

## MINUTES

### NEW JERSEY HIGHLANDS COUNCIL MEETING OCTOBER 12, 2006

#### PRESENT:

JOHN WEINGART	)	CHAIRMAN
KURT ALSTED	)	COUNCIL MEMBERS
ELIZABETH CALABRESE	)	
TRACY CARLUCCIO	)	
MIMI LETTS	)	
JACK SCHRIER	)	
DEBBIE PASQUARELLI	)	
ERIK PETERSON	)	
TAHESHA WAY	)	
SCOTT WHITENACK	)	

#### ABSENT:

TIM DILLINGHAM  
JANICE KOVACH  
MIKAEL SALOVAARA  
GLEN VETRANO

The following are the minutes from the New Jersey Highlands Council meeting which was held at 100 North Road, Chester, New Jersey on October 12, 2006 at 4:00 p.m.

#### CALL TO ORDER:

The Chairman of the Council, Mr. John Weingart, called the 37<sup>th</sup> meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:00 p.m.

**ROLL CALL:** The members of the Council introduced themselves.

**PLEDGE OF ALLEGIANCE** was then recited.

#### OPEN PUBLIC MEETINGS ACT:

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

## **MINUTES OF OCTOBER 5, 2006:**

Chairman Weingart advised that the meeting minutes from October 5, 2006 were not yet available, and therefore would be considered at the next meeting. He advised that the Public Availability Comment summary of October 5, 2006 was included in the members' meeting packets.

### **CHARIMAN'S REPORT:**

Mr. Weingart reported that public comments which have been received electronically by the Council have been made available to Council members, and that a list of the comments submitted has also been included in the members' packets so that members can download or request hard copies.

Mr. Weingart noted that at some point during the meeting members would go into Executive Session to discuss several items including reports on pending litigation and matters of attorney client privilege. He asked if any members had reports.

Ms. Tracy Carluccio complimented the staff on the list of comments provided in the packets and appreciated the inventory and organization. Mr. Weingart then turned to Mr. Dante Di Pirro for the Executive Director's report.

### **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Di Pirro noted with regard to the list of comments Ms. Carluccio mentioned, that inventory was compiled by staff member Ms. Sabina Martine. He noted that if any members would like hard copies of the comments, they would be available.

Mr. Di Pirro noted that the Supreme Court declined to hear an appeal in a matter and the effect is that the Appellate Division's ruling upholding the Department of Environmental Protection's stormwater regulations stands. The DEP stormwater rules establish that 300 foot buffers be maintained for the most significant waterways in New Jersey. Mr. Di Pirro stated that the rationale of that decision supports the Council's efforts in identifying the most important areas of resources for protection. Mr. Di Pirro noted that the Council is a quasi-legislative body and as such, once it adopts the plan, it is entitled to great deference and must utilize science upon which to make rational decisions.

Mr. Weingart thanked him for the report and turned to the first topic for discussion, the continuation of Transfer of Development Rights. Mr. Di Pirro introduced Mr. Jeff LeJava to finish presenting the TDR document, noting that changes requested by members since the last meeting have been incorporated and outlined in the new document.

### **Highlands Transfer of Development Rights:**

Mr. LeJava noted that the new document stated "Consensus Revisions" at the top. He pointed the members' attention to the changes made, at the bottom of page 2 under Goals of the TDR program, an added goal is to use the TDR as a mechanism to protect and enhance the significant values of Highlands region resources. This provision is taken directly from section 10a of the Highlands Act.

On page 3 the last bulleted item regarding the establishment of a TDR Bank that will foster implementation of the Highlands TDR program was included. On page 4, within the third arrowed item, based on input at the prior meeting, language concerning a method to address questions about the scope of the program has been added. Mr. LeJava read the revised policy regarding prioritizing TDR sending zones during pre-conformance and the factors to be considered in the determination citing section 13.h.2 of the Act.

On page 5, second paragraph, note that the Highlands Council will develop a method for identifying receiving zones. Mr. LeJava noted that since receiving zones in the TDR program are voluntary, demand will take time to develop. He noted that the extent of available funds for purchasing credits will need to be addressed. Staff recommends devising a prioritization of sending zones based upon the Land Use Capability Map (LUCM) and corresponding resource values of the underlying area.

Tier 1 lands would be those lands that are considered most significant and critical lands for achieving the goals of the Highlands Act, and would be lands that are likely to be acquired outright.

Tier 2 lands would be lands that are important for conservation but not viewed as critical would be identified as sending zones to be conserved through TDR. Within tier 2 a further ranking would be conducted to identify presence of resources on a given property. The higher the value of a property within tier 2 the sooner it would be available a sending zone.

Another consideration for prioritizing is contained in the requirement of section 13.h.2 of the Act which states the Council will give priority consideration for inclusion in the TDR program those properties that are not qualified for grandfathering under exemption number 3 of the Act. This involves those projects that had received municipal and state approval prior to March 29, 2004 but had not begun construction. Projects which have received municipal approval and were awaiting state approval and had an application for a permit deemed complete by the DEP would be prioritized. The resource value of the sending zone property will always have primacy.

After prioritizing of the sending zones are complete, the extent of sending zones that can sell credits would be based upon the number of designated receiving zones available to accept credits and the extent of available funds in the Highlands TDR Bank.

Mr. LeJava said staff is proposing a method for addressing this issue of necessary delay while the generation of demands and identification of voluntary receiving zones are obtained, providing funds for the TDR Bank.

Ms. Mimi Letts asked for clarification whether the Council would have to wait for receiving zones to be established before it could have credits placed into the TDR Bank.

Mr. LeJava replied that the Council would not have to wait and thanked her for the clarification. He noted that the next proposed change was on page 9 before number 3 and it states that an HDC (Highlands Development Credit) determination letter is valid for two years. He noted this is similar to what the Pinelands Letter of Interpretation (LOI) which is also valid for two years. If within those two years, a conservation restriction is not placed on the property, the requirement exists to reapply for a determination of the number of credits.

Ms. Letts suggested that the mathematic application should be bracketed to make it clear that it is an equation.

On page 10, Mr. LeJava noted under the first arrowed item a clause was included at the end to have the process allow for significant public input. This addresses the process for designating voluntary receiving zones which is a municipal and citizen driven process which staff believes requires a great deal of public input.

On page 11, the second full paragraph regarding the designation process, notes that it begins with the municipality by holding a public hearing to discuss the advantages or disadvantages of designating a voluntary TDR receiving zone within its boundary. The municipality may decide to adopt a municipal resolution and state its interest in becoming a receiving zone. Next steps would be the determination of eligibility for TDR voluntary receiving zone feasibility grants.

Mr. Schrier agreed that a municipal resolution is the best method to achieve identification of receiving zones from a legal standpoint.

Mr. LeJava noted those were all the consensus revisions since the last meeting, and then turned the members attention to page 14 under item number 4 with the policy recommendations regarding the TDR Bank to complete review of the document.

Mr. LeJava noted the Highlands Council shall establish a Highlands TDR Bank that along with the Council will administer the Highlands TDR program. He noted the bank would be governed by a 5 member Board of Directors. Under Section 13i of the Highlands Act, the Council has the authority to establish its own Highlands TDR Bank, or to utilize the State TDR Bank which was created in 1993. Based upon a review of the State TDR Bank Act, and the bank's current regulations, staff believes that establishing a Highlands TDR Bank would afford greater flexibility to address development of a regional TDR program. The State TDR Bank's focus is primarily on supporting intra-municipal TDR Banks. Therefore, it is staff's recommendation to establish its own TDR Bank based on its regional approach.

The State TDR Act Sections 158 and 159 would be applicable to the Highlands TDR Bank. Mr. LeJava noted that on page 15 of the policy document, the Highlands TDR Bank shall be authorized to serve four essential functions: 1) as an information clearing house; 2) as a buyer of last resort in Highlands development credits; 3) as the agency charged with recording and tracking all Highlands development credit activity; and 4) as the agency responsible for reevaluating the minimum HDC price on an annual basis and make recommendations to the Highlands Council for its adjustment.

Mr. LeJava noted as to the first function as an information clearing house is similar to the role currently by the Pinelands Development Credit Bank which is bringing buyers and sellers together. He noted the PDC Bank maintains a list and registry of all Pinelands Development Credits available for sale and post them on their website facilitating the initiation of transactions.

The Highlands TDR Bank would also maintain a registry of HDCs available. At the outset of the program, as Ms. Letts mentioned earlier, the Highlands Bank would purchase HDC from sending zone property owners while receiving zones are being established. The bank would make acquisitions in light

of the prioritization considerations outlined in section 13h, as well as the resource evaluation system considerations. The bank would also make purchases from sending zone property owners facing hardship situations. Mr. LeJava noted that would need further clarification, but for example hardships are those property owners facing imminent bankruptcy with a need to liquidate assets, or for medical emergencies.

Mr. LeJava said the purpose of allowing the bank to make purchases on day one of the program is also in furtherance of address the situation of unknown number of voluntary receiving zones. Ms. Letts asked why the term “buyer of last resort” was chosen. Mr. Schrier said he believed it was because private buyers would be preferred. Mr. LeJava agreed and pointed out that in the possible situation where a seller is under a hardship and needs to sell, if there are no private purchasers for those credits or voluntary receiving zones to purchase, the TDR bank would be the purchaser.

Mr. LeJava noted that the Bank must also be empowered to sell credits, and the requirement there is that Bank actions cannot substantially impair the private sale or transfer of development potential. To address that concern, when a bank is selling credits to a developer or another party, they would have to purchase at a premium set by the Bank in consultation with the Council. A developer has two options: 1) go directly to a property owner by contacting the Bank and viewing the HDC registry to gain information about available credits for sale, or 2) they can come to the Bank and purchase directly from the bank at a premium which is a requirement of the law. Mr. Di Pirro offered the explanation that it is a measure to allow the market to handle the sales and not affect the private market.

Mr. LeJava said the final two functions of the TDR Bank are to record and track all HDC activity similar to what the Pinelands Bank has done to establish a registry. Once an HDC allocation is made and a conservation easement is recorded a credit certificate is issued by the Bank. The Bank would also reevaluate the established minimum HDC price on a yearly basis to ensure the value does not negatively impact either the private TDR market or the Highlands TDR program.

Mr. LeJava noted the next policy item on page 17 notes that the Highlands TDR Bank shall record and track activity as required by the State TDR Act to track restrictions on sending zones. The Highlands Bank will issue an HDC certificate provided for each credit allocated to a sending zone lot, which will list the owner of record, the block and lot, date of issuance, and a specific identification number. The Bank shall allow the HDCs to be encumbered by their owners, pledging HDCs as collateral for financing.

Mr. LeJava noted this function relates back to the goal referred to on page 2 of the policy, where a property owner receives sending zone credits to use for collateral to secure loans from private lending institutions. This provision is the result of an abundance of input from numerous stakeholders, and will be an important tool for property owners. In the event of a default, the only obligation of the TDR Bank is to list the lending institution as the holder of the credit certificate in the registry.

The award of an HDC certificate by the Highlands TDR Bank will require the recording of a conservation restriction to record the severance of development potential from a sending zone lot. Mr. LeJava noted that the Council will draft a model conservation restriction to satisfy the requirements of the State TDR Act and other legal requirements related to deeds of easement conducted during pre-conformance. The conservation restriction will be recorded at the time the property owner wishes to sell or convey their development potential. If the property owner receives and HDC certificate and decides not to record a conservation restriction, the HDC determination letter remains valid for two years.

If the HDC determination expires after two years, the owner would reapply to the Highlands Council for an updated HDC letter. Mr. LeJava noted there are factors which are reevaluated on a yearly basis and in turn could alter determinations.

A minimum HDC price will be established at the outset of the Highlands TDR program which recognizes the need to balance sending zone lot owners' interests with those of the development community. Mr. LeJava noted that section 13h.1 of the Highlands Act mandates that the Council establish the initial value of a development right. The price requires balancing two critical interests – first the price must be sufficient so that sending zone property owner realizes a true economic return from the sale of the credit; at the same time if the price is set too high, it will reduce a developers profit to an extent that building with TDR credits in a receiving zone would be uneconomical. The dollar value of an HDC would depend on the profitability of the bonus density provisions for developers who construct in voluntary receiving zones. The fundamental principle of the TDR program is that for each additional unit on a given lot in a receiving zone the increase in revenues would be greater than the increase in costs.

Mr. Weingart asked for clarification as to what a Pinelands developing credit would sell for and also what number of units correlate to a credit. Mr. LeJava stated that a Pinelands Development Credit is divided into four buildable development rights. At the time the Pinelands established their PDC program, a PDC price was \$10,000 or \$2,500 per right. In the Pinelands the market has fluctuated in price over time and individual development right values are ranging between \$15,000 per right, and \$40,000 per right which would equate to approximately \$60,000 and \$120,000 per credit. When compared to the Highlands region, the lands in the Pinelands were much more homogenous and did not vary as greatly as they do in the Highlands.

Mr. LeJava said that the Highlands Council will establish the initial value and allow the value to be evaluated and possibly adjusted each year based on the information obtained from both private transactions and sales by the Bank. The Pinelands set the minimum price at \$10,000 and never readjusted the minimum price. The Highlands wants the bank to play a more active role and could readjust the minimum credit price as transactions occur.

Mr. LeJava noted the last policy item regarding HDCs is that they could be purchased by any person, and are not limited to developers in receiving zones. If a land trust is interested in purchasing HDCs from a private property owner, they would be able to do so, place a conservation restriction on the property, and then retire the HDCs.

Mr. Schrier noted that these options were very beneficial to property owners.

Mr. LeJava noted on page 20 under item number 5, the Highlands Council shall review and assess the success of the Highlands TDR Program at the end of the first 5 years of program implementation. The Highlands Act does not outline a method for assessing success or failure of the program but the State TDR Act sections 155 and 156 establish that any municipally adopted TDR program be reviewed to determine whether it is meeting its goals. At the 5<sup>th</sup> anniversary of the TDR program's adoption the Council will examine the development potential transactions in both public and private market and compare the conditions to also examine the number of units constructed with or without TDR credits in receiving

zones. A report of the findings would be prepared outlining the efficacy of the program to date and make recommendations for changes if warranted.

If an insufficient number of potential transactions have occurred, the Council would need to examine if the program was constructed reasonably at the outset and whether it requires significant amendment or petitioning the Legislature for changes.

Ms. Carluccio suggested that it could also be stated in the policy that the program would be reevaluated on a periodic schedule and not just after the first 5 years.

Mr. LeJava noted on page 21 item number 6 require coordination with other state agencies and are recommended for inclusion in the Policy Guidance Document. It is recommended to coordinate with the Garden State Preservation Trust and the State TDR Bank to secure initial capital for the Highlands TDR Bank. The Highlands TDR Bank will request initial funding from the State TDR Bank and the Council has recently corresponded with the Governor's office requesting additional funding for this purpose.

Mr. LeJava noted that coordination with the Office of Smart Growth and other state agencies to devise an expedited state development and redevelopment endorsement process for TDR receiving zones. Voluntary receiving zones outside the Highlands region but within the seven counties will be required to be State Plan endorsed to participate in the Highlands TDR program. At present State Plan endorsement can take up to two years, and the Highlands Council would be recommending through this policy a streamlining of the process through coordination.

On page 22 Mr. LeJava noted coordination with the DEP would also be done to expedite obtaining state environmental and land use permits required for construction and designated receiving areas. Mr. LeJava stated that the resource assessment and analyses of infrastructure done by the Council and staff has enabled it to share the information with all agencies and therefore decisions will be capable of being made in a timelier manner than what has been done in the past.

Mr. LeJava noted that one main guiding principle for the Highlands Regional Master Plan is promoting smart growth and by identifying receiving zones and areas where communities want to build more efficiently, the process being proposed would alleviate "roadblocks" for developers who wish to build in those zones by bringing all the agencies with authority together to make decisions by sharing information.

Ms. Carluccio noted that much time is spent reviewing permits through DEP and gathering information generated through analyses conducted by experts as well as the applicants. She noted the process will move faster because the data has been collected.

Mr. LeJava stated that the technical support available through the Council is also beneficial to municipalities and other agencies because it will assist them to make their decisions.

Ms. Pasquarelli said that in order to provide information to others the Council, it is critical that it put a system in place which continually updates and maintains information.

Mr. LeJava noted the last policy addresses coordination with the DEP to require the purchase of HDCs as one means of mitigating damages to natural resources in the Highlands Region. Mr. LeJava noted the concept is an attempt to create demand for purchase and use of credits. It is possible that under the

Natural Resource Damages Program (NRD) administered by the DEP, a damaged area within the Highlands region --such as a spill resulting from an old gas station -- the spill could be cleaned via the New Jersey Spill Act, and a portion would address the damages to the natural groundwater resource and a responsible party could potentially mitigate partial damages by purchasing Highlands Development Credits where there is a nexus to the injury that occurred and a property in the area upstream of where the gas station was located. No further development would then occur, but it would require coordination and review with the DEP.

Ms. Carluccio noted there is a federal regulation as to the Natural Resources Damage Assessment Act which is implemented at the state level but is separate from the New Jersey Spill Fund. She asked which program Mr. LeJava was referring to as to coming into coordination with the Council. She noted the Council would need clarification as to which authority it would need to coordinate with.

Mr. LeJava said that it addresses responsible parties under the New Jersey Spill Act have a requirement to address natural resource damages that occurred due to the spill and their legal liability would be under the Spill Act. Mr. LeJava stated that further legal review would be done on the concept. Mr. Di Pirro noted that the policy involves coordination with the DEP due to the fact that they will be examining issues of NRD when seeking recovery for violations and spills, and the Department has a range of statutory options in which it could utilize funds recovered, and this could be an appropriate option because it is to protect natural resources.

Mr. Weingart noted that the RMP document itself would have the policy and not rationale, so the policy being reviewed is not specific to legislation and maybe the operative first word is “explore the possibility of...”. Ms. Letts and Ms. Carluccio agreed.

Mr. LeJava advised that the last two specific policy recommendations address promotion of local understanding, support and participation in the Highlands TDR Program by municipalities. He read the sections aloud which outlined how it would develop the program through public outreach and develop and implement a voluntary TDR Receiving Zone Feasibility Grant Program.

Under the next section Mr. LeJava spoke about next steps which the Council would undertake, including all details regarding implementation of the Feasibility Grant Program, approval of a Conservation Deed Restriction, establishment of the TDR Bank including appointment of members to the Board of Directors and the adoption of bylaws, establishment of the resource value factor toward allocation, and completion of the real estate analysis required by the Highlands Act. He noted steps also included establishment of real estate market and end use factors, the minimum HDC price and the approval of the HDC Certificate Program and what the document would contain. It would also include the registry of HDC Certificates and maintenance.

Mr. Schrier asked Mr. LeJava if it was being recommended that the Council make the appointments to the TDR Bank, and he responded that was correct. Mr. LeJava said these were next steps through adoption of the draft plan and pre-conformance with the overall goal of having an implementable program by late spring of 2007.

Mr. LeJava noted that section 3 dealt with staff recommendations for legislative proposals. One is that the Council explores amending the Act or proposing new legislation to permit any municipality in the state to

participate in the Highlands TDR Program by becoming a receiving zone. If the proposal became a law it would allow communities in markets such as Hudson, Essex or Ocean counties to establish and receive credits. The second legislative proposal is to authorize any development transfer bank to guarantee loans secured with HDCs as collateral. This could possibly be achieved through a notation on an HDC Certificate that it may be pledged as collateral for a loan.

Ms. Letts thought that the Council may wish to petition the Legislature for greater incentives for municipalities to agree to be receiving areas. She thought the figure of \$15,000 per lot is not a good incentive for towns to buy into the program.

Mr. Weingart noted that he understood the first recommendation and agreed that would be a good act for the Council to take, but asked for more clarification on the benefits of the second recommendation.

Mr. LeJava offered the scenario in which a farmer who needs to purchase new equipment, prior to the Highlands Act, they would utilize the development potential of their property in securing the loan, in light of the Act impacting development potential – this direction could provide a vehicle for farmers to retain credit for those development credits in aid to securing loans.

Mr. Schrier stated that he believed the Council needs to gain further information and experience before petitioning for legislative changes and was not currently in a position to decide the value of HDC credits.

Ms. Pasquarelli asked regarding any number of outstanding projects under consideration currently, whether the Council should be attempting to involve those projects in the early stages of the TDR Program. She sought further information on what action could be taken by the Council between the present and when the program starts at the projected time of spring 2007.

Mr. LeJava said that an important action the Council may take is through approval of the Feasibility Grant Program. He noted he would provide the scope and definition of that program to the Council within the next couple weeks so that it may vote and adopt it through Resolution. This will enable funding for start up of the program to assist municipalities in exploring becoming a voluntary receiving zone. Towns with pending projects that are thinking toward participating, as well as evaluating the possibility of receiving impact fees, will be aware that the Council offering technical and financial assistance.

Ms. Pasquarelli stated that factor ties in with the earlier matter of municipalities not being required to conform with the RMP to participate in TDR, because this program will begin before conformance.

Mr. LeJava said there are issues that have to be further examined regarding Councilwoman Pasquarelli's point, and he noted he would report back.

Ms. Calabrese agreed and stated there are many ways to encourage municipalities to opt-in, and there are varying needs from town to town and that money is not always the only incentive. She stated developers or towns could be encouraged to address infrastructure issues and possibly recreation facilities as well.

Mr. Tom Borden stated that meetings have occurred with the Office of Smart Growth in terms of benefits that come with plan endorsement, and noted that there are additional opportunities through plan

endorsement including significant state funding for infrastructure improvements. He noted there are possibilities for additional incentives through plan endorsement.

Ms. Tahesha Way asked what type of constraints could occur with regard to overgrowth and negative impacts on the environment, as to feasibility issues. Mr. LeJava stated that the LUCM is coming together with all the data layers which will identify where appropriate receiving zones could be located based upon the resource assessment and infrastructure capacity that exists on the ground currently. He noted that the communities being identified will have been analyzed based on a combination of all the data gathered, and will be areas with sufficient wastewater and water supply capacity, and not areas of significant ecological or agricultural quality that would prevent further development of the area.

Mr. Weingart asked if there were any questions and since none were received he turned to Mr. Borden to present the Plan Conformance Guidelines document.

### **Highlands Regional Master Plan – Plan Conformance Guidelines:**

Mr. Borden noted for review for new Council members, that the Council previously addressed conformance in December 2005 and adopted a Resolution outlining a framework for Plan Conformance which has provided guidance. He summarized that the December 2005 Resolution had seven guiding principles which defined the conformance process which towns and counties will utilize to conform with the RMP.

One key component of conformance is the inclusion of an education and outreach program for the RMP. The second key initiative was the pre-petition process to allow municipalities and counties to meet with the Council staff, members and committees where necessary to obtain additional information. The Council resolved that there would be required provisions and standards regarding resource protection that would be included in the Policy Guidance Document as well as the discretionary standards relating to the growth inducing requirements.

Mr. Borden noted that the issue of partial conformance and opt-in was resolved in the December 2005 Resolution and states that towns that are partially in the Planning Area and partially in the Preservation Area, and want to conform in the Planning Area shall be required to opt-in for the entire Planning Area. He noted that during conformance municipalities may collect new or additional information which could be provided to the Council. Mr. Borden explained that some data is dated 2002 and can be updated through conformance with municipalities. He stated the adjustment and revision process is a key component of conformance, with plans and ordinances required to be in conformance with the goals and provisions of the RMP. Mr. Di Pirro noted that there would be no mandatory growth through conformance and will remain discretionary to the town.

Mr. Borden noted the sixth element of the December 2005 resolution outlined a process to ensure that staff has a complete application prior to presenting to the Council. He noted that this process is iterative and will be seeking updated information from municipalities and counties. Mr. Borden advised that the process would be built on the understanding that public input is crucial, and that ample opportunities are given for obtaining that input during plan conformance.

Mr. Borden noted that for the meeting he would focus primarily on municipal conformance because it is the primary mechanism for implementation of the Act. He noted the county procedures would be nearly identical to municipal. One item being developed is the proceedings for addressing individual development applications, and the process for notice and development of new procedures for individual projects. Ms. Pasquarelli asked if this would provide a checklist and Mr. Borden replied that a municipal checklist requirement is included in the current document as to what a municipality would need to do to conform. Mr. Borden explained that conformance is a “marrying” of the Highlands Act and the Municipal Land Use Law. Many of the issues are guided by the authority of municipalities under the MLUL.

He pointed the members’ attention to the first section Purpose and scope of Plan Conformance Process. This addresses all master plans and development regulations which are broadly defined under the MLUL to include their official zoning map and development and site plan subdivision ordinances.

Ms. Carluccio asked if the actions taken under the MLUL also include Board of Health regulations, and Mr. Borden replied that it could be included. Ms. Letts asked how much would be given to towns for conformance, and Mr. Borden noted that relates back to the Cash Flow Timetable, and at present there is in excess of \$12.4 million dollars with future appropriations per year. He stated the \$100,000 estimate mentioned at previous meetings was a minimum amount and was based upon full conformance.

Mr. Borden stated the process will need to be dovetailed with a grant process where conformance requirements would be tied to grant funding agreements, and he reminded that growth is discretionary and will only occur if it is consistent with resources. Ms. Letts noted the Council should establish thresholds for various functions. Mr. Balzano said the grants will vary due to degree of complexity of necessary updates. Ms. Letts asked when the Council would decide what amounts would be allocated for various functions. Mr. Borden advised that grants would be based on categories and the Council by resolution will consider and approve grant applications as they are received.

Mr. Borden advised that there will be various mechanisms for public input throughout the process. A municipality may submit a resolution if it seeks to conform which will provide opportunities for governing bodies to take action. Ms. Carluccio commended staff for its effort with this guidance piece and noted that it was very well put together and clearly demonstrates that many details are needed through public input.

Mr. Borden stated that the Council may consider forming an additional committee to focus on plan conformance. Such a committee would provide an additional opportunity for the public review process with municipalities and counties.

Mr. Borden noted that public hearings would occur through the Open Public Meeting Act under the MLUL as towns update their master plans and ordinances. Mr. Borden advised that more work would need to be done to further refine public notice practices, possibly through interaction on the website or through the Council office.

Mr. Borden reported that a requirement of the Act is to adopt a schedule for conformance, the first schedule focusing on the Preservation Area. This schedule could be adopted concurrent with adoption of the RMP to identify which towns and counties are to be prioritized. He outlined the criteria that would guide the schedule and submission process as well as prioritization methods.

Mr. Borden noted that conformance will very much be guided by the ability of a municipality or county to obtain statutory benefits. Planning grants that are available will be a fundamental aspect of conformance and also the availability of technical assistance. State aid will also be gained through agencies such as the Department of Community Affairs and the State Infrastructure Trust Fund. The Council will take action to promote interaction between state agencies and will identify issues at both municipal and county levels that need resolution. Dependent upon the issue it could be transportation, COAH or DEP, where reconciliation with the goals of the Highlands Council will need to be addressed and facilitated.

Mr. Borden next pointed to the voluntary municipal conformance in the Planning Area section of the Policy Guidance Document. He noted the process is outlined therein for municipalities wishing to achieve conformance expeditiously through adoption of a non-binding municipal resolution stating that it has an interest in conformance. This action would enable the Council to include it in the conformance schedule. Ms. Letts asked whether planning boards would be included in the process before a municipality adopts a resolution, because it is the governing body that would adopt the resolution. Mr. Borden advised that factor has to be considered by the municipality, but a possible solution is that the resolution should identify whether the Notice of Interest has planning board support.

Ms. Pasquarelli thought this was not necessarily an immediate consideration and ultimately lies up to the town, and also noted that the 60 day requirement contained in section (b) on page 7 may not be an adequate amount of time for preservation area towns to submit a Notice of Interest for conformance.

Ms. Pasquarelli stated that she also wanted the Council and staff to recognize and consider the need for a process in the instance where a town later changes its mind and perhaps decides it is no longer interested. Mr. Borden stated that the process to do so would come through addressing it in the schedule and provide flexibility through updating the schedule.

Ms. Letts said the possibility could exist where a town may apply and receive planning grants initially and ultimately spend the funding, but not conform. Mr. Di Pirro stated that as long as actions are made in good faith toward conformance, the Council would not ask for funding to be returned.

Mr. Borden advised that the next section identified Highlands Council deliverables for a municipality or a county after it submits a Notice of Interest to be provided at the Highlands Overview Meeting. This provides an opportunity for the municipality to meet and discuss any issues and questions it has inviting any professionals they wish to attend.

Mr. Borden stated that the Municipal Assessment is an optional review by the town to address all plan endorsement guidelines to define the planning direction of that town or county.

Mr. Borden noted that page 9 lists the documents required for the Petition for Plan Conformance. He advised that the conformance process is iterative and noted that the issues and required actions to be taken during that process are outlined to include:

1. a Highlands Build-out Analysis;
2. a Highlands Infrastructure Capacity Analysis;
3. a Highlands Resource Inventory;
4. a Master Plan, including:

- i) Statement of objectives, principles, assumptions, policies and standards;
  - ii) Land Use Plan Element;
  - iii) Conservation Plan Element;
  - iv) Housing Plan Element;
  - v) Circulation Plan Element;
  - vi) a Utility Service Plan Element;
  - vii) a Recreation and Open Space Plan Element;
  - viii) a Historic and Cultural Preservation Plan Element;
  - ix) a Farmland Preservation Plan Element;
  - x) a Community Facility Plan Element; and xi) Economic Plan Element
- 5. an Official Map
  - 6. a Zoning Schedule and Zoning Map
  - 7. Development Regulations;
  - 8. Specific Policy Statements

Mr. Borden noted that number 3 above would be a baseline resource inventory and a key component of plan conformance. He advised that there are also a number of discretionary documents that may be submitted for consideration during Plan Conformance including: a Recycling Plan Element, a Development Transfer Plan Element, a Capital Improvement Program, Long-term capital programs of the local and/or regional school districts, and a listing of priority projects. Mr. Borden stated that the next section recognized that certain issues may be identified by municipalities that need to be revised first.

Ms. Pasquarelli asked if the discretionary items identified were requirements currently defined under the MLUL. Mr. Borden said that he knew the first two items to be required, and that he would research whether the other two items were also required pursuant to the MLUL.

Mr. Borden advised that the next section identified the process for a municipality to request Initial Revisions. He stated the key issue being proposed is that the Council provide and issue a Consistency Statement, similar to what the Pinelands does to identify issues in the master plan that may be problematic at the local or county level. This provides the opportunity for the Council to identify those issues, and contains a checklist.

Mr. Borden noted that this type of review for example would prevent any instances where a municipality in the preservation area may allow development applications to proceed in light of the fact that existing sewer lines were not already in place, and the expenditure of considerable public funds for planning board functions to review developments that will ultimately not occur.

Mr. Borden stated that the 17 exemptions in the Act as to the Preservation Area are presently being processed by the DEP and will continue to be reviewed by the Department. As municipalities begin conformance in the Planning Areas, it should be noted that those 17 Preservation Area exemptions also apply, and therefore the Highlands Council will also need to issue exemption determinations for the planning areas in conformance.

Mr. Borden stated that as municipalities submit petitions that property owners in the Planning Area will submit exemption requests to the Council. If the property is in a constrained area the owner may want to

take action and sell their property therefore the Council will need a process to issue exemption determinations.

Ms. Pasquarelli asked about the existing 17 exemptions, and how they apply to the Planning Area since those regulations are in place for the Preservation Area and are not part of the RMP.

Mr. Borden noted that the LUCM will create a layer of constraints in the Planning Area which will identify key forest, agricultural and natural resources, etc. He stated that in order to conform a municipality will also update its master plan and ordinances to be consistent with the RMP, it will become clear relatively quickly whether a property will be impacted or not if a town conforms and a process has to be in place to handle exemption requests.

Mr. Borden notified that he had been in contact with the DEP and learned that it has received 590 applications for Highlands Applicability Determinations of which 15 to 20 were applications for permits. He noted that the exemptions will drive the issue.

Ms. Pasquarelli asked what could occur for property owners in the period between the municipality's Notice of Intent, and Plan Conformance is achieved. Mr. Borden stated that a detailed ordinance regarding water availability will take considerable time to complete, and this process envisions a consistency statement process to act as an ability to inform local decision making until such time that all plan elements are in place. For example, Mr. Borden noted that buffers can quickly be implemented into ordinance provisions, however detailed analyses for water availability ordinances will require more examination and study.

Ms. Pasquarelli asked at what point the legal shield and its benefits would kick in. Mr. Borden said that the legal shield will apply according to when the municipal checklist ordinance is adopted and the Council deems it consistent with the RMP. Ms. Letts thought the stages of protections and benefits should be outlined clearly in the plan because it will take time for municipalities to address all the elements.

Mr. Di Pirro stated that the conformance section of the Policy Guidance Document will provide guidance and a framework to include more specifics and also provide clarity at the time the draft plan is adopted.

Ms. Carluccio stated that development applications that are eligible for exemptions it may discourage towns from conforming. Mr. Alstede asked what portion of the 500 exemptions issued to date by the DEP were exempt, and Mr. Borden said it was 314 and that it takes the Department 3 months to make that determination. Mr. Alstede said that he would like the Council to implement a swifter process to determine straight forward exemptions.

Mr. Borden stated that if exemptions are determined to be appropriate for issue by the municipality, then they would issue with a review by the Council. Mr. Di Pirro noted that there are overlapping jurisdictions with DEP who has regulatory jurisdiction through the framework of the Act over the Preservation Area, and the Council has jurisdiction over both the Preservation and Planning Areas through the adoption of the RMP.

Mr. Borden advised that the Council receives copies of all exemptions issued by the DEP and further stated that where municipalities are well versed in all the issues it will afford for a more expeditious process if they issue exemptions at the local level.

Mr. Borden said the next section identified the need for Municipal Plan Conformance Guidance Manuals including model ordinances and the public comment and hearing process will be conducted for all these types of documents.

Ms. Carluccio asked that the conservation restriction mentioned under the TDR model that needs to be developed, should also be listed in the section. Mr. Borden advised that the key issues upon receipt of a petition will be added to the Council's website as soon as possible and utilize that ability to update petitions.

Mr. Borden noted that a process to conduct a review for petition completeness is also outlined, and if the petition is deemed complete the Executive Director is authorized to report to the Plan Conformance committee to make recommendations. All key issues are also outlined as to incomplete petitions which require additional materials. Mr. Borden identified all the elements and procedure for recommendations to the Council in considering approval of conformance.

Mr. Borden stated the next section addressed the issues of benefits for conformance and lists what grants and tasks would take place as to the schedule. He also noted that coordination elements with the State Planning Commission are also outlined in the section.

Mr. Borden stated that a hearing process would be conducted after a final report from either the Committee or from the Executive Director in some cases, for petitions to be heard. Mr. Borden stated this would be when the 60 day clock under the Highlands Act begins, which is after the Council has received a complete report with recommendations and a schedule established in advance, including notice to the public and concerned landowners.

Mr. Schrier questioned whether there was a penalty imposed under the Act in the event the Council finds it needs more time than 60 days to review a petition, and Mr. Borden noted that the statute does not include a penalty. He stated that the 60 days would not commence until the petition package is in a complete form as approved by the Executive Director or Plan Conformance Committee and presented to the Council for consideration.

Ms. Carluccio asked as to when an approval is granted with conditions, whether there was a time limit for the conditions being satisfied. Mr. Borden stated that the implementation schedule would identify a conceptual timeline and the approval itself would specify when conditions need to be met.

Mr. Borden advised that the public hearing on petitions sets the notice process in motion. Part of the Council's review process as dictated by the Highlands Act requires the Council to review the report and identify what changes are necessary in a master plan or development regulations as a condition to approval.

Mr. Borden stated that the next section identifies the effect of failure by Preservation Area towns to obtain plan conformance approval. The Council has authority under the Act to be the land use entity when a

town refuses to conform. Ms. Pasquarelli asked how the Council would enforce conformance. Mr. Di Pirro stated that there is a provision in the Act to address the unlikely situation of refusals to comply with state the mandate, and the Council has the ultimate ability to assume all the authority including enforcement and stop work notices.

Ms. Pasquarelli said in setting up guidelines, the Council needs to understand fully all the ramifications. Mr. Di Pirro stated the Council has the ability to initiate lawsuits to require that they follow the mandates of the Act and the court could ultimately issue an injunction. Ms. Carluccio asked whether the Council would create an enforcement office, and Mr. Borden stated that the Council could create its own enforcement mechanisms for the Planning Area as well as additional measures to work with the DEP in the Preservation Area as to enforcement.

Mr. Borden advised that the next section addresses the timeframe for conformance and amendments to both the RMP and the municipal master plans. It is recommended that the reexamination and updates of both plans be conducted simultaneously.

Mr. Borden stated that the last section addresses the authority given by the Act for the Council to decide to revoke conformance as a last resort action.

Ms. Carluccio noted regarding the portion which states that the Executive Director states when an amendment is complete, where does the Council become engaged and be given the opportunity to disagree. Mr. Borden stated that opportunity would be incorporated into the process when presented to the Council for review.

Mr. Weingart asked what would occur regarding a municipal certification if the Council makes changes to the RMP and what level those changes require municipal master plan changes. Mr. Borden stated that when the Council updates or changes the RMP at that time it would identify a process for updating municipal and county documents. It would issue a schedule outlining whether changes are substantial or minor.

Ms. Letts stated once a town is in conformance they are obligated to update their master plans based upon the Council's changes. Mr. Borden stated the statute allows a Planning Area to reconsider at the reexamination date.

Mr. Weingart noted that there were two items left on the meeting agenda, the public availability session and Executive Session. Mr. Borden advised that the issues for the Executive Session were not necessarily time sensitive and could be tabled until the next meeting when more members are present. Mr. Weingart then asked if there was a motion to adjourn in order to conduct the public availability session.

**ADJOURN:**

Ms. Carluccio made a motion to adjourn, Mr. Alstede seconded, all were in favor and the meeting adjourned at 6:55 p.m.

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



Dated: November 20, 2006

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John Weingart, Chairman