments in the spirit of constructive criticism to assist the council and its staff in its deliberations. It makes these comments on its own volition. The Association has no financial interest in this issue and has received no compensation for the preparation of these comments.

Land Use History/Phase I Environmental Audit Requirements

Redevelopment areas are likely to be proposed on land that has been intensively used for some time. Included in this possible universe of sites are industrial sites of all descriptions and ages. It is the nature of redevelopment to cause new intense use of these areas.

We strongly urge the Council to require at a minimum, a land use history of the proposed redevelopment area to identify the possibility of encountering hazardous materials during redevelopment. Should such a history produce evidence of discharges, spills, USTs or improper waste disposal practices we believe the Council should require a Phase I Environmental Audit of the property or properties. These procedures should be added to the consistency determination.

Carbonate Rock (Karst) Features and Project Phasing

We note that in previous Draft Consistency reports, specific karst related requirements were proposed. We concur with these proposals. However, the document before us today appears to allow the redevelopment project to be "phased" with a representation by the applicant that it will not disturb any carbonate rock areas in "Phase I". We believe that a redevelopment consistency determination must consider the entire tract in its review and serve as an environmental resource inventory for the entire redevelopment process. Allowing applicants to represent a certain phasing schedule creates the possibility of important RMP issues "falling between the cracks" at some future time, particularly since the Council does not currently have field staff to supervise projects during construction.

Carbonate Rock Mapping and Contributing Areas

Review of the Council's Carbonate Rock mapping for the site indicates an area of carbonate rock in the northwestern portion of the site. However, there is no information regarding bedrock geology elsewhere on the site. This highlights, once again, the need for a proper geologic map as part of the RMP data to be reviewed during consistency determinations.

By reference to the N.J.G.S. mapping available on the DEP's i-map system, the carbonate rock is Jacksonburg Limestone. Carbonate rocks vary considerably in their karst potential. These variances could be included in the RMP. However, without such information, reviewers must require proper in-field reconnaissance and testing to

determine the existence (or absence) of karst conditions. Appropriate requirements must be included in the consistency determinations.

The balance of the tract is underlain by Martinsburg Shale. This formation commonly overlays carbonate rock. Problems with karst do not only develop where carbonate rock is exposed but where such conditions exist below the surface. Thus, the Draft report's provisions regarding karst should remain. The NJGS data also reveals a fault, (Kenneday's Fault) to the west of and paralleling Rockport Road, in close proximity to the site. Faults can be important groundwater bearing features and must be considered in allowing intense use, particularly with regard to sub-surface disposal and site grading.

Additionally the RMP recognizes the criticality of directing water from non-karst areas to karst. The applicant should be directed to map this "run-on" area and to follow the RMP policies regarding directing stormwater to carbonate rock areas.

Policy Issue

Perhaps the most critical issue relating to this application is the policy issue that arises when a redevelopment area is proposed within a municipality that has officially refused to conform its preservation area planning and zoning to the RMP. As required by the Act. ANJEC notes that the project is located in the Preservation Area and that as of Dec. 9, 2009, Mansfield Township was in direct violation of the Highlands Act.

ANJEC believes that, in the absence of a compliant conformance petition from the municipality, the Council should hold this and all other consistency determinations in abeyance. We take this position for the following reasons:

1. At present, there is no reliable expectation that the regional objectives applicable to the Preservation Area as defined in the RMP will be met by municipal conformance.
2. Redevelopment is an important part of comprehensive regional planning and should not be allowed to proceed in the Preservation Area without, at the very least, the submission of Conformance Petition to the Council.
3. Successful implementation of redevelopment projects will, by necessity, always involve the review and participation of the host municipality. Such cooperation is highly doubtful when the Council and the municipality are a loggerheads concerning the legal requirements of conformance.

Respectfully submitted,
David Peifer
ANJEC

Governor Christopher Christie:

The Highlands Act was premised on the notion that it was necessary to ensure the supply of cheap and plentiful water to the urban area of the state. Just compensation to landowners and farmers was promised when it became law in 2004. I am proposing one small revenue source towards the \$15 billion in lost equity. This \$15 Billion figure comes from Warren County's expert reports on the effects of the Highlands Act.

The New Jersey Water Supply Authority (N.J.W.S.A.) is a state agency. Its function is to provide water at cost to its customer's. Its biggest customers are New Jersey American Water Co. and Middlesex Water Co. They are "for profit" companies. It currently sells water at \$231/per million gallons (mg.) in the Raritan System. Of that, \$8 per mg. goes towards watershed land acquisition.

I am proposing an additional \$50 per mg. to be used exclusively for highlands landowner compensation. This money should be collected from the consumers the same as other fees are collected by vendors on behalf of the state.

The N.J.D.E.P. has determined the average water consumption, per person, per year, to be almost 23,000 gallons. This means the Yearly cost per person for land preservation is 18 cents. Raising the land preservation part of the N.J.W.S.A.'s costs another \$50 per mg. would mean an additional yearly cost of \$1.14, for a total of \$1.32 per year. This total for land protection of \$58 per mg. would raise about \$3.85 million annually.

\$3.85 million is not that much money when compared to the \$15 billion in lost equity as a result of the Highlands Act. However, it could be a meaningful beginning towards honoring the promises made by the state. This plan along with other compensation mechanisms – none of which are now developed or functional, could start the process of re-establishing trust between this state's government, and it's Highlands farmers and landowners.

The NJWSA is currently going through its annual rate review process. For those that may endorse my proposal, please provide your thoughts during public comment period through March 12 to: Henry S. Patterson, Executive Director, New Jersey Water Supply Authority, 1851 Highway 31, P.O. Box 5196, Clinton, NJ 08809 or e-mail: hpatterson@njwsa.org

David Shope

ATTN - CHRIS MARION

To: Eric Shuffler
From: Commissioner Susan Bass Levin
Commissioner Bradley Campbell
Secretary Charles Kuperus
Re: Highlands Task Force
Date: June 5, 2003

DRAFT

The Highlands Coalition is advocating that Governor McGreevey issue an Executive Order appointing a Highlands Task Force, and has now sent a letter to the Governor urging that this be done.

The Coalition is advocating that the Task Force be comprised of representatives of County and municipal governments, private environmental and planning groups and state legislators. The Task Force should be charged with completing its work by the end of the year.

The Highlands Coalition suggested in a meeting that the Task Force address 6 items. The letter to Governor McGreevey focuses on 3 items, one of which is in addition to the original 6 items. This item, that DEP, DOT and DEP review projects and permits in the Highlands to ensure consistency with the principles of smart growth, is included below as an item on which the Task Force should make recommendations. Alternatively, state agencies could be directed to do this apart from the Task Force. Local officials from the Highlands have generally reacted favorably to the idea of a Task Force being established if local governments are adequately represented.

NOTE:

All but one of those items is incorporated into the tasks enumerated below. The one exception is the Highlands Coalition suggestion, in the meeting and in the letter to the Governor, that the Task Force look at regional planning models that could be adopted for the Highlands. Local officials have expressed concerns that mentioning this item specifically will immediately result in an adverse reaction to the task force among some local officials and residents who will see the Task Force as a prelude to establishing a "Pinelands Commission type" entity for the Highlands and will be counterproductive to having the task force becoming an effective body. To address those local concerns, the request by the Highlands Coalition has been rephrased in item 3 to having the Task Force address regional planning in the Highlands more generally.

The task force should be charged with the following tasks:

1. Identify changes that should be made in the State Development and Redevelopment Plan or in the State Plan Policy Map to further the designation of the Highlands as a special resource area.
2. Identify specific measures that state agencies, counties and municipal governments in the Highlands should be required to include in their petitions for

DRAFT

- plan endorsement to further the designation of the Highlands as a Special Resource Area. This would include identification of appropriate intensity and location of future growth, including infrastructure and public capital improvements, based on planning and natural resource considerations.
3. Identification of steps that can be taken to improve regional planning in the Highlands region. *in conjunction*
 4. Identification of specific steps state agencies should be taking to further the designation of the Highlands as a Special Resource Area including those that would facilitate implementation of endorsed county and municipal plans and any special considerations that should be taken into account when state agencies review development projects in the Highlands.
 5. Identification of lands that should be protected based upon water and other natural resource values. This would include examination of whether a new State Park should be established in the Highlands.
 6. Identification of methods other than outright acquisition that can be used to permanently protect lands.
 7. Identification of agricultural lands that should be maintained in agricultural production and steps that can be taken to increase the viability of agriculture in the Highlands. *the the*
 8. Determination of whether fiscal measures are necessary to address fiscal impacts to municipalities in which significant lands will be permanently protected and if so identify potential sources of funding for such assistance.
 9. Identification of measures to promote economic development of the region that is compatible with the State Plan and with protecting the environmental resources of the region.
 10. Identification of any regulatory or legislative action that would be necessary to implement any of the recommendations.

Suggestions for the composition of the Task Force include: (the exact make up should be a function of the total membership of the group)

- A majority of the task force members should be local officials.
- County representatives: There are 7 counties with land in the Highlands; Hunterdon, Warren, Morris, Sussex, Passaic, Somerset and Bergen. Only small portions of Somerset and Bergen are in the Highlands. At least the other 5 county governments should be represented on the task force along with some municipal officials.
- Environmental and smart growth group representation (NJ Future, a local member of the Sierra Club or a representative of a more local group such as Skylands Clean, NJ Conservation Foundation, Regional Plan Association, the Highlands Coalition and Audubon)
- Agricultural interests (Secretary Kuperus can designate)
- Landowners, including the owners of water supply lands (e.g. Newark, NJWSA),
- Business interests including the Chambers of Commerce and recreational businesses (e.g. golf course owners, ski resorts, canoe rentals)
- Homebuilder representation

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October 5, 2007

Stephen H. Shaw, Esq.
Hueston, McNulty, P.C.
256 Columbia Tpk., Suite 207
Florham Park, NJ 07932Re: Warren County et al. v. State of New Jersey, et al.
Docket No.: MER-L-1021-07
Your file no.: 8542

Dear Mr. Shaw:

You have asked me to supply you with a report concerning the above-referenced case. I have previously sent you my e.v. You have provided me with or directed me to abundant materials on the case for my review, including:

Comments on rule proposal from David K. Dech dated February 16, 2006 (planning)

Comments on Highlands Regional Master Plan from Warren County Planning
Department dated May 11, 2007

Planning Impacts of the Highlands Act, by David K. Dech (undated)

Consulting Report from Holzhauer & Holenstein dated February 14, 2006 (value)

Technical Validity of the Highlands Water Protection and Planning Act of New Jersey by
Frank Getchell of Leggett, Brashears, and Graham, dated July 27, 2007 (hydrogeology)

CD-ROM with maps

Complaint for Declaratory Judgment with Attachments A-D

OFP, LLC v. Superior Court, 2007 N.J. Super. LEXIS 289 (2007)

Defendants' Motion to Dismiss

The Highlands Act and proposed Rules

Miscellaneous maps of Highlands area available online

New Jersey Highlands Coalition web site

New Jersey Highlands Council web site

USDA Forest Service web site concerning Highlands of Connecticut, New Jersey, New York, and Pennsylvania

Miscellaneous U.S. Census data available online

Newspaper and journal articles concerning Highlands Act and the pending litigation.

In addition, on May 21, 2007, you took me on a drive through the New Jersey Highlands to see the area that lasted between two and three hours, and arranged for me to meet with affected individuals.

Based on my review of the foregoing, which include extremely detailed comments from several disciplines on the Act, proposed rules, and draft Regional Master Plan, and on my training and experience, I have some observations and opinions concerning the public policy initiative represented by the Highlands Act and its implementation.

1. This is a policy initiative of massive scope and utopian ambition that is certain to produce a host of adverse consequences for private landowners, public entities, and citizens in general within the area covered by the Act and to some extent elsewhere in New Jersey.
 - a. Some of these consequences are intended.
 - b. Some of the intended consequences are stated, and it may be that other intended consequences are less explicit.
 - i. It seems that water conservation and preservation of open space are to a substantial extent pretexts or euphemisms for what is in fact an anti-development measure. The Act places the 400,000 acre preservation area permanently off limits to development. The 400,000 acre planning area is subject to extremely strict limits (such as very low population densities) on development through eventual implementation of the Regional Master Plan, and these limits will effectively prevent nearly all the development that would have taken place otherwise. The net effect of the entire legislative scheme, when fully implemented, will be to take 800,000 acres, or about 1250 square miles, and place it off limits to major development.
 - ii. I have reference specifically to this language, from the Highlands Water Protection and Planning Council (Highlands Council) web site: "The Highlands Water Protection and Planning Act is a law

signed in August 2004 that will preserve open space and protect the state's greatest diversity of natural resources including the precious water resources that supply drinking water to more than half of New Jersey's families."

- iii. However, there is a relative absence of means that directly protect water quantity and quality (environmental cleanup, statewide water consumption measures, etc.), and instead the focus is on restricting development in the 800,000 acre area.
 - iv. It is unlikely that the Act could have been defended, politically or legally, if it were promoted as a state-imposed prohibition of market-driven real estate development across a large portion of the state.
 - c. Some of the consequences will be unintended and unanticipated. The Act will produce massive distortions of the private real estate market in the state and undermine the system of local government, and these effects will in turn have further ripple effects. It does not appear that the full scope of these consequences has been adequately considered.
 - 2. This initiative carries enormous negative consequences for private landholders in the preservation and planning areas.
 - a. Among these consequences is a loss in the value of their property so great as to be tantamount to public confiscation. Many of them have lost all, or nearly all, the value of their property that was represented by the potential for development of the property. For agricultural and other non-residential land, that development value was about 80% of the land's value. The total loss in property value within the preservation area alone is estimated at over \$15 billion.
 - b. There is at present no adequate compensation scheme for these owners to replace the lost value that has been taken for public purposes.
 - i. It is highly unlikely that the TDR program will ever be made to work as an effective compensation system for the many property owners who have lost value. The voluntary nature of the program and its ephemeral nature at present militate against it ever being a significant attempt to offset the losses. In order for a TDR program to work, two conditions must be satisfied: first, there must be localities willing to accept increased development pressure and density; second, there must be in those areas sufficient demand for new development. There is no rational basis to believe that those conditions exist. Moreover, implementation of a TDR program does not appear to be a high priority in any event.
 - ii. The provision of waivers and exemptions is also unlikely to offset much of the cost that the Act imposes on the vast majority of owners.
 - iii. The Green Acres, Farmland Preservation, and Garden State Preservation Trust and other compensatory funds will total far less than the actual economic loss.

- c. Consequently, private landowners are bearing the costs of preservation that is intended to benefit people living elsewhere in New Jersey. The net effect is the public taking of private land value for public purposes, without compensation.
3. The initiative will also have major negative consequences for public entities located in the area covered by the Act, including Warren County and the municipalities located in Warren County.
 - a. The ability to control and plan for land use is one of the most important powers possessed by local governments
 - b. The existence of this power makes local governments significant in the lives of their citizens, and makes these governments the focal point of local politics.
 - c. Where the Highland Council states, "The Highlands Act provides the necessary mechanism to enhance local land use planning efforts," it would be more accurate to state that the Act strips local governments of their power to control and plan for land use within their jurisdictions.
 - d. Local governments in the area covered by the Act have therefore been deprived of what is arguably their most important function.
 - e. This fact will have significant consequences in the future and will diminish the importance of local governments in the lives of their residents, transforming the nature of local politics in the part of New Jersey covered by the Act.
 - f. These impacts will not be experienced by local governments outside the area covered by the Act, creating a distortion in the system of local government in New Jersey. Some communities will have control over land use and the power of self-determination, while others will not.
 - g. Recommendations from affected local governments on these issues, specifically the Strategic Growth Plans prepared by counties, and recommendations from the Five County Coalition, seem not to have been taken into account.
4. To the extent that local governments in the area covered by the Act have lost control over land use and development, the citizens residing in that area have lost their powers of self-determination. But for this Act, those citizens would have been able to guide the course of real estate development in their communities. They would thereby have been able to give their local communities certain identities; chart particular courses of economic development; attract or try to exclude particular activities; and perhaps compete with other communities for the types of development that are attractive to residents. The Act effectively transfers that power of community self-determination to the State of New Jersey, which has imposed a different vision on the entire area. That vision holds that this area is to be a largely undeveloped region whose open spaces are to be maintained in perpetuity as a resource for others.
5. Consistent with that vision, the Act seems to anticipate that, in addition to some amount of agriculture, a "recreation, ecotourism, and wildlife activities" economy will emerge in the area covered by the Act. This expectation is

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- unsupported and speculative at best and may prove to be a Potemkin Village. However, the loss of many billions of dollars to the area is real. That loss consists of economic development that would have come to this area had the Act not been passed and development allowed to take its natural course.
6. The implementation of the Act has not complied with the statutory time limits, to the detriment of property owners and local governments. This delay is apparently being attributed to the enormity of the tasks imposed on the Highlands Council by the Act. The Council is taking the position that it is unable to do what it has been asked to do within the time it was given.
 - a. The Regional Master Plan (RMP) has not been adopted (due by June 2006)
 - b. The Transfer of Development Rights (TDR) program does not exist, and as noted above it does not appear to be a high priority task.
 7. The adverse consequences have already hit landowners and local governments but measures to offset those consequences have not been implemented and in all likelihood will never be implemented as claimed.
 8. The boundary of the area covered by the Act is based in large part on considerations other than science.
 - a. The area covered by the Act was first enlarged beyond the limits suggested by science in order to prevent development in as much land as possible
 - b. Thereafter, certain areas were carved out of the area covered by the Act through a process of negotiation and political compromise that was not based on science
 - c. Consequently, it seems that the boundaries are arbitrary and were politically brokered rather than being established by science. This raises issues of rationality and equal treatment.

If you have any questions or need any further response from me on this matter, please do not hesitate to contact me.

Sincerely,



Evan C. McKenzie

Preservation and Development

Plan for Highlands Has Lots of Critics

By JOHN HOLUSHA

Published: August 8, 2008

CHESTER TOWNSHIP

DEPENDING on whom you talk to, the Highlands Act and its proposed operating plan are either:

A far-sighted effort to preserve a mountainous part of the state from suburban sprawl and ensure a supply of clean drinking water for over half the state's population, or:

A heavy-handed confiscation of the development rights of rural property owners by urbanites with political power.

In the next few weeks, Gov. Jon S. Corzine is to decide whether to accept a carefully crafted compromise on the operating rules for the Highlands legislation adopted four years ago or heed the pleas of a coalition of environmental groups to send it back for reconsideration. His office said the 400-page plan was under a review that would include a study of an apparent conflict between the Highlands plan and recent state legislation requiring affordable housing.

At stake is what will happen in the Highlands, an 860,000-acre swath in the northern and western parts of the state that has remained largely rural and agricultural, despite New Jersey's ranking as the most densely populated state in the nation.

Although the technical arguments focus on water supplies and quality, the region is studded with streams and lakes as well as a part of the Appalachian Trail and is a playground second only to the Jersey Shore. "The Highlands are our Yosemite, our Yellowstone," said Jeff Tittel, the executive director of the New Jersey Sierra Club, who argues that the operating plan does not do enough to protect the environment.

Kurt Alstede, a farmer in Chester Township, about 45 miles west of New York, serves on the Highlands Council, and voted against the operating plan. "Nobody around here asked to be saved by Trenton," Mr. Alstede said, adding that he opposed the plan because it did not include funding to compensate landowners for lost development rights.

He said most legislators are from urban areas and have little understanding of life and economics in rural areas. "In essence, we have become a colony," Mr. Alstede said. "Those of us in rural areas have seen our rights taken away."

Interest in preserving the Highlands goes back as far as 1907, when a government commission issued a report about the purity of water in the region. Former Gov. James E. McGreevey made preservation of the Highlands a priority of his administration, and the act was passed in 2004, with a provision that the details were to be worked out by the Highlands Council and its staff.

The operating plan, which would restrict development in the region, was adopted by the council on July 17 in a 9-to-5 vote. Under existing zoning laws, according to the council, 47,600 units of housing could be built in the region. If all the towns were to comply with the operating plan, that would be reduced to

12,300 units, the council said, and commercial development would be reduced to 19.2 million square feet from 108 million square feet.

These numbers represent the extremes, because the Highlands is divided roughly in half into what are known as the preservation and the planning areas, and the operating plan is to be mandatory in the preservation area but optional in the planning areas.

Eileen Swan, executive director of the Highlands Council, said that many municipalities have land in both areas and that the council plans to use consultation and financial incentives to see that local zoning plans adhere to the preservation area standard.

"Our goal is to maintain the beauty of the area, and we have dedicated funds for planning," Ms. Swan said. "We have \$21 million to work with the towns."

Despite the restrictions on growth, which angered builders and landowners, environmental activists also objected to the operating plan. The plan "is flushing a necessary act's mandates down the toilet with polluted Highlands water," said Julia Somers, executive director of the New Jersey Highlands Coalition.

Mr. Tittel said the amount of development allowed by the operating plan would cause increased contamination of water in the region, which he called "a clear violation" of the 2004 law, officially called the Highlands Water Protection and Planning Act. He noted that the Highlands not only supply water to households but also serve as an important water source for the state's pharmaceutical, petrochemical and tourist industries. "Highlands waters feed a \$100 billion industry in the state," he said.

In a letter to Governor Corzine, the environmental groups said the current slump in housing prices and the decline in housing development has created "a window of opportunity" to strengthen the operating plan. By blocking the proposed plan, "inappropriate development will not take place, but rather you will allow for future development that will be protective of natural resources."

Environmentalists have also complained that designating only 19,000 acres of the region as a Special Environmental Zone where building would not be allowed is inadequate and that 20 percent of the region's farmland would be lost to development. "The policies of the plan should require farmland protection," the letter said, not development.

But Mr. Alstede sees land sales from a different perspective. He said selling a farm to developers is often the only alternative for elderly farmers with no heirs interested in agriculture.

"If a farmer wants to retire, the way to do it is to sell the farm," said Mr. Alstede, who said his own farm is protected from development. "But now he can't sell the land for development. He can't get out."

John Weingart, chairman of the Highlands Council and associate director of the Eagleton Institute of Politics at Rutgers, said money was certainly an issue.

"We need more funds for land acquisition," Mr. Weingart said, adding that one suggestion was to impose a tax on users of the region's water. Others have discussed a complex system of trading development rights.

He said the complaints from environmental groups came late in a four-year effort to develop the operating plan and are overstated. "The rhetoric from environmental groups is out of control," he said.

"Nobody thinks the plan is perfect, but it is what a majority of the council approved," Mr. Weingart said. "But according to the rhetoric, it is worse than no plan at all, and anyone who disagrees with them is suspect."

Regardless of what happens to the current operating plan, New Jersey, since passage of the 2004 law, appears to be a leader in trying to protect the Highlands. A federally designated Highlands region also includes parts of Pennsylvania, New York and Connecticut, but only New Jersey has acted to protect its part of the region, Ms. Swan said.

A version of this article appeared in print on August 10, 2008, on page NJ1 of the New York edition.

<http://www.nytimes.com/2008/08/10/nyregion/nyregionspecial2/10highlandsnj.html>

**Comments submitted at Highlands Council
Meeting on March 4, 2010 by David Shope.
Page 11 of 11.**



FRIENDS OF FAIRMOUNT HISTORIC DISTRICT
2 Fox Hill Road, Califon, NJ 07830
908-832-0557

Statement by
Jon Holt, Issues Manager
Friends of Fairmount Historic District
March 4, 2010 Highlands Council Meeting

The Highlands Water Protection and Planning Act Rules, at N.J.A.C. 7:38-2.3(a)(11), authorize DEP to issue exemptions for the “routine maintenance and operations, rehabilitation preservation, reconstruction, repair or upgrade of public utility systems”. The Rule requires that before DEP can grant an exemption, it must first find the proposed activity is **“consistent with the goals and purposes of the Highlands Act”**.

On July 15, 2009, NJDEP’s Division of Watershed Management issued a revised Exemption 11 determination. The revised Exemption decision, like the original decision, contained no discussion or explanation of how it determined that the proposed activity is consistent with the goals and purposes of the Highlands Act. Instead, it included the following condition:

Subject to the following conditions, the Department hereby issues this amended decision finding that:

c) the project/activity is exempt from the permitting requirements of the Highlands Act pursuant to N.J.S.A. 13:20-28(a)(11) and N.J.A.C. 7:38-2.3, **subject to compliance with the following conditions the Department deems necessary for the project to achieve consistency with the goals of the Highlands act:**

Conditions:

1. Prior to construction, JCP&L shall submit to the Highlands Council for review and approval an extensive landscape plan, using native plant species, to screen the substation from adjacent homes and roadways and compliment the character of the existing historic district. Failure to implement the approved landscape plan shall constitute a violation of this exemption and the Highlands act.
[Emphasis added.]

On August 19, 2009, with full knowledge of the NJDEP condition on Exemption 11, the BPU Order stated:

Accordingly, the Board HEREBY ORDERS that neither N.J.S.A. 40:55D-1 et seq., nor any other governmental ordinances or regulations, permits or license requirements made under the authority of N.J.S.A. 40:55D-1 et seq. shall apply to the siting, installation, construction, or operation of the proposed Substation. The Board, however, is cognizant that the Property is located within areas governed by the Highlands Preservation Act and the NJDEP. This Order shall not be construed as a certificate, license, consent, or permit to construct or disturb any land within the jurisdiction of these areas should JCP&L need to obtain any approval or authorization to proceed from the Highlands Council pursuant to N.J.S.A. 13:20-1 et seq. and the NJDEP pursuant to N.J.S.A. 13:19-1 et seq., or any other entity as may be required by law or regulation.

By letter dated January 28, 2010 addressed to Tewksbury Township Mayor Robert M. Hoffman, Jr., the Highlands Council indicated as follows:

The Highlands Council will be reviewing JCP&L's landscape plan and will consider any written public comments on the landscape plan. ... The purpose of the Council review is not to reconsider the entire substation or, in any way, reconsider NJDEP's determination. This entire substation plan has received a thorough review by both NJDEP and the Board of Public Utilities.

This last sentence is not correct. In both cases, the BPU and NJDEP stated that Highlands Council review and approvals or authorizations are required.

In addition to the need for the Highlands Council to approve JCP&L's landscaping plan based on the NJDEP conditions, the Friends of Fairmount Historic District take issue that NJDEP made a thorough review of JCP&L substation plan. Had they done so, they would have realized that the plan does not meet the public safety requirements of the Highlands Act:

The Highlands Act states in Section 34 that New Jersey Department of Environmental Protection (NJDEP) may not issue a Highlands approval unless and until it is determined that the proposed development:

(5) is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare.

You have heard from the Kalbs concerning their safety fears.

Because of the negative impacts on the historic district and scenic roadways and that it would endanger the lives of the flag-lot families, JCP&L's substation proposal is not consistent with the goals consistent and purposes of the Highlands Act. Therefore, the proposal does not meet the requirements of Highlands Act Exemption 11.

At a minimum, JCP&L's substation proposal should be required to undergo a full Highlands Act Application review. In this way, the many environmental and public safety issues associated with this project can be fully vetted. One way to assure such a review is for the Highlands Council to deny JCP&L's landscaping application.

We also ask that a Commissioner attend the March 23rd Public Meeting in Tewksbury. We believe it is important for one of you to hear first hand of the concerns of our Township officials and residents.

Thank you.

①

My name is Hank Klumpp. I live in Hunterdon County.

It has been over 5 years now since my real estate values were stolen from me by the Highlands Act. I can't be expected to say any kind words about John Weingart who is no longer on the Highlands Council. Over the 5 years he did nothing to help the farmers. The Highlands Act does not hurt him so he will just move on — never look back — while decisions that have hurt me are still in place and I'm still standing

②

before the council in the mess he helped create. The Highlands Council has been like a revolving door. I have always felt that one qualification to be on this council is - you can't have a conscience - Weingart qualified.

The Highlands Act was never to hurt anyone. So how can it be justified when not one cent was in place to compensate landowners for the real estate values that were stolen. My property has had no equity for over 5 years now. The state is

③

broke so it can't afford to pay
me for my property — so they
stole it. The scientific study
responsible for putting my land
in the Highlands Preservation
Area does not exist — it was
political — all political.

I've been told that, eventually,
I may be reimbursed for my
loss. Of course, I will receive
less than a penny on the dollar
and payment won't begin for
about one thousand years.

Thank you

^N
HAWK KLUWIP

958-882-7634

24 LEVYVIEW RD.

832-7634

LEWIS, W. J. 08807

33



New Jersey Highlands Council

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Highlands Project Review

The Highlands Council is legislatively charged with reviewing proposed projects throughout the Highlands Region for consistency with the Highlands Act and Highlands Regional Master Plan (RMP). The Highlands Council issues consistency determinations that provide a detailed analysis of each project on a case-by-case basis. If you have any questions or are unsure which of the following reviews or applications are required, please call the Highlands Council at (908) 879-6737.

1. [Highlands Preservation Area Exemptions](#)
2. [Highlands Planning Area Exemptions](#)
3. [Application for Consistency Determination \(Municipal Referral to Highlands Council\)](#)
4. [Highlands Redevelopment Area Designation Procedures](#)
5. [WOMP Consistency Reviews](#)
6. [Project Review Status and Tracking](#)
7. [Projects in Review](#)

1. Highlands Preservation Area Exemptions

Preservation Area exemptions are issued by the NJDEP in accordance with N.J.A.C. 7:38. This jurisdiction is shared and the Highlands Council collaborates with the Department on certain exemptions (namely Exemptions 9 and 11), where NJDEP requests that applicants copy the Highlands Council on the exemption application. In addition, upon applicant request, the Highlands Council will occasionally provide an opinion to NJDEP on other exemption determinations.

- [Highlands Water Protection and Planning Act Exemptions and Waivers](#) (pdf)

Additional information, including the application for an Exemption in the Preservation Area, may be found on the [NJDEP website](#).

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2. Highlands Planning Area Exemptions

The Highlands Council issues exemptions in the Planning Area in accordance with the Highlands Act and the Highlands Regional Master Plan. Highlands Planning Area Exemptions are required for development projects in municipalities that have adopted ordinances implementing the Highlands Act in the Planning Area. They can also be sought by any person planning development in the Planning Area, where such ordinances may be adopted in the in the future. To apply for a Highlands Planning Area Exemption Determination please submit a completed Application Form (below).

- [Highlands Planning Area Exemption Determination Application Form](#) (pdf)

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3. Application for Consistency Determination (Municipal Referral to Highlands Council)

In municipalities that have adopted an ordinance requiring the referral of development applications to the Highlands Council, a Highlands Council Consistency Determination may be required. The Highlands Council will only conduct a Consistency Determination under this application where an Application for Development has been submitted to a municipality and the municipality has determined that such Highlands Council review is required. This review is to determine whether the project is consistent with the goals, requirements and provisions of the Highlands Act, the Regional Master Plan, and the Highlands Council resolution approving the municipality's Petition for Plan Conformance. This review is conducted at no cost to the municipality or applicant.

>> PLEASE NOTE <<

Highlands Council staff is available to meet with applicants during the conceptual phase of project development to help guide applicants toward RMP consistency prior to commencement of development plan and design activities and required submission materials. **Applicants are encouraged to contact the Highlands Council office at (908) 879-6737 as early as possible in the project design/development process.**

- [Municipal Referral Application](#) (pdf)

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4. Highlands Redevelopment Area Designation Procedures

The Highlands Council has developed procedures implementing provisions of the Highlands Act regarding the designation of Highlands Redevelopment Areas in the Preservation Area. Such designations are necessary for any project that requires a Highlands Preservation Area Approval under N.J.A.C. 7:38 (the NJDEP Preservation Area Rules) with a waiver of provisions regarding a brownfield or a site with existing impervious cover of 70 percent or more. The Highlands Council procedures (link below) establish and outline the process and requirements for receiving Council designation of Highlands Redevelopment Areas.

- [Procedures for Highlands Redevelopment Area Designations](#) (pdf)

[Top](#)

5. **WQMP Consistency Reviews**

The Highlands Council has prepared a listing of submittal requirements for Water Quality Management Plan (WQMP) amendments that it reviews. Please refer to this document when submitting WQMPs for review.

- [WQMP Reviews - Submittal Requirements](#) (pdf)

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6. **Project Review Status and Tracking**

Tracking Sheet

A summary of information regarding past and current projects reviewed by Highlands Council staff can be found in the tracking sheet below.

- [Highlands Project Review Tracking Sheet](#) (pdf)

Considered Projects

Completed details regarding projects that have been considered by the Highlands Council are available on the page below.

- [Considered Projects](#)

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7. **Projects in Review**

Details regarding projects that are pending consideration by the Highlands Council are below.

Township of Mount Olive Budd Lake/Rt 46 Proposed Highlands Redevelopment Area Designation

Currently in Public Comment Period: August 27 through September 10 - see [Public Notice](#).

- [Draft Staff Recommendation Report](#) (219 KB pdf)
- [Exhibits](#) (1.47 MB pdf)
- [Draft Consistency Determination](#) (431 KB pdf)
- [Public Notice](#) (120 KB pdf)

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RESOLUTION 2010-2
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA
BOREALIS COMPOUNDS L.L.C.

WHEREAS, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

WHEREAS, Section 9 and 11 of the Highlands Act, N.J.S.A. 13:20-9.b. and N.J.S.A. 13:20-11.a.(6)(h), specifies that in preparing the Highlands Regional Master Plan (RMP), the Highlands Council may, in conjunction with municipalities in the Preservation Area, identify areas in which redevelopment shall be encouraged and shall identify areas appropriate for redevelopment in order to promote the economic well-being of the municipality, provided that the redevelopment conforms with the goals of the Preservation Area and the Highlands Act, with the rules and regulations adopted by the Department of Environmental Protection (NJDEP), and any area so identified for possible redevelopment shall be either a brownfield site designated by the NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface; and

WHEREAS, Section 35 of the Highlands Act, N.J.S.A. 13:20-33.b.(2), authorized NJDEP to grant a waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Areas identified by the Highlands Council pursuant to Section 9.b. or Section 11.a.(6)(h); and

WHEREAS, the NJDEP had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

WHEREAS, the Highlands Rules, at N.J.A.C. 7:38-6.4, specifies that as provided for in Highlands Act, the NJDEP may waive any provision of the rules for redevelopment in certain previously developed areas in the Preservation Area identified by the Highlands Council pursuant to the Highlands Act; and

WHEREAS, the Highlands Council prepared and adopted Procedures for Highlands Redevelopment Areas Designation (Procedures) by Resolution 2008-43 dated October 30, 2008; and

WHEREAS, the Applicant, Borealis Compounds L.L.C., Mansfield Township, Block 1301, Lot 1 and Block 1307, Lot 6, submitted a Petition for Highlands Redevelopment Area Determination; and

WHEREAS, on February 10, 2009, the Highlands Council staff and staff from NJDEP and Council staff met the applicant on-site to evaluate the impervious areas and based on that meeting the applicant submitted revised plans addressing resource concerns and satisfying the impervious surface criteria; and

WHEREAS, the Highlands Council released the Highlands Council Staff Draft Recommendation Report dated February 5, 2010 (Draft Recommendation Report) for public comment; and

WHEREAS, the Highlands Council held a public comment period concerning the proposed Highlands Redevelopment Area Designation commencing January 15, 2010 and ending January 29, 2010; and

RESOLUTION 2010-2
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA
BOREALIS COMPOUNDS L.L.C.

WHEREAS, the Highlands Council staff duly considered the Draft Recommendation Report and all public comments; and

WHEREAS, after Highlands Council staff review, staff recommended that the Highlands Council approve the proposed Highlands Redevelopment Area Designation with conditions set forth in the Highlands Council Staff Final Recommendation Report dated February 5, 2010 (Final Recommendation Report);

NOW, THEREFORE, BE IT RESOLVED, the Highlands Council hereby approves of the Borealis Compounds L.L.C.'s Highlands Redevelopment Area Designation with conditions as set forth in the Final Recommendation Report and authorizes the Executive Director to prepare a document so informing the NJDEP of the Highlands Redevelopment Area Designation.

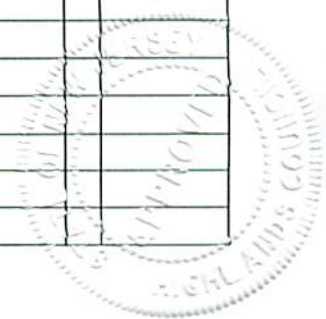
CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 4th day of March, 2010.



Jack J. Schrier, Acting Chairman

<u>Vote on the Approval of this Resolution</u>	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Carluccio						✓
Councilmember Cogger	✓		✓			
Councilmember Francis			✓			
Councilmember Holtaway					✓	
Councilmember Kovach		✓	✓			
Councilmember Letts			✓			
Councilmember Richko			✓			
Councilmember Vetrano			✓			
Councilmember Visioli			✓			
Councilmember Schrier			✓			



RESOLUTION 2010-3

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA WEST MILFORD MUNICIPAL COMPLEX AND PUBLIC LIBRARY

WHEREAS, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

WHEREAS, Section 9 and 11 of the Highlands Act, N.J.S.A. 13:20-9.b. and N.J.S.A. 13:20-11.a.(6)(h), specifies that in preparing the Highlands Regional Master Plan (RMP), the Highlands Council may, in conjunction with municipalities in the Preservation Area, identify areas in which redevelopment shall be encouraged and shall identify areas appropriate for redevelopment in order to promote the economic well-being of the municipality, provided that the redevelopment conforms with the goals of the Preservation Area and the Highlands Act, with the rules and regulations adopted by the Department of Environmental Protection (NJDEP), and any area so identified for possible redevelopment shall be either a brownfield site designated by the NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface; and

WHEREAS, Section 35 of the Highlands Act, N.J.S.A. 13:20-33.b.(2), authorized NJDEP to grant a waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Areas identified by the Highlands Council pursuant to Section 9.b. or Section 11.a.(6)(h); and

WHEREAS, the NJDEP had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

WHEREAS, the Highlands Rules, at N.J.A.C. 7:38-6.4, specifies that as provided for in Highlands Act, the NJDEP may waive any provision of the rules for redevelopment in certain previously developed areas in the Preservation Area identified by the Highlands Council pursuant to the Highlands Act; and

WHEREAS, the Highlands Council prepared and adopted Procedures for Highlands Redevelopment Areas Designation (Procedures) by Resolution 2008-43 dated October 30, 2008; and

WHEREAS, the Applicant, West Milford Township, Block 7903, Lots 13, 14, 15, 16, submitted a Petition for Highlands Redevelopment Area Determination to redevelop the property with a 25,500-square foot three story public library, associated parking areas, and a new septic disposal system; and

WHEREAS, on February 1, 2009, the Highlands Council staff and staff from NJDEP and Council staff met the applicant on-site to evaluate the impervious areas and based on that meeting the applicant submitted revised plans addressing resource concerns and satisfying the impervious surface criteria; and

WHEREAS, the Highlands Council released the Highlands Council Staff Draft Recommendation Report and associated documents dated February 11, 2010 (Draft Recommendation Report) for public comment; and

RESOLUTION 2010-3

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA WEST MILFORD MUNICIPAL COMPLEX AND PUBLIC LIBRARY

WHEREAS, the Highlands Council held a public comment period concerning the proposed Highlands Redevelopment Area Designation commencing February 11, 2010 and ending February 26, 2010; and

WHEREAS, the Highlands Council staff duly considered the Draft Recommendation Report and all public comments; and

WHEREAS, after Highlands Council staff review, staff recommended that the Highlands Council approve the proposed Highlands Redevelopment Area Designation with conditions set forth in the Highlands Council Staff Final Recommendation Report dated March 3, 2010 (Final Recommendation Report);

NOW, THEREFORE, BE IT RESOLVED, the Highlands Council hereby approves of the West Milford Highlands Redevelopment Area Designation with conditions as set forth in the Final Recommendation Report and authorizes the Executive Director to prepare a document so informing the NJDEP of the Highlands Redevelopment Area Designation.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 4th day of March, 2010.



Jack J. Schrier, Acting Chairman

<u>Vote on the Approval of this Resolution</u>	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Carluccio						✓
Councilmember Cogger	✓		✓			
Councilmember Francis			✓			
Councilmember Holtaway			✓			
Councilmember Kovach			✓			
Councilmember Letts		✓	✓			
Councilmember Richko			✓			
Councilmember Vetrano			✓			
Councilmember Visioli			✓			
Councilmember Schrier			✓			

HIGHLANDS REGIONAL



MASTER PLAN
2008

Highlands Council Meeting

March 4, 2010



Executive Director's Report

- Plan Conformance Update
- RMP Updates/Map Adjustments
- Legislative Update
- Highlands Redevelopment Area Designations

Highlands Municipal Plan Conformance

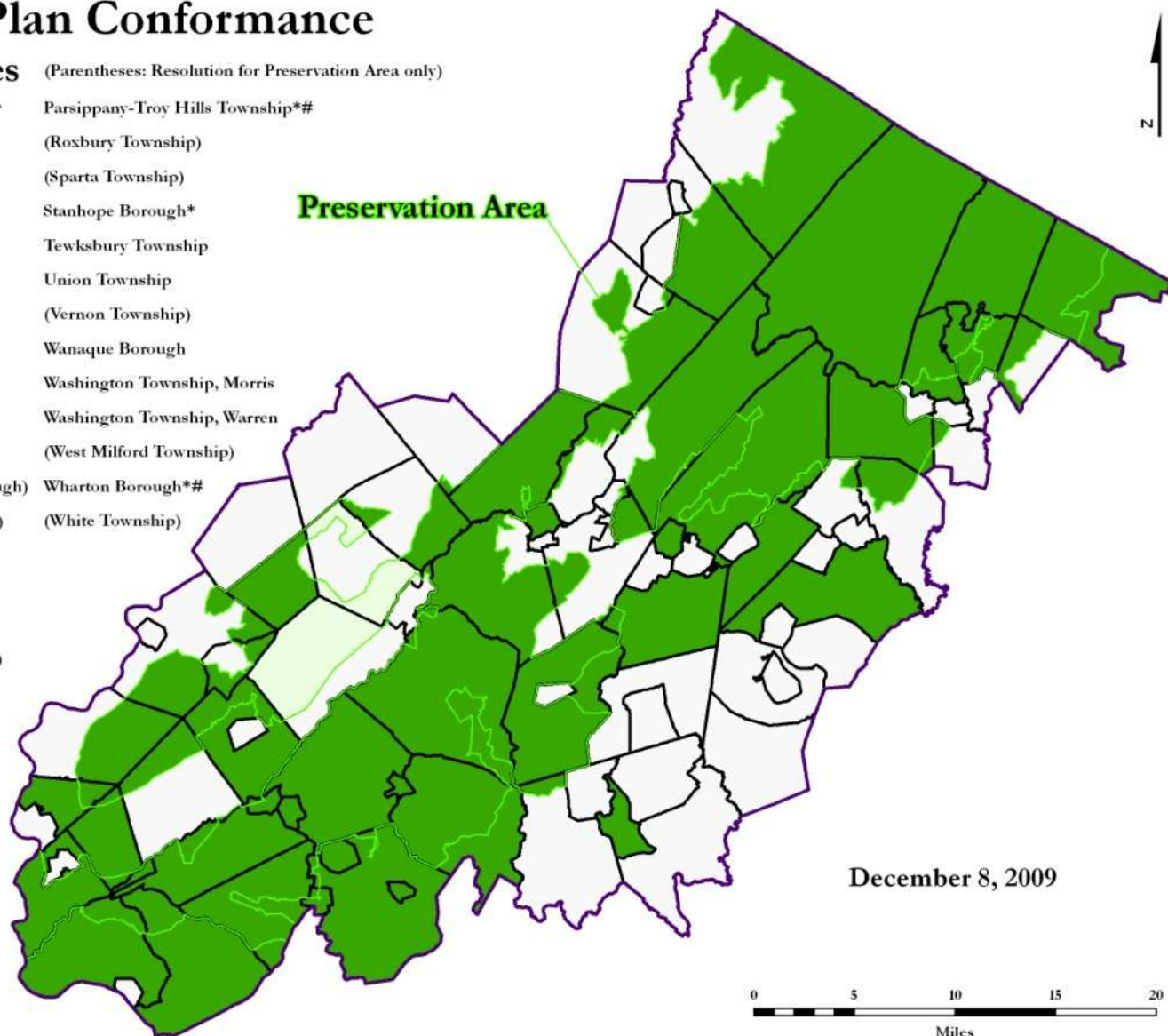
Petitioning Municipalities (Parentheses: Resolution for Preservation Area only)

Alexandria Township	High Bridge Borough*^	Parsippany-Troy Hills Township*#
(Allamuchy Township)	Holland Township	(Roxbury Township)
(Bedminster Township)	(Hopatcong Borough)	(Sparta Township)
Bethlehem Township	(Jefferson Township)	Stanhope Borough*
Bloomington Borough	Kinnelon Borough	Tewksbury Township
(Bloomsbury Borough)	Lebanon Borough*	Union Township
(Boonton Township)	Lebanon Township#	(Vernon Township)
Byram Township	(Liberty Township)	Wanaque Borough
(Califon Borough)	Lopatcong Township	Washington Township, Morris
Chester Township	Mahwah Township	Washington Township, Warren
Clinton Town	(Montville Township)	(West Milford Township)
Clinton Township	(Mount Arlington Borough)	Wharton Borough*#
Denville Township	(Mount Olive Township)	(White Township)
Far Hills Borough*	(Oakland Borough)	
(Franklin Township)	(Ogdensburg Borough)	
(Glen Gardner Borough)	(Oxford Township)	
(Green Township)	(Pequannock Township)	
Greenwich Township	Pohatcong Township	
(Hackettstown Town)	Randolph Township	
Hampton Borough	(Ringwood Borough)	
(Hardyston Township)	Rockaway Township	
(Harmony Township)		

* Municipalities entirely within Highlands Planning Area

^ Ordinance Introduced

Resolution not submitted with Petition



Plan Conformance

- Plan Conformance - 56 municipal submissions covering 95% of the Preservation Area and 35% of the Planning Area.
- 395,660 acres in the Preservation Area and 153,942 acres in the Planning Area for a total acreage of 549,602 acres (or 64%) of the Highlands Region.
- Planning Area petitions and resolutions are voluntary submissions and not binding until Council action and municipal ordinance.

Review Process Update

56 municipalities submitted Petition documents by December 8th and all have received responses from the Highlands Council:

- Submissions from 25 municipalities were found to be complete
 - Petition documents posted on Highlands Council website
 - Within 45-90 days, Draft Consistency Review and Recommendations Report issued by Highlands Council Executive Director
 - During Municipal Review Period, a municipality may then amend Petition to address issues in the Report
 - Public Notice, Final Report, and Council consideration
- Submissions from 29 municipalities were deemed incomplete; letter to municipality specified which additional information is required
 - Preservation Area municipalities have 45 days to provide requested information; no deadline for Planning Area municipalities
 - Five municipalities have already submitted requested information
- Submissions from 2 municipalities (Wharton and Parsippany-Troy Hills) will be deemed complete if the municipality adopts a resolution to petition the Highlands Council

Affordable Housing Update

- Municipalities were asked to submit to the Highlands Council a draft Housing Element and Fair Share Plan by March 1, 2010, in order to have adopted plans completed by June 8, 2010.
- To date, 35 municipalities (including Independence, Wharton and Chester Borough, which have not yet petitioned for conformance) either submitted draft Housing Element and Fair Share Plans to the Highlands Council, or were not required to submit additional information, as their Module 3 petition submission included sufficient information. The plans are being reviewed by staff for completeness.
- Highlands Council staff is working with other municipalities on their housing plans.

Plan Conformance – Planning Area

- Planning Area municipalities do not have a deadline to submit petition documents.
- Many of the municipalities that submitted a Petition just for the Preservation Area may still submit a Petition for the Planning Area (approx. 130,000 acres).
- 18 Planning Area only municipalities continue to work under a Notice of Intent (over 65,000 acres).
 - Milford, Chester Borough, Hanover, Mendham Borough, Mendham Twp., Mine Hill, Morris Plains, Mountain Lakes, Riverdale, Pompton Lakes, Bernardsville, Franklin Borough, Hamburg, Alpha, Belvidere, Frelinghuysen, Phillipsburg, Washington Borough

RMP Updates/Map Adjustments

You are viewing an archived document from the New Jersey State Library.

13 municipalities submitted more than 100 requests for RMP Updates or Map Adjustments.

- **27 requests were found to be RMP Updates**, and the information submitted will be incorporated into the Highlands spatial database.
 - Updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation.
 - An RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted.
- **68 requests were found not to be RMP Updates:** Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. In this case, no LUCM Zone change will occur based on an RMP Update.
 - Municipalities may provide more information to support their original request
 - Municipality may make use of other policies of the RMP to propose a change in LUCM Zone, including the Map Adjustment program or a Highlands Center designation
- **14 requests required more information**, and the municipality was asked to provide additional information.

Legislative Update

- On Feb. 8, the Senate Environment and Energy Committee unanimously released a bill, S-80, which would authorize any municipality outside the Highlands Region to establish receiving zones for the Highlands TDR Program. The bill was sponsored by Senators Bob Smith, Christopher Bateman, Robert M. Gordon, Jennifer Beck and James Beach.
- On Feb. 25, the Assembly approved its version of the bill, A-602, by a vote of 62-10-3. The bill was sponsored by Assemblymen Erik Peterson and John F. McKeon and co-sponsored by Assemblyman Reed Gusciora.

Consideration of Highlands Redevelopment Areas

The Highlands Act provides for relief for:

Any area identified for possible redevelopment shall be either a brownfield site designated by the NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface.

A waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Area identified by the Highlands Council.

Highlands Redevelopment Area

- Borealis Compounds, LLC operates a plastics manufacturing facility in Mansfield Township, Warren County.
- The applicant is petitioning the Highlands Council for a Highlands Redevelopment Area Designation in the Preservation Area using the 70% impervious surface criteria
- Block 1301, Lot 1 (33.1 acres) contains the existing plant and Block 1307, Lot 6 (9 acres) is undeveloped and currently used as agricultural lands.

Redevelopment Proposal

Borealis Redevelopment Site

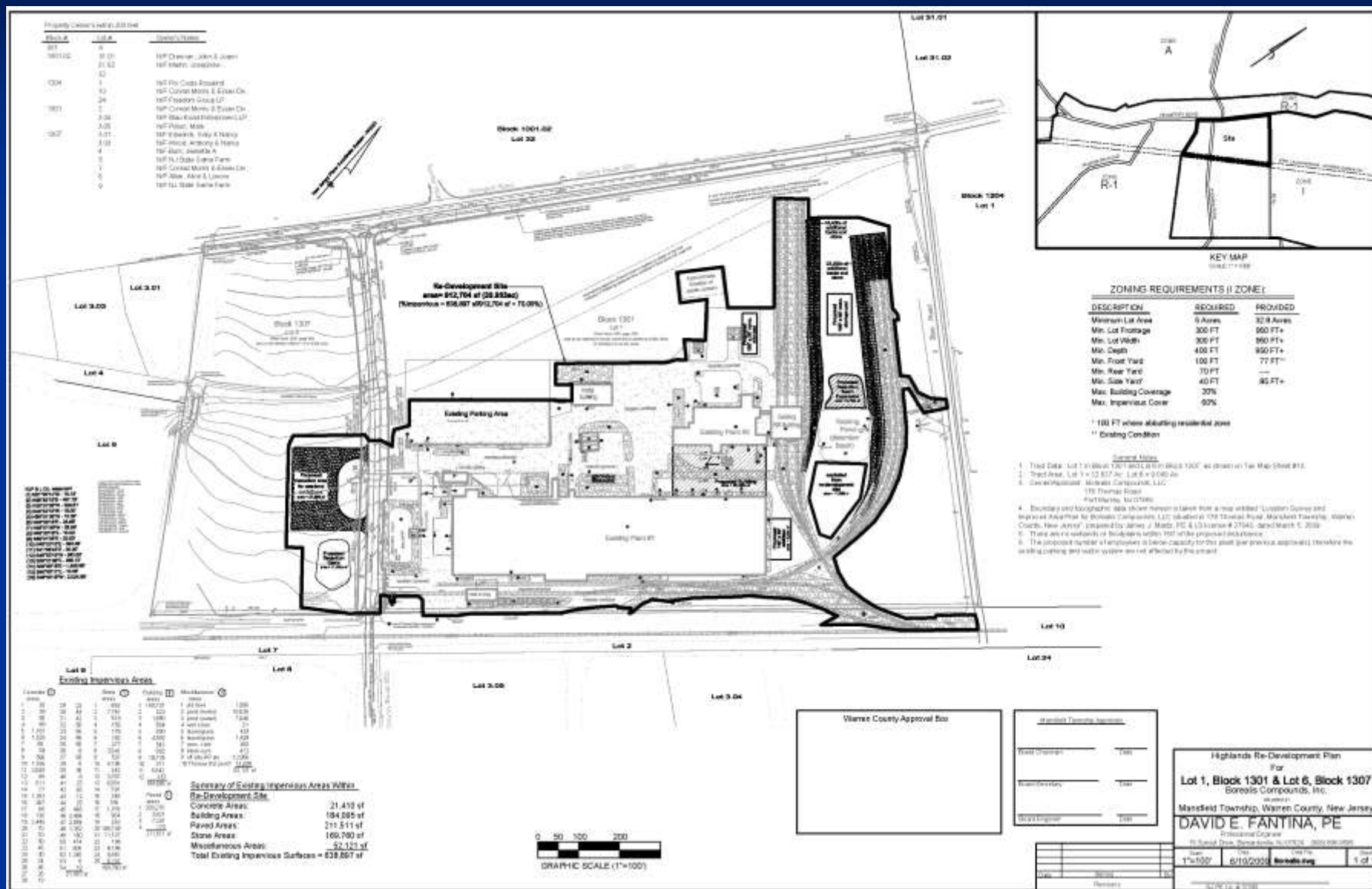


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Feet

Proposed Borealis Project

- The redevelopment project will increase materials storage and handling capability at the site
- Main component includes the delineation of the Highlands Redevelopment Area boundary and construction of a paved 27,200 square foot container-staging area on Block 1307, Lot 6. Stormwater management facilities associated with the staging area are also proposed.
- Highlands Redevelopment Area boundaries on Block 1301, Lot 1 include the construction of a new building, additional railroad tracks, additional storage silos, and miscellaneous improvements such as stormwater management.
- Of the 42 acres of the property, approximately 6 acres of new disturbance.

Borealis Site Plan



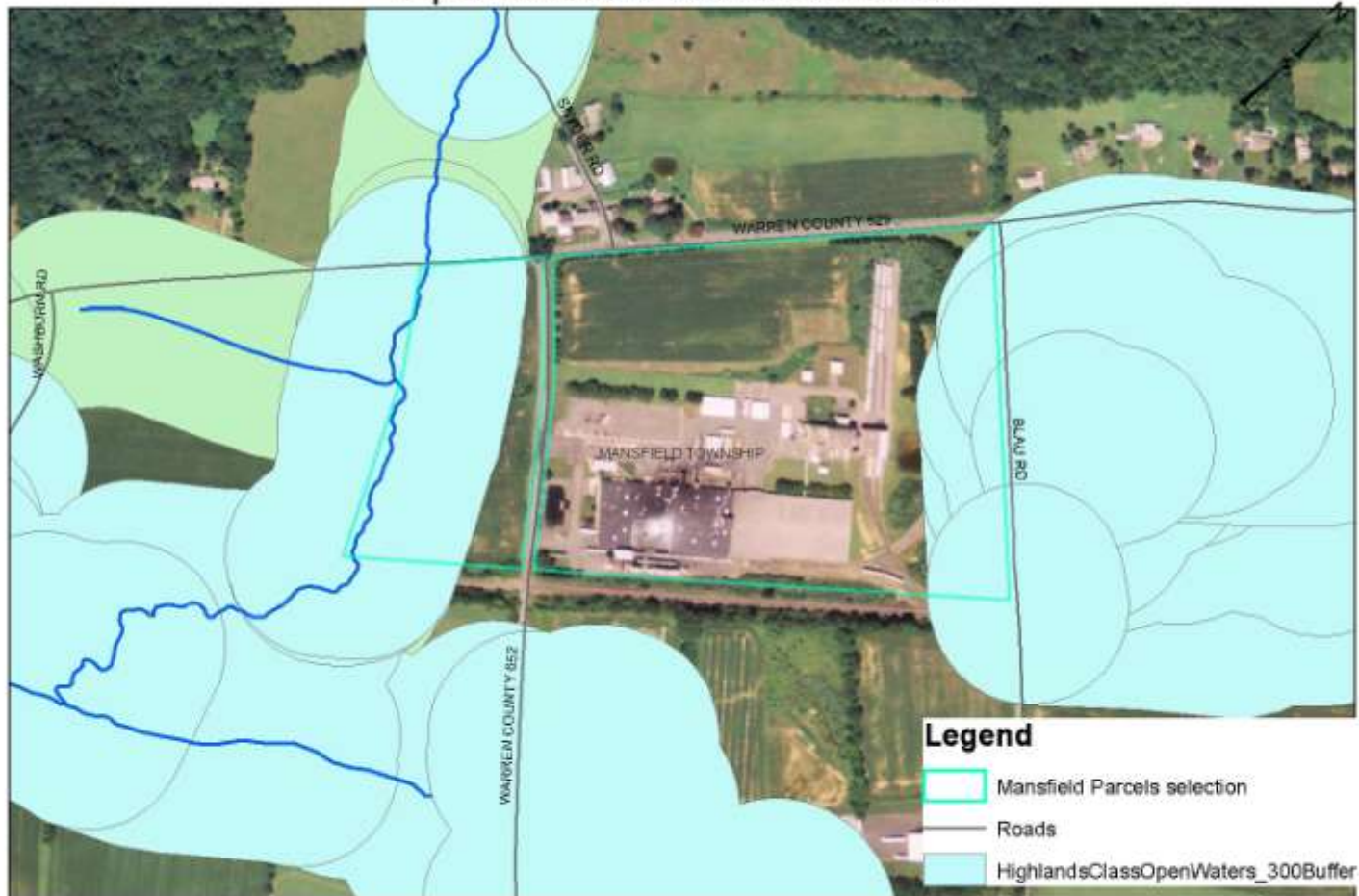
Staff Findings

Staff analysis of the proposed Redevelopment Area petition and field visits to the site yield the following findings:

- Impervious surface calculations of 70% were verified:
 - Existing Impervious Surface = 638,897 sq ft
 - Allowable Redevelopment Area = 912,704 sq ft
 - Proposed Redevelopment Area = 912,704 sq ft
- The container staging area encroaches into approximately 100 feet of Highlands Open Waters (HOW) protection area. Nearly the entire open waters buffer area is currently used for agriculture;
- The HOW buffer is also identified as critical habitat for grassland birds;
- A waiver would be required from the Highlands Council (in the Redevelopment Area approval) and NJDEP (through the HPAA process) for these issues.

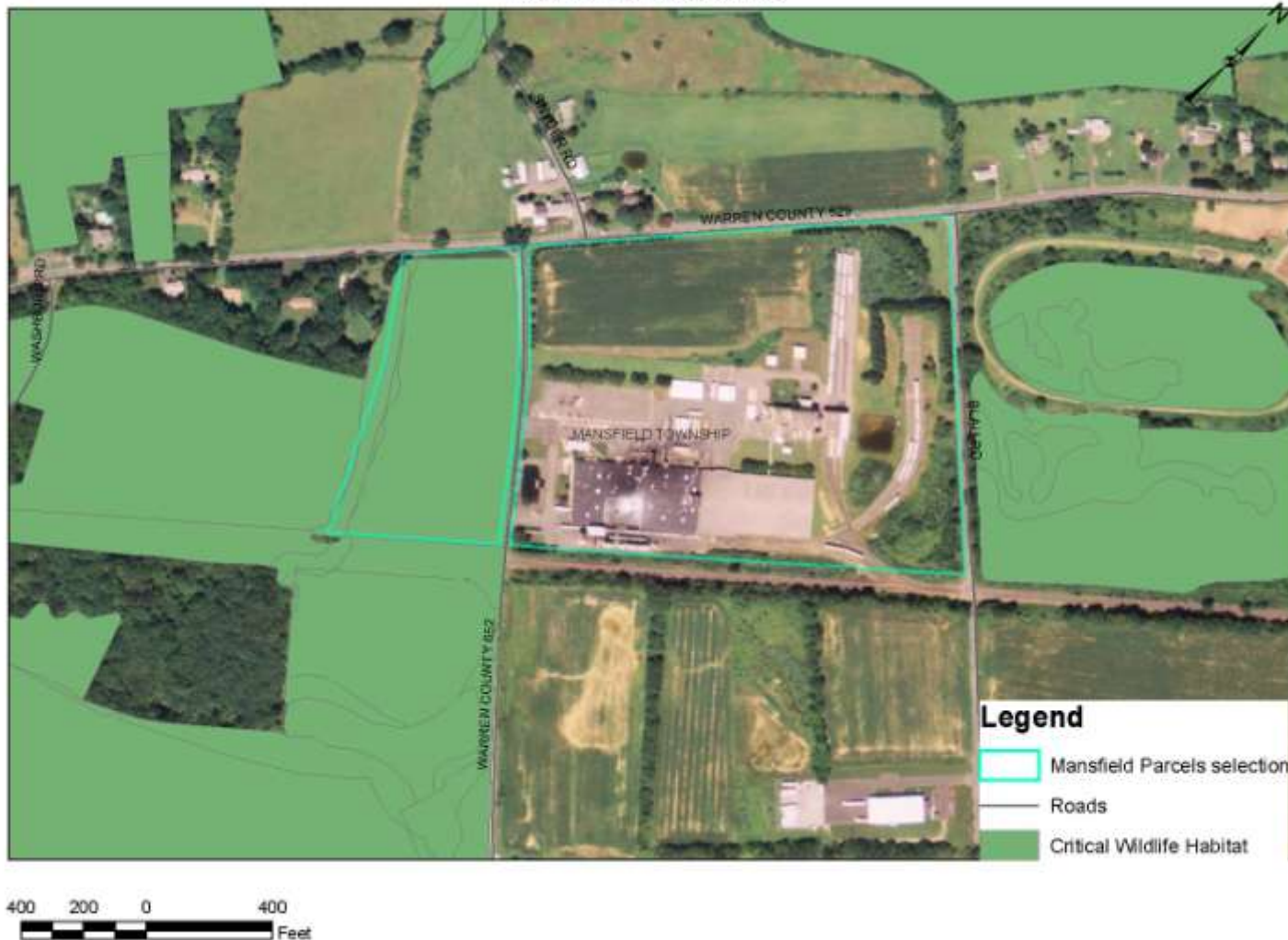
Borealis Resource Analysis

Borealis Redevelopment Site Open Water Protection Areas



Borealis Resource Analysis

Borealis Redevelopment Site Critical Habitat



Borealis Timeline

- Comment period on draft staff report and draft consistency determination closed on **January 29, 2010**;
- One public comment letter was received from the New Jersey Farm Bureau, encouraging continued use of agriculture in buffer area;
- Staff report and CD were revised to clarify that buffer mitigation plans can incorporate soil and water conservation practices to achieve enhancement of water quality and riparian habitat while retaining agriculture uses at the discretion of the landowner;
- Revised staff recommendation report and consistency determination posted on Council website on **February 8, 2010**.

Proposed Staff Recommendations

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

1. A HOW protection area mitigation plan be implemented to ensure no net loss of water quality and buffer value, through mitigation of the impacts of the proposed impervious container staging areas. Implementation and maintenance of the mitigation plan should be a permanent condition of the conservation easement. Future agricultural practices, if retained at the discretion of the landowner, should incorporate appropriate soil and water conservation practices into the required HOW and critical habitat mitigation plans and be maintained as long as agriculture continues.
2. The mitigation plan shall also ensure no net loss of habitat value for the grasslands species of concern through improvement of habitat on the remainder of Block 1307, Lot 6, unless the applicant successfully rebuts the presence of such species.

Proposed Staff Recommendations, cont'd

3. The remainder of Block 1301, Lot 1 and Block 1307, Lot 6 outside of the proposed Highlands Redevelopment Area must be deed restricted to prevent future development, but will allow for continued agricultural uses with the establishment and maintenance of appropriate soil and water conservation measures;
4. Stormwater management must utilize LID techniques and non-structural measures to the maximum extent feasible. Natural hydrology and vegetation should be used to the maximum extent possible to achieve required stormwater performance targets. A directly-connected discharge to the C1 stream must be avoided;
5. No modification to the water allocation permit or NJPDES permits may be granted for an increase in flows for either, or for an increase in pollutant loadings or concentrations for the latter, without Highlands Council determination of consistency with the RMP.

Proposed Staff Recommendations, cont'd

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

- The Highlands Council provide a CD regarding any modifications to their water allocation permit and regarding any proposed modifications to their NJPDES permits, when and if proposed;
- No increased pollutant loadings will occur in the wellhead protection areas through an increased discharge (i.e., no increased NJPDES discharge limits for any pollutant). Borealis should also provide an Operations and Contingency Plan regarding the facility's discharge prevention plans regarding any hazardous materials stored or handled on-site, to meet Tier 2 requirements of the RMP;
- Prior to extension of the rail sidings over carbonate rock formations, Borealis should provide either 1) geotechnical investigation that karst topography and associated hazards do not exist at the site, or 2) demonstrate that the proposed rail improvements do not constitute an unacceptable risk of discharge or risk to public safety.

West Milford Municipal Complex and Public Library

- Block 7903 Lots 13, 14, 15, and 16: West Milford
- Pre-application meeting held on February 1, 2010, with initial meeting held previously
- Tract is mostly developed – municipal buildings, cell tower, small retail store, and small dwelling
- Majority of tract in Existing Community Zone
- Township proposes a Highlands Redevelopment Area to accommodate a public library and associated parking area in western portion of tract



Project Need

- Existing library only has approximately 1/3rd of the space it needs to house its expansive book and media collections according to Township
- New public library will be designed to meet the State standards for a community the size of West Milford
- The Highlands Act calls for the RMP to “promote compatible ... cultural uses and opportunities within the framework of protecting the Highlands environment.”

Highlands Redevelopment Area

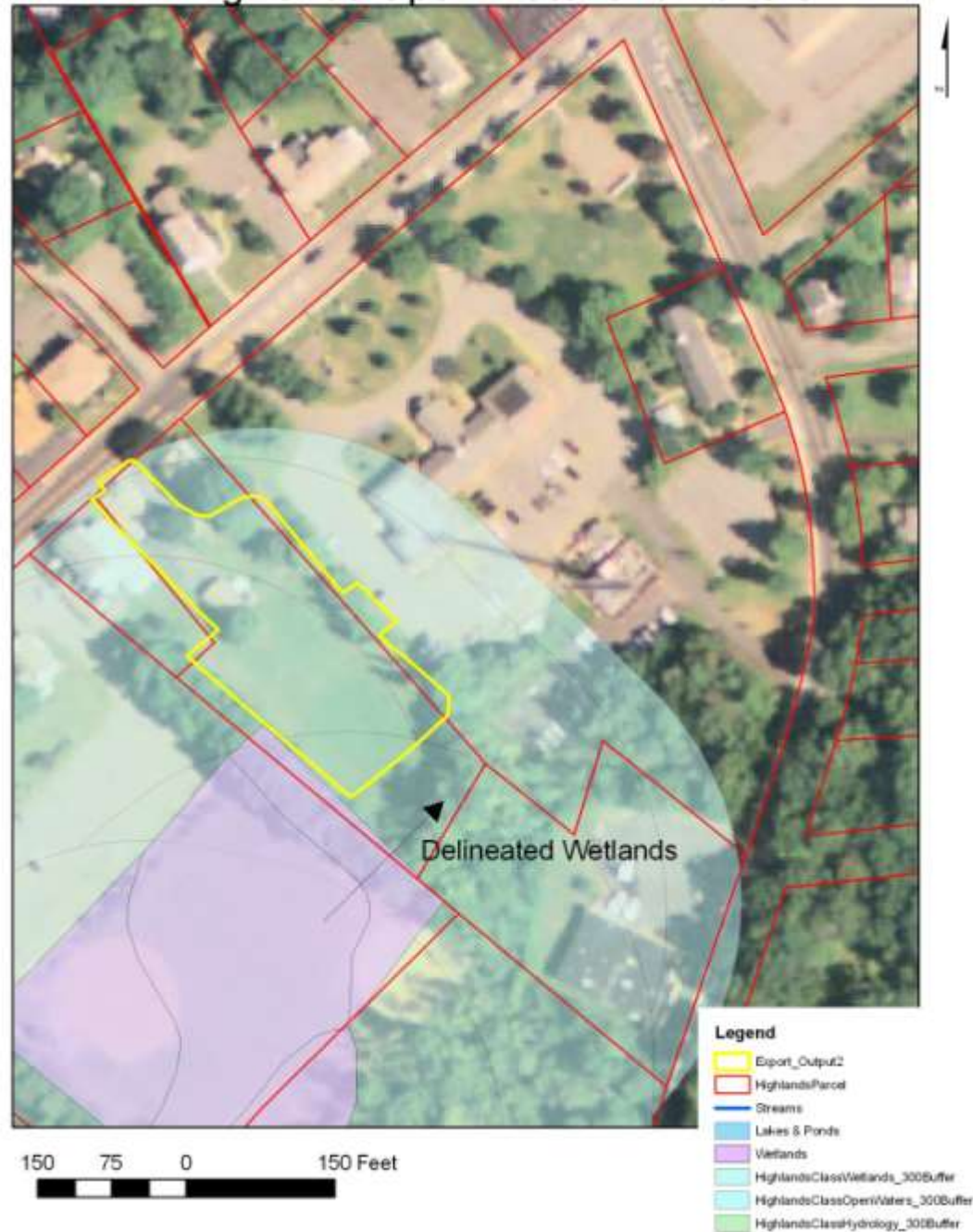
- Approximate 25,500-sq ft library in area that currently features small retail store and maintained lawn areas
- Proposed disturbance is approximately 1.5 acres
- Impervious surface requirement (70%):
 - Existing Impervious Surface = 166,190 sq ft
 - Allowable Redevelopment Area = 237,414 sq ft
 - Proposed Redevelopment Area = 237,384 sq ft

Highlands Open Waters Buffer

- Proposed project entails encroachment into a Highlands Open Waters buffer
 - On-site wetlands delineation
 - Proposed development avoids on-site wetlands which are upgradient from proposed development
 - There is encroachment into the wetlands buffer that is currently disturbed
- Encroachment would not result in a net impact to the functional value of the buffer and qualifies for a waiver

West Milford Municipal Complex- Highlands Open Water and Buffers

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Staff Recommendations

- Recommendation to approve proposed Highlands Redevelopment Area designation with conditions:
 - NJDEP Letter of Interpretation/HRAD verifies location of onsite wetlands
 - Highlands Open Waters buffer encroachment shall be entirely within a previous disturbed area that would not result in a net impact to the functional value of the buffer in conformance with Policy 1D4; qualifies for a waiver
 - Remainder of property outside of the proposed Redevelopment Area will be protected via conservation restriction
- For the next step (the HPAA with waiver issued by NJDEP), the applicant shall supply a stormwater management plan that incorporates low impact development techniques

HIGHLANDS REGIONAL



MASTER PLAN
2008

Highlands Council Meeting

March 4, 2010



