



JON S. CORZINE
Governor

State of New Jersey
Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

MEETING AGENDA

Thursday, August 16, 2007 - 4:00 p.m.

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – July 12, 2007
6. CHAIRMAN’S REPORT (and Council Member Reports)
7. COMMITTEE REPORTS
 - a. Personnel Committee - Chairman Weingart
 - b. Budget and Finance Committee - Council Member Pasquarelli
8. EXECUTIVE SESSION
 - a. Personnel Matters
 - b. Litigation – OFP v. State of New Jersey, Daughters of Divine Charity v. State of New Jersey
9. CONSIDERATION OF PROPOSED AMENDMENT TO THE HIGHLANDS COUNCIL BY LAWS (voting matter with public comment)
10. EXECUTIVE DIRECTOR’S REPORT
11. REPORT ON DEVELOPMENT OF THE REGIONAL MASTER PLAN
12. PUBLIC COMMENTS
13. ADJOURN

NEW JERSEY HIGHLANDS WATER PROTECTION
AND PLANNING COUNCIL
MINUTES OF THE MEETING OF AUGUST 16, 2007

PRESENT

JOHN WEINGART) CHAIRMAN

KURT ALSTEDE)
TRACY CARLUCCIO) COUNCIL MEMBERS
BILL COGGER)
JANICE KOVACH)
MIMI LETTS)
ERIK PETERSON)
JACK SCHRIER)
GLEN VETRANO)
TAHESHA WAY)
SCOTT WHITENACK)

VIA TELECONFERENCE

DEBBIE PASQUARELLI)

ABSENT

ELIZABETH CALABRESE)
TIM DILLINGHAM)

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 52nd meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:06 pm.

ROLL CALL

The members of the Council introduced themselves.

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 or circulation throughout the State and posted on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF JULY 12, 2007

Mr. Schrier introduced a motion to approve the minutes. Ms. Way seconded it. The Council members had no changes. The minutes were approved as amended by the Council to address concerns raised by the public. Mr. Drysdale's letter of May 10, 2007 will be included to ensure that his comments are fully captured. There were three abstentions: Ms.

Pasquarelli, Ms. Kovach, and Mr. Vetrano. The remaining members present voted to approve.

CHAIRMAN'S REPORT

Mr. Weingart announced that he was changing the order of the Agenda. Items # 8 & 9, Executive session to discuss Litigation and personnel (if necessary) and proposed amendment to By-laws, will follow #12, Public Comments.

He also mentioned that as a result of Mr. Siemon's presentation, meeting dates would be changed and those changes will be posted on the website.

Mr. Weingart described a letter that he was sending to Governor Corzine at the suggestion of Kurt Alstede. The letter advocates that the legislature extend the use of the current appraisal methodology (using 2 appraisals) beyond the 2009 deadline in the Highlands Act. This is a previous position that the Council has taken. Mr. Weingart expressed the Council's view that not extending the existing appraisal methodology was a potential deterrent to landowners wanting to preserve their land. Mr. Alstede commented that the threat was already becoming real as the SADC had already taken the position that they were not accepting any new applications because of not being able to meet the deadline for submittal of appraisals. Mr. Weingart added that this is the only legislative amendment to the Highlands Act that the Council has endorsed.

There were no other comments.

COMMITTEE REPORTS

Mr. Weingart said that there had been two committees that had met since the last Council meeting. Personnel and Budget and Finance.

Mr. Weingart gave the **Personnel Committee Report**. There have been two recent meetings, one after the July 12 Council Meeting and the other before the August 16th. The Committee 1) discussed the process that the Executive Director has put in place for performance assessment of the staff including herself to review performance and look at opportunities for improvement; 2) agreed to support the proposed FY'08 Staffing budget; 3) and expressed support for filling the remaining FTE positions as quickly as possible.

Ms. Pasquarelli asked Tom Borden to give the **Budget and Finance Committee Report**. Mr. Borden reported that the committee had met on August 8. The following issues were discussed:

- 1) Fiscal '07 Budget versus Actual;
- 2) Report of General Operating and RMP budgets. The General Operating budget had a surplus of over \$300,000 going into FY'08;
- 3) Staff is in the process of completing the FY'08 budget for Committee review and there will be a new budget created for grants as we move to the conformance process;
- 4) There will be a meeting in early September to finalize the FY'08 budgets;
- 5) There was a Request for Qualifications for part-time professional services to provide support to the Council and it is posted on the website.

There were no additional comments or questions.

EXECUTIVE DIRECTOR'S REPORT

The major focus of the work has been the preparation for the final master plan and working with Charlie Siemon. Because of the Presentation from Charlie Siemon, Ms. Swan abbreviated her report that was included as part of the meeting packet. She welcomed new staff members, Dan Van Abs as Senior Director of Planning and Science and Emery Coppola as a part-time scientist. Ms. Swan reviewed the extensive and relevant background of each new staff member. She noted that staff had held numerous meetings since the last Council meeting:

Municipal and County Outreach meetings: July 10-Clinton Township, July 20-Highlands County Planners, July 24th-Hackettstown, July 20-Highlands Raritan Compact;

State and Federal Agency Coordination: July 31-NJ Water Supply Authority; August 2-Department of Agriculture and SADC

Stakeholder Coordination:

July 23 - NJ Highlands Coalition

Upcoming Meetings

July 31 - USGS

August 17 – Smart Growth Policy Team

August 21 – NJ Highlands Coalition

August 22 – Hardyston Twp

August 23 – West Milford & NJDEP

She also commented that the Governor had signed new legislation A-4345 and S-2753 that pertained to NJEIT and said that we would be working to ensure funding for programs in the Highlands Redevelopment areas and should advocate for incentives like the NJEIT use of funding for land acquisition related to water quality and quantity protection. The rate for loans that qualify as “smart growth” is ¼ of the prevailing rate.

She concluded her remarks to move to the major focus – Mr. Siemon’s presentation and introduced the entire staff who attended the meeting saying that they are an incredibly professional staff working with commitment to achieve the mandates of the Highlands law. She introduced Siemon and Larsen as a nationally acclaimed firm and described the roundtable format meetings that have been occurring with staff to move recommendations for final plan to the Council for their direction. Lane Kendrick of Kendig Keast is working as a subcontractor to Siemon and Larsen. She introduced Mr. Siemon.

Mr. Siemon’s presentation:

Mr. Siemon described the process as Council and staff move forward. The process would be to present recommendations to the Council for the next generation of the plan, which has been informed by Public Comment, and seek the Council’s approval.

He commented that with his extensive experience and Lane Kendrick’s experience, they do not need to “reinvent the wheel” but will offer programs for consideration that have already been proven effective, these programs will be tailored to meet the needs of the Highlands. This is his fourth trip to Chester since June 24th. Mr. Siemon outlined the approach taken to date of reading the plan, technical support papers and the statute once again, developing **questions and understanding issues and plan and LUCM development** from the staff. He

expressed that he was impressed with the active participation of staff and that the participation had been a big time saver for him. He commended the staff for explaining the issues to him and running different versions of the map to assist him.

He explained that he had asked staff for a detailed assessment of what needed to be addressed in the preparation of the final plan and in response to comments received. On his 2nd trip there had been a two week period of analysis of what needed to be done and the timeline to achieve that. As a result, Mr. Siemon has worked on a Proposed Table of Contents that is differs from that used in the draft RMP. He commented that the LUCM was very important and that he had taken the plan and the mapping apart and put it back together in a different order. He thought that he had come out with a better understanding of what was explicit and implicit in the draft RMP.

He proposed a revised Table of Contents including:

- Data and Analysis
- Existing and future regional and community character
- Goals, Policies and Objective
- Programs
- Implementation

He discussed several additional considerations for inclusion in the next generation of the plan and the LUCM but that though the Goals, Policies, and Objectives section needed a hard editing it was in reasonably good shape. He went on to say that there were programs in the Pre-Conformance activities that needed to be completed. The staff had done an analysis and come to the conclusion that they could deliver the work product for final plan by mid November.

Ms. Swan and Siemon suggested a series of workshops, where instead of voting on individual issues the Council would be asked to consider the approach being recommended by staff and Siemon/Larson and give direction as to continuing work. As a result of those workshops, the staff would be responsive to Council direction. The proposed tentative schedule which could be revised as needed was:

September 6 – Discussion of Policy Choices

September 20 – Discussion of Vision (He commented that the plan lacked a synthesis – vision of what the existing character was and its diversity) He will include a clear articulation of resource assessment.

October 4 – Discussion of Goals, Policies, Objectives

October 18 – Ongoing matters

November 1 – Discussion of Lands Model not new LUCM but some illustrations

November 8 – Discussion of Programs and Implementation – Every goal, policy and objective should have a program.

November 19 – Release of Master Plan for Public Comment

December 13 – Council meeting including a Public Hearing on the revised draft Master Plan

December 17 – End of Public Comment Period

January 31 – Highlands Council consideration of adoption of Regional Master Plan

Mr. Weingart added that there would be not be public comment during the workshop portion of the sessions but public comment would be taken at the end of the meeting.. If there were other matters that were being voted on, as always the Council would welcome public comment before voting.

Mr. Schrier said he had tremendous respect for Mr. Siemon and his work, but he had heard schedules in the past and asked what was different now. Mr. Siemon said that his 32 years and Lane Kendrick's 34 years of experience in doing these kinds of projects gave them the experience needed to assist in completing the project. He also said that he was putting his professional reputation on the line to complete this project and that he and his partner Wendy Larsen were proud of the work in New Jersey that they had been involved with – State Plan and Pinelands. He commented that his group had a good track record at “bringing it home”. He also said that he had a remarkable working relationship with Ms. Swan and that the staff had made progress. He had asked them what they could do to deliver a competent plan and within a timeline and the staff had responded.

Mr. Weingart noted that this approach was different from what had been done with the draft plan. Ms. Carluccio asked if Mr. Siemon would attend each Council meeting and he said he was planning on it. Mr. Siemon also commented that the science that had been assembled was excellent work but that some things that were implicit had to be explicit.

Ms. Carluccio commented that she liked the organization of the material and asked how the staff would obtain Council comments. Ms. Swan responded that Council members could email her or phone and that she would be the conduit and would make sure that Council members questions/concerns were responded to. Mr. Weingart said that there might be additional meetings. Mr. Siemon also remarked that Mr. Kendrick would play an active role in the programs presentation.

Mr. Schrier asked what Mr. Siemon was referring to when he commented that there was no need to “reinvent the wheel”. Mr. Siemon responded that both firms have worked on projects that included, for example, clustering in agricultural areas, actually on 4 occasions. In those projects, model ordinances were used and he was recommending that those types of examples might be included in the appendices of the final plan. Ms. Pasquarelli asked for clarification having trouble hearing and Mr. Siemon again responded. Mr. Vetrano asked if Mr. Siemon had reviewed the public comments. Mr. Siemon said he was working through those comments and that they continued to be condensed.

Ms. Swan said that the working draft table of contents would be given to Council today and Ms. Letts said there were a lot of comments that needed to be addressed for example, the Lake communities and other “purple” sections.

Ms. Pasquarelli apologized for not meeting Mr. Siemon in person, but asked him to clarify the comments about the LUCM. He said that the original LUCM had not had the capability to be digitally manipulated, but it was now converted to digital form with varying degrees of analysis available. Ms. Letts asked if this change would make the GIS more user friendly to the municipalities and counties and Roger Keren, Director of GIS, answered yes. Ms.

Paquarelli questioned how to achieve unanimity for final adoption of the plan without voting on issues as the process went along. Mr. Siemon responded that in his experience, during the plan preparation process, he had been successful in getting a sense of where the Council was going. He went on to say that as the pieces of the plan are formed, there is a "hue and character" that develop – the ultimate resolution being made when the whole plan is finished. If we come to a point where we need additional clarification, we will ask for another meeting to address it. Mr. Weingart commented that the Plan Development Committee would not play a role as the whole Council would be making these decisions. He also said that it was not necessary to have unanimity on every issue and that there would be many opportunities to make amendments. Ms. Letts commented that the more words removed from the plan, the better in order to make it more user friendly. Mr. Weingart thanked Mr. Siemon.

Public Comment

Hal Danielson, Hampton, New Jersey

Mr. Danielson gave his environmental background and spoke about his personal situation with a proposed subdivision from 1989 in the Borough of Hampton. He described his frustration over the Highlands Act and its effect on his property. Mr. Weingart asked if he had spoken to any members of the staff. He had not. He gave his contact information to a staff member.

Andrea Najduch, Independence Township, NJ

She came before the Highlands Council last month and submitted a report for public comment on the Liberty Square project. She expressed concern as to whether the project had met the August 10 deadline. She was asked to contact DEP directly.

Hank Klumpp, Tewksbury Township

Mr. Klumpp submitted a written statement and asked why scientific data is still being collected. He discussed the issue of equity and how much a farmer depends on it. He offered to answer any questions that the Council had and expressed concern that his questions had not been answered with respect to why his property was in the preservation area.

Wilma Frey, New Jersey Conservation Foundation

She asked whether the documents provided to the Council for the upcoming meeting would be provided in advance of the meetings. Ms. Swan informed her that the documents will be made available at each meeting.

Robin O'Hearn, Skylines Clean

She commented about a project in West Milford that had an approval that expired in July – Green Valley Estates and brought the matter to the Council's attention.

Julia Somers, NJ Highlands Coalition

She was pleased with Mr. Siemon's comments and excited about the future. She agreed with Ms. Frey about getting documents ahead of meetings and also expressed concern about continuing to allow the public to comment at the work sessions

David Shope, Lebanon Township

Mr. Shope quoted several articles including one from ANJEC that Mr. Siemon had contributed to. He submitted all the articles in writing for the record.

Andrew Drysdale, Chester

Mr. Drysdale read his letter about concerns about the Highlands Act and the Council's work. The letter was submitted for public comment as was a letter that his wife wrote. Both were submitted in writing for the record.

Bill O'Hearn, NY/NJ Trail Assoc.

He would like the Council to support obtaining Federal money for purchases in the Highlands and he highlighted a \$4 million purchase on Westbrook Mountain.

Helen Heinrich, NJ Farm Bureau

She said that the reformatting was welcoming and she would be interested to see how the layers of the map will work. She is concerned about land owner equity and said there had been no feedback on the comments submitted. Ms. Pasquarelli commented that no one has any feedback on the comments received as yet. Ms. Heinrich commented that the NJ Farm Bureau and the Department of Agriculture have been trying to be partners from the beginning.

Monique Purcell, Department of Agriculture

She thought the strategy for finishing the plan was good. She asked whether the Natural Resources and TDR committees would be meeting. Mr. Weingart said they would be meeting. She also questioned whether State agencies would be involved and Ms. Swan commented that they would continue to be involved in the ongoing outreach process.

Mr. Weingart requested a motion to go into Executive Session which was offered by Mr. Schrier and seconded by Mr. Cogger. There was a short break and then the Executive Session was held.

Mr. Vetrano introduced a motion to go back to public session and Ms. Kovach seconded it at 6:20 pm.

Mr. Borden summarized the discussion with respect to the litigation with Daughters of Divine Charity. Mr. Peterson introduced a motion on behalf of the Highlands Council to authorize the Attorney General's office to resolve the matter on behalf of the Highlands Council. Mr. Vetrano seconded it. All members present and Ms. Pasquarelli via teleconference voted in favor.

CONSIDERATION OF RESOLUTION TO AMEND THE BY-LAWS OF THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

Mr. Cogger introduced a motion to accept the amendments as proposed. Ms. Kovach seconded the motion. Ms. Pasquarelli expressed concern about not being present to give her views on the amendments, particularly with respect to the Executive Director's authority on personnel issues. She asked that the discussion be tabled to give her further time to review and until she could be present in person. She expressed the view that the Council needed to retain authority over all personnel decisions. Mr. Weingart answered that in his experience as an Assistant Commissioner of DEP, Executive Director of one State commission and Chair

of another and looking at other commissions around the state, that the most common practice was for the Executive Director to be given full authority to make personnel decisions. He found it difficult to imagine how involvement of the Council members would facilitate those decisions and concluded that the Council would be best served with the Executive Director having that responsibility.

Mr. Schrier said that if there was not clear agreement that he would agree to further discuss this matter, but if not, the matter should go forward. A roll call vote was called by the Chair. The vote was: Alstede, aye; Carluccio, aye; Cogger, aye; Kovach, aye; Lets, aye; Pasquarelli (via teleconference) nay; Peterson, aye; Schrier, aye; Vetrano, aye; Way, aye; Whitenack, aye; Weingart, aye. The motion passed 11-1 votes.


The proposed schedule was discussed and Mr. Alstede felt that the November 16 date was difficult. The staff will reach out to find out if November 19 would be better for members. Mr. Siemon said that the packages of materials for the September 6 meeting might be one week before to allow for meetings with DEP that would inform decisions, but in general, the packages would be distributed 10 days before meetings.

Mr. Weingart announced the next meeting would be September 6 at 10 am. Mr. Schrier introduced a motion to adjourn and Mr. Vetrano seconded it. The meeting was adjourned at 6:40 pm.

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.

Dated: 8/31/07


Paula M. Dees, Executive Assistant

TRUE COPY

PUBLIC COMMENTS SUBMITTED

①

Why, after 3 years and the Highlands Act carelessly signed, would a council be trying to collect scientific data NOW?? I still want to see the scientific data that put my property into the Highlands Preservation Area and have concluded- after everyone I've spoken with- that there is none - and never was any.

Trenton politicians want to preserve my land but they don't want to pay me what it is worth. Equity - farmers rely on it. When it is gone, a farmer's future is in total jeopardy. Farmers depend on equity - for survival.

2
When real-estate value on land is taken away - banks turn their backs.

I've been told that Trenton would compensate landowners because the Highlands Act would never hurt anyone. How can anyone of sound mind expect property owners to accept pennies on the dollar now that our property values have been stolen and then unrealistic environmental restrictions added - by people in charge of making major decisions for our property - but having nothing to lose themselves.

Do any of you on the council know how it feels to be robbed?

3

As a farmer, with 150 acres in the Highlands Preservation, I'm being told that I can build one additional house on it. I have 9 grandchildren. As unjust as it is — tell me that only one house can be built on the family farm — but please — compensate me with the value of my land so I can help my other eight grandchildren build a house somewhere else one day. Trenton wants my property — they can't afford to pay for it — so they are taking its value from me — and asking you to justify the theft.

4
The only fair ending to this whole fiasco is that farmers are fully compensated and suffer no financial loss. What part of that fair conclusion does the council and environmentalists not understand?

Comments submitted at Highlands Council
Meeting of August 16, 2007 by Hank Klumpp.
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Hank Klumpp
24 Longview Road
Lebanon, N.J. 08833

Comment to the Highlands Council

Comments submitted at Highlands Council
Meeting of August 16, 2007 by Andrea Najduch.
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On August 16, 2007
By Andrea Najduch
27 Mt. Rascal Road
Cockettstown, NJ 07840
(908) 852-1202

I came before you last month to bring your attention to the Liberty Square Development in Independence Township. This 8.9 acre parcel is in the Highlands Preservation Area. At that time their application for an exemption was before you and the NJDEP Bureau of Watershed Management. I felt it necessary to bring your attention to the critical nature and details of this exemption application. During the Public Comment Period, we submitted a very thorough report to you and the NJDEP expressing our concerns with the application. Unfortunately, on July 26 just four working days after public comment *ended* Liberty Square was granted an exemption. How could this happen! This application to date has no viable stormwater management system. It has a disapproval from Warren County Planning Board stating 78 reasons for denial. No revised plans have been submitted to Independence Township and none of the many many conditions of approval have been met. This project sits on the HMUA wellhead protection area. The site, with greater than 30 ~~degrees~~ ^{percent} slopes, has Karst Geology and sinkholes posing a threat to HMUA well system. There is to date no letter from HMUA granting a service commitment to the project. The single page plan on record with Warren County Soil Conservation shows drainage pipes funneling water onto county roads and to downstream properties, which is prohibited by Warren County. Why was this not looked at closer? Is this not exactly what the Highlands Legislation was designed to protect? Why did no one demand accountability for a workable stormwater plan? How could an exemption be given based on a conditional approval?

On July 26 and the week following, the 8.9 acre heavily wooded, deeply forested lot was stripped to bare ground. What will now absorb the water? How severe will the flooding be to the neighborhood downstream? Independence Township gave them a building permit with out meeting any of the conditions of approval. Under the guise of building "only a retaining wall", to beat the August 10th, they managed to rape the entire site. Much of their time and resources each day was spent striping the land bare. Why was this allowed?

Did anyone on this Council even look at the application for exemption? Did anyone on this Council read the public comments supplied in opposition to the application for exemption. I don't know as of yet whether they made the Aug. 10th deadline. There was approximately 30 feet of base course of retaining wall in place on Friday the 10th of August. They continued to work on site that weekend and are still working to date. Independence Township believes they can restore this 8.9 acre site using the \$25,000 bond they required for the issuance of the permit. When we questioned the activity we were told they are doing "site prep". How can you do such extensive "site prep" without approved plans. How ridiculous is that? How do you possibly restore the damage? As of today excavation is continuing.

I might note that two years ago the developer's attorney approached our attorney after a public meeting on this application in Independence Township. He told our attorney to tell us that we were going nowhere with our efforts, because this project was going through despite our objections. He stated that his firm represented people in high places, in New Jersey Government. We did not believe that to be possible, but we are learning that it is.

Comments submitted at Highlands Council
Meeting of August 16, 2007 by Andrea Najdich.
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If possible may I request, that we be notified
if Liberty Square made the Aug 10 deadline
~~for the start of building.~~ They are still doing
extensive excavating on this parcel

Submitted
by
David Shope

The Taking Issue: Redux

by Charles L. Siemon, Esq.

Comments submitted at Highlands Council Meeting of August 16, 2007 by David Shope.
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The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.

— Supreme Court Justice Oliver Wendell Holmes

ANJEC regularly receives calls requesting information and advice to deal with claims that certain actions, ordinances or regulations constitute an unconstitutional taking of private property and therefore should not take place. To help our readers gain a better understanding of the issue, nationally recognized land use expert Charles Siemon explains the current state of takings law, with summaries of the major cases, including a 2002 Supreme Court decision which has some interesting implications. A partner in Siemon & Larsen, a land planning and planning law firm based in Boca Raton, Florida, Mr. Siemon has been active in New Jersey for more than 20 years. He wrote the Pinelands Comprehensive Management Plan and played an essential role in developing the original 1992 NJ State Development and Redevelopment Plan.

The so-called "taking issue" dominated the law of resource planning and management in the last half of the 20th century. As Charles Haar notes in his classic text on land use, the taking issue is "the most haunting jurisprudential problem in the field of contemporary land-use law...one that may be the lawyer's equivalent of the physicist's hunt for the quark." In the 1960s, the tension between public and private expectations about the use of property was strained by the increase in the scope and reach of planning and environ-

Note: Quotes are from the relevant U.S. Supreme Court decisions. For a copy with annotated references, check out ANJEC's Smart Growth Survival Kit at www.anjec.org or contact us at 973-539-7547.

mental regulations. How far could the government go to protect the public health, safety and welfare? And if the government went too far, what relief would be available?

Contemporary takings jurisprudence first came to a head in *Penn Central Transportation Co. v. City of New York* in 1978. In our 1985 book, *The Zoning Game Revisited*, attorney Richard Babcock and I analyzed the issues that the Supreme Court dealt with in this landmark case. *Penn Central* involved the denial of permission to construct a skyscraper above the Grand Central Station terminal, based on a finding that the tower would "overwhelm the Terminal by its sheer mass," making the landmark an "aesthetic joke."

Penn Central presented the Supreme Court with the issue of whether historic landmark restrictions were unconstitutional. Although many observers questioned whether development restrictions on particular structures for aesthetic considerations would survive constitutional

The crux of the takings inquiry is "the character of the action and...the nature and extent of the interference with rights in the parcel as a whole."

scrutiny, the Supreme Court had little trouble upholding the regulations – and in finding that no taking had occurred. Whether a restriction would "be rendered invalid by the Government's failure to pay for any losses proximately caused by it depends largely upon the particular

circumstances [of the] case." In that context, there is no "'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the Government, rather than remain disproportionately concentrated on a few persons." Nevertheless, the "economic impacts of the regulation on the claimant and ...the extent to which the regulation has interfered with distinct investment backed expectations," are "relevant considerations" in the "essentially *ad hoc*, factual inquiries" involved in regulatory takings cases.

The Court rejected the argument that the airspace over the terminal should be independently considered, and held that the crux of the takings inquiry is "the character of the action and...the nature and extent of the interference with rights in the parcel as a whole." The regulation under review contemplated the continuation of the existing use, and moreover, since the "appellants have not sought approval for the construction of a smaller structure, we do not know that appellants will be denied the use of any portion of the airspace...."

TDR's Can Help Mitigate Takings

Penn Central also addressed what was a novel concept at that time – transferrable development rights (TDR's). These rights, which were "made transferrable to [other] parcels ...may well have not constituted 'just compensation' if a 'taking' had occurred," yet they "mitigate whatever financial burdens the law has imposed on appellants and...are to be taken into account in considering the impact of regulation."

The Supreme Court's opinion in *Penn Central* did little to settle the "taking issue" debate. Property rights advocates viewed the opinion as confirming that a regulation that goes too far actually effects a taking – the legal equivalent of occupation. Police power hawks found comfort in the ambiguity of the Court's formulations, and in the recognition that transferable rights were at least relevant – if not important – to a takings inquiry.

The latter group was encouraged by the Court's decision in *Andrus v. Allard*. In this case, the Supreme Court rejected a takings claim arising out of the application of a federal law to prohibit the sale of ancient Native American artifacts made from long-dead but now-protected birds.

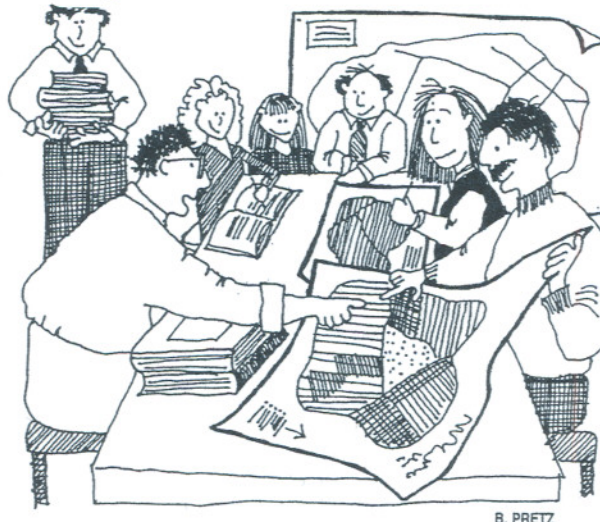
[T]he denial of one traditional property right [- here, to sell property -] does not always amount to a taking. At least where a property owner possesses a full "bundle" of property rights, the destruction of one "strand" of the bundle is not a taking, because the aggregate must be viewed in its entirety.

The opinion concluded, noting, "It is true that appellees must bear the costs of these regulations. But, within limits, that is a burden borne to secure 'the advantage of living and doing business in a civilized community.'"

More questions than answers

The Supreme Court accepted takings cases for review in 1980, 1981, 1985, and 1986, but for varying reasons found itself unable to reach the takings issue. It made up for lost time in a 1987 "trilogy" of takings cases.

On its facts, the first case, *Keystone*, was the "son" of the Supreme Court's 1922 decision in *Pennsylvania Coal v Mahon in 1922*, which held that a state law restricting coal mining was a taking of the company's property. Yet it had a different outcome – no taking – a result which puzzled many commentators. The second, *First English*, involved an outright, unqualified moratorium on the private use of private property, which the



Court held was a compensable taking. The third, *Nollan*, involved development exactions, which the Court held must bear a sufficient nexus to an identified adverse impact to avoid being a taking. To most commentators, the 1987 "takings trilogy" provided more questions than answers.

In the early 1990's, the Court recognized that a regulation that destroyed all economic value of property effected a taking, unless the only use for the property would have been a nuisance at common law. (*Lucas v South Carolina Coastal Council*) The Court also expanded on *Nollan*, holding that exactions must be "roughly proportional" to the impacts which justify them. (*Dolan v City of Tigard*) Taken together three decisions between 1997 and 2001, (*Suitum v. Tahoe Regional Planning Agency City of Monterrey v. Del Monte Dunes at Monterrey, Ltd.*, and *Palazzolo v. Rhode Island*) suggested a further, subtle shift in favor of private property rights. For example, *Palazzolo* acknowledged criticism of the *Penn Central* "parcel as a whole" rule, with which "we have at times expressed discomfort" – but left it for another day.

The role of land use planning

In the 2002 *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* case, two groups of property owners who were affected by two separate moratoria claimed (among other things) that the moratoria effected a temporary taking of

... economical use of their lots – equal to the categorical taking in *Lucas*. The Supreme Court granted *certiorari*, limited to "whether a moratorium on development imposed during the process of devising a comprehensive land-use plan constitutes a *per se* taking of property requiring compensation...."

Tahoe-Sierra distinguishes the "straightforward application of *per se* rules" governing physical occupations from the "essentially, *ad hoc*, factual inquiries" involving "careful examination and weighing of all the relevant circumstances," which guide

regulatory takings analysis. It also provides a modest ode to the importance of public resource planning and management: "Land-use regulations are ubiquitous...treating them all as *per se* takings would transform government regulation into a luxury few governments could afford."

Tahoe-Sierra reaffirms the "parcel as a whole" theory, or as the Court restated the principle, "the aggregate must be viewed in its entirety." After noting that "[a]nything less than a 'complete elimination of value'...would require the kind of analysis applied in *Penn Central*," the Court focused in on the question presented, observing that the District Court erred when it "disaggregated petitioners' property into temporal segments...and then analyzed whether [they] were deprived of all economically viable use during each period."

The "starting point" for the takings analysis should be the entire parcel.

Accordingly, the "starting point" for the takings analysis should be the entire parcel. "An interest in real property," the Court said, "is defined by metes and bounds [(geographic references)]..." and the temporal character ("term of years...of the owner's interest."). In a regulatory takings analysis, "[b]oth dimensions must be considered if the interest is to be viewed in its entirety."

Hence, a permanent deprivation of the owner's use of the entire area is a taking of "the parcel as a whole," whereas a temporary restriction that merely causes a diminution in value is not.


The Court extensively considered the "justice and fairness" of the challenged moratoria, and although noting that skepticism is appropriate for moratoria of greater than one year, the facts did not support a finding that "justice and fairness" required payment of just compensation for enduring the economic burdens of these moratoria.

The current state of takings law

So what does it all mean? First, it is clear that in the exceptional circumstance where a regulation permanently deprives a property owner of all use or value of his or her property, the regulation has effected a taking. Second, where the property owner is left with any use or value, when

A regulation can effect a taking, but only in very limited and exceptional circumstances.

analyzed in the context of the "parcel of a whole," a regulation will not be a taking unless the diminution exceeds reason - on the order of 75% to 95%. Third, temporary interruption in the use of property does not constitute a taking, so long as the property retains some economic value in the context of the time-value of money.

Despite the furor of the taking issue discussion, the risk of a court finding a taking has been much exaggerated, and the circumstances where a good faith regulatory action will actually effect a taking are few and far between and only involve "exceptional" circumstances - total destruction of value or use, or egregious, unjustifiable regulatory action directed at a limited number of property owners. In other words, the taking issue is now all but resolved - a regulation can effect a taking, but only in very limited and exceptional circumstances. 



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Thanks to

Coster Gerard and our 20 Trustees for adding \$7,000 to the S.H. Dudley Endowment Fund through a very successful 2002 Trustee Challenge. We are especially grateful to Coster Gerard for making Challenge Donations over the last four years. And thanks to our Board. Every single member contributed. We also greatly appreciate the contributions of six members of the ANJEC Advisory Board.

The people who made three of our wishes come true:

- Nelson Dittmar for a computer monitor
- Gary Szalc for a microwave oven for our Trenton office
- Tom Waldron for helping us with our mailings

Elaine H. Vellekamp for her donation in memory of Ronald Vellekamp, member of the Tenafly Environmental Commission.

HIGHVALLEYLIVE

BLOG: 5 STEPS TO BETTER BURGERS

Grilling season is here, and columnist Tony Lauroth, author of the "Bizarre Bazaar" blog, has five hints for perfecting your homemade burgers. Visit highvalleylive.com and search for the "Thrive" blog to read the tips.

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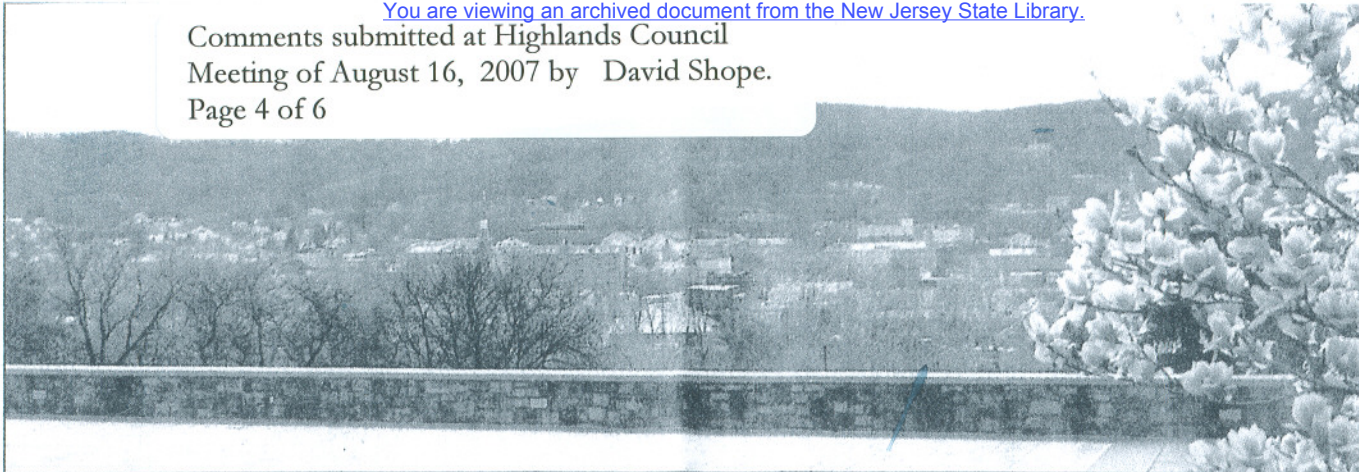
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- Local | B1 Scoreboard | C6
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Comments submitted at Highlands Council Meeting of August 16, 2007 by David Shope.
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EXPRESS-TIMES PHOTO | KELBY ANDERKO

A view of South Mountain in Bethlehem, part of the Highlands region that cuts through Pennsylvania. Efforts to preserve a 3-million-acre swath of land vary widely in the four states' spans.

Pa. quietly preserving pieces of the Highlands

CONSERVATION GROUPS, government team up.

BY PRECIOUS PETTY
The Express-Times

At the end of his first term, President Bush signed The Highlands Conservation Act and authorized the expenditure of \$110 million to preserve a system of forests, wetlands and waterways in

four states.

The area provides clean drinking water for more than 15 million people and is a habitat for thousands of plant and animal species, some of which aren't found anywhere else in the world.

Despite that, Congress is seemingly in no hurry to allocate the money — so far, only

| PLEASE SEE CONSERVE, A2



WHAT ARE THE HIGHLANDS?

More than three million acres of natural land.

■ Congress passed the Highlands Conservation Act in 2004 to provide federal assistance for Connecticut, New York, New Jersey and Pennsylvania.

■ This allows the states to acquire and permanently protect resources of high conservation value.

SOURCE: U.S. Department of Agriculture, Highlands Coalition

N.J. OK expected this fall

HIGHLANDS COUNCIL studies comments.

BY LYNN OLANOFF
The Express-Times

The plan governing land use in New Jersey's 860,000-acre Highlands region should be approved this fall, more than three years after state lawmakers passed an act intended to conserve the area's water supply.

A six-month public-comment period on the plan ended Friday. The state Highlands Council received more than 1,000 comments since it released its regional master plan Nov. 30.

The council now will take the summer to review the comments and incorporate them into its plan, council

| PLEASE SEE PLAN, A2

5-13-07

D. Shope (1)

Continued from A1

CONSERVE: Pa. quietly preserving pieces of the Highlands

\$2 million has been set aside — prompting the Highlands states of Connecticut, New York, New Jersey and Pennsylvania to move forward without it.

The federal funding is slated for use in all four states; targeted lands include Oley Hills in Berks County, Pa., and Wyanokie Highlands in Passaic County, N.J.

Different approach in Pa.

The New Jersey Highlands have received the lion's share of local media attention, largely because of the Highlands Act, which protects 860,000 acres in the Garden State's northwest.

The controversial law led to the creation of a Highlands regional master plan, which is under public review and drawing intense criticism from officials in Hunterdon and Warren counties who worry about how it limits development.

Meanwhile, the Pennsylvania Highlands — which span 13 counties, including Northampton and Lehigh — have escaped the public eye, though not the attention of public officials. They're relying on a piecemeal approach rather than state legislation to preserve the 1.4 million-acre area.

In the Lehigh Valley, for example, state, county and municipal officials are teaming up with land trusts and conservancies to purchase development rights for properties that lie in the Highlands.

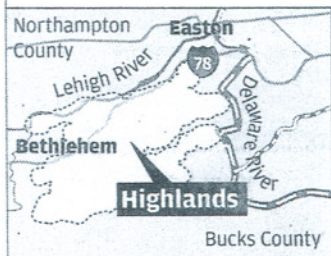
Statewide, they spend about \$30 million annually on open space purchases, according to Kristin Sykes of the Appalachian Mountain Club, a nonprofit conservation and recreation group.

"The counties and municipalities are beginning to save things through the use of parks, open space game land, etc. And they've been doing that throughout time," said Melanie Martin of the Lehigh

REGIONAL HIGHLANDS

Northampton

- Northampton, Bucks counties
- 288 protected acres
- 21,482 total acres



SOURCE: Highlands Coalition

South Mountain

- Lehigh, Northampton counties
- 58 protected acres
- 5,920 total acres



EXPRESS-TIMES GRAPHIC | JAMES MOENING

Valley Planning Commission. "We're slowly starting to see now an interest from land trusts, local conservancies coming into the area trying to acquire open space by utilizing the county open space programs."

'The backyard paradise'

The Highlands stretch up from Pennsylvania's Maryland border into northwest New Jersey, New York's lower Hudson Valley and eastern Connecticut.

"It's the easternmost ridge of the Appalachian Mountains," linking the Berkshire Mountains in Massachusetts with Shenandoah National Park in Maryland, Sykes explained.

The Highlands' ecological significance is amplified by its proximity to so many urban centers — among them Philadelphia, Harrisburg, Reading and the Lehigh Valley in Pennsylvania.

"It's within an hour's drive of 25 million people," said Sykes. "We call it the backyard paradise and it really is, especially the Pennsylvania section."

The Pennsylvania Highlands include 85,600 acres in Northampton and Lehigh counties which make up the Lehigh Valley Highlands, Martin said.

Several of the valley's defining features are part of the Highlands — Bougher Hill and Stouts Valley in Northampton County and Hosensack Swamp and Little

Lehigh Creek Watershed in Lehigh County, for example.

"Imagine Allentown without this lovely backdrop of a mountain here," planning commission Executive Director Michael Kaiser said of South Mountain, which is part of the Highlands.

"It creates a wonderful vista that you can see from anywhere in the city. Ditto Bethlehem."

Local preservation efforts

About 22,000 acres of the Lehigh Valley Highlands are designated as high priority conservation areas in the planning commission's comprehensive plan for the region, Martin said.

Those areas, which typically feature steep slopes, floodplains, wetlands and unaltered woodlands, are targeted by Northampton County's Open Space Initiative and Lehigh County's Green Future Fund.

So far, 13 pieces of property are approved for preservation funding, Martin said. The county contribution is typically matched by money from the state Department of Conservation and Natural Resources, municipalities and land trusts, Kaiser said.

The underlying question, said Sykes, is, "If we had limited funds and we only could protect a certain amount of places, where would we do it?"

Reporter Precious Petty can be reached at 610-258-7171 or by e-mail at ppetty@express-times.com.

Comments submitted at Highlands Council Meeting of August 16, 2007 by David Shope. Page 5 of 6

THE EXPRESS-TIMES

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5-13-07
2

Battle between owls may be decided by guns

ASSOCIATED PRESS

4-28-07

PORTLAND, Ore. — A few hundred aggressive cousins of the threatened northern spotted owl may be killed by government agents with shotguns under a proposed federal plan.

The spotted owl was listed as threatened 17 years ago, and its numbers continue to dwindle through much of its range in the Pacific Northwest, federal officials said Thursday in proposing the plan to prevent the species from dying out.

The barred owls have crowded their cousins, the spotted owls, out of prime habitat, sometimes even attacking them.

The U.S. Fish and Wildlife Service hopes that thinning the number of barred owls will allow the spotted owl to move back into historic nesting areas and increase its numbers.

The recovery plan envisions removing 12 to 32 barred owls in each of 18 areas, first by luring them with recorded calls

and an owl decoy, then by shooting them at close range.

The barred owl is not native to the West Coast, but followed settlers across the continent, scientists say.

Controlling the barred owl is a part of a draft plan that includes work on spotted owl habitat, research and monitoring. It could cost \$198 million over 30 years — the time the Fish and Wildlife Service says may be needed to bring the spotted owl's numbers to the point of recovery.

The Humane Society of the United States called the plan to kill barred owls nonsensical, saying the bird wasn't the primary threat to the spotted owl.

"The decline of the spotted owl is not due to the barred owls but to the degradation and destruction of old-growth forests" by the timber industry, the society's Lauren Nolfo-Clements said in a statement.



TOM GALLAGHER/ASSOCIATED PRESS

The northern spotted owl is being squeezed out of its habitat by aggressive barred owls.

D. Shope

Comments submitted at Highlands Council Meeting of August 16, 2007 by David Shope.
Page 6 of 6

Comments submitted at Highlands Council
Meeting of August 16, 2007 by Lois Drysdale.
Page 1

August 16, 2007

Mr. John Weingart
Highlands Council
100 North Road
Chester, NJ 07930

Dear Mr. Weingart,

This letter is in response to your statement that was published in the Daily Record, Friday, August 10, 2007 regarding the Highlands Plan. The statement was, "Getting it done quickly is important, but not more important than getting it done well".

My opinion is that it is impossible to get something done well that should never have existed in the first place.

Sincerely,



Lois Drysdale

Comments submitted at Highlands Council
Meeting of August 16, 2007 by Andrew
Drysdale. Page 1

ANDREW DRYSDALE
Land Surveyor
32 East Fox Chase Road
Chester, NJ, 07930
Tel. 908-234-1079 Fax 908-234-1326

August 16, 2007

Highlands Council
100 North Road
Chester, NJ 07930

Good Afternoon,

My name is Andy Drysdale, my wife Lois and I live and own farmland at 32 East Fox Chase Road, Chester, NJ, we have been trapped in the "Preservation Area", since August of 2004, some of our land is now in the "Conservation Zone" of the Regional Master Plan. We, along with many others, are victims of Environmental Extremists who have led politicians, legislators and the NJDEP to do unnecessary things.

A perfect example of something unnecessary is,"The New Jersey Highlands Water Protection and Planning Act".

If there had been funding in place to purchase development rights at fair market value from willing sellers statewide, ample open space would have been preserved and maintained.

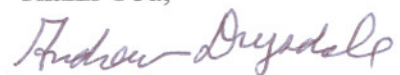
The money was not there however for several reasons, although there are many good state employees and some good state programs, there are also too many corrupt state officials, too many do little state workers with large benefit packages and too many unnecessary large bureaucratic state programs.

Not only was the act unnecessary, but it was created without the funding, the science or the planning being in place.

Would not you think that the word planning in the name of the act would have given someone a clue that they needed to hire a professional planner, not just 3 years ago but 4 or 5 years ago when this nonsense first began?

Finally, how does the State of Florida survive without highlands?

Thank You,



Andrew Drysdale

RESOLUTION 2007-19
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
ADOPTION OF AMENDED BYLAWS

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

WHEREAS, Section 6 of the Highlands Act empowers the Highlands Council with powers, duties and responsibilities, in addition to others prescribed in the Highlands Act; and

WHEREAS, Section 6.a of the Highlands Act authorizes the Highlands Council to adopt and from time to time amend and repeal suitable bylaws for the management of its affairs; and

WHEREAS, Section 6.g of the Highlands Act authorizes the Highlands Council to conduct its business as needed to effectuate the purposes of the enabling legislation; and

WHEREAS, the Highlands Council adopted initial bylaws at its first meeting by Resolution 2004-01 dated December 16, 2004, revised the bylaws by Resolution 2005-01 dated January 6, 2005 and by Resolution 2006-23 dated June 1, 2006; and

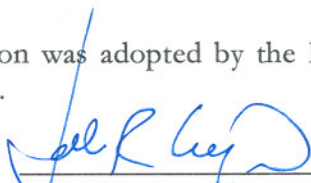
WHEREAS, the Personnel Committee and the Council staff considered and recommended amendments to the bylaws regarding the process for Council personnel decisions and other matters relating to Council operations; and

WHEREAS, pursuant to the Highlands Council bylaws, the bylaws may be amended at any regularly scheduled meeting where, as it has here, ten days advance notice has been given to all Highlands Council members.

NOW, THEREFORE, BE IT RESOLVED, the Highlands Council hereby adopts the attached amended bylaws dated August 16, 2007.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 16th day of August, 2007.



John Weingart, Chairman

Vote on the Approval of
this Resolution

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	✓	—	—	—
Councilmember Calabrese	—	—	—	✓
Councilmember Carluccio	✓	—	—	—

RESOLUTION 2007-19
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
ADOPTION OF AMENDED BYLAWS

Vote on the Approval of
this Resolution

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Cogger	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Dillingham	<u>—</u>	<u>—</u>	<u>—</u>	<u>✓</u>
Councilmember Kovach	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Letts	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Pasquarelli	<u>—</u>	<u>✓</u>	<u>—</u>	<u>—</u>
Councilmember Peterson	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Schrier	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Vetrano	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Way	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Weingart	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>
Councilmember Whitenack	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>

BYLAWS OF THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

Revised August 16, 2007

This Highlands Water Protection and Planning Council (hereinafter "Highlands Council" or the "Council"), a body corporate and politic created by the Highlands Water Protection and Planning Act, P.L. 2004, c. 120, (hereinafter "HWPPA" or the "Act"), hereby adopts Bylaws for the management of its affairs pursuant to the authority granted by Section 6.a of the HWPPA.

I. The Council

Section 1. Purpose

The Highlands Council is established as a regional planning, land use, and water resource management body.

Section 2. Functions

The functions of the Council are those mandated by the Act including but not limited to the following:

- a. Undertake all of the duties and responsibilities as set forth by the HWPPA, including any amendments thereto, and as may otherwise conferred upon the Council by the Legislature.
- b. Prepare a Regional Master Plan for the Highlands Region (i.e. both the Preservation Area and Planning Area);
- c. Approve, reject or approve with conditions applications proposing development in the Highlands Preservation Area and, where authorized by law, in the Planning Area;
- d. Comment on applications for development pending before local boards, adoption of any master plan or development regulations or enforcement of any development regulation by any local government in the Highlands Region;
- e. Approve, reject, or approve with conditions municipal and county master plans and development regulations after adoption or revision of the Highlands Regional Master Plan;
- f. Identify lands that are desirable for public acquisition to ensure the preservation of the Highlands;
- g. Provide comments and recommendations on any capital or other project proposed to be undertaken in the Highlands by any state, county, or local government, or any other public entity;

- h. Establish a Transfer of Development Rights program;
- i. Appoint an Executive Director, who shall serve as the chief administrative officer;
and
- j. Adopt policies for personnel, budgets and other matters for operation of the Council.

Section 3. Offices

The principal office of the Council shall be located in the Township of Chester, Morris County, New Jersey. The Council may have offices at such other places within the Highlands Region as its business may require or make desirable as determined by the Council.

Section 4. Seal

The Council shall adopt an official Seal by affirmative vote of a majority of the total authorized membership of the Council.

Section 5. Membership

The Council shall consist of 15 members, appointed in accordance with the HWPPA. Any vacancies occurring among the members of the Council shall be filled in the manner provided by the HWPPA. Any member of the Council whose term expires shall serve until a successor has been appointed and qualified. Members may not designate another person to vote on their behalf or otherwise fulfill their responsibilities as a Council member. Consistent with the HWPPA, no vacancy in the membership of the Council shall impair the right of a quorum of its members to exercise all the rights and perform all the duties of the Council.

II. Chair, Officers, Executive Director, Vacancies

Section 1. Chair

The Chair shall be appointed by the Governor in accordance with the HWPPA.

Section 2. Functions of Chair

The Chair shall:

- a. Preside at all meetings of the Council;
- b. Set the agenda for Council meetings or cancel meetings in consultation with the other members to the extent permitted by the HWPPA;
- c. Rule on all questions of order, subject to appeal to the Council;
- d. Create Committees in consultation with the Council;
- e. Appoint Council members to the various Committees and designate the chairs thereof;

- f. Sign all resolutions adopted by the Council, and any other legal document or instrument authorized by the Council;
- g. In the absence of the Treasurer, review and authorize the signing of checks for payments by the Council;
- h. Act as supervisor of and lead point-of-contact for the Executive Director; and
- i. Possess such other authority and duties as conferred upon him or her by these Bylaws or by any resolution adopted by the Council.

Section 3. Other Officers of the Council

- a. Vice-Chair: In the absence of the Chair, the Vice Chair shall preside at Council meetings, set the agenda for Council meetings, rule on questions of order, sign all resolutions adopted by the Council and any other legal document or instrument authorized by the Council. In the absence of the Chair and the Treasurer, the Vice Chair shall review and authorize the signing of checks for payments of the Council. In the event of a vacancy of the position of the Chair, the Vice-Chair shall assume all of the responsibilities of the Chair until a new chair is appointed by the Governor in accordance with the HWPPA. The Vice-Chair shall serve one-year, renewable terms.
- b. Treasurer: The Treasurer shall monitor the Council's financial status and periodically report such status at Council meetings. The Treasurer shall review proposed disbursements, with the exception of regularly scheduled disbursements, prior to authorizing the Executive Director to sign checks for payments of the Council. In the absence of the Chair and Vice-Chair, the Treasurer shall preside at all Council meetings. The Treasurer shall serve one-year, renewable terms.

Section 4. Council Member Expenses

Within the limits of funds appropriated and otherwise available for such purposes, each member of the Council shall be entitled to reimbursement for actual expenses necessarily incurred in the performance of the Council duties, pursuant to the policies established by the Council.

Section 5. Executive Director

The Executive Director shall have all the authority provided to him or her in accordance with the HWPPA and these Bylaws of the Council. He or she shall implement the policies and decisions of the Council and shall administer the operations, office(s) and administrative staff. In the event the Office of Executive Director is vacant, the Deputy Executive Director shall fill the office until such time as the Council appoints a new Executive Director.

The Executive Director shall oversee all plans and activities necessary to achieve the Council's mandate and specific goals as described in the HWPPA including the following:

- a. Recommend for approval by the Personnel Committee an organizational chart for staff positions;
- b. Recommend for approval by the Personnel Committee one candidate to fill management positions as identified in the organization chart;
- c. Promote, remove, discipline and supervise employees in accordance with written personnel policies established by the Council. The Executive Director will inform the Personnel Committee of such actions;
- d. Hire non-management personnel in accordance with the approved budget and consistent with the hiring policies of the State, advising the Personnel Committee of plans, progress and actions;
- e. Administer the affairs of the Council for the efficient, orderly and economic administration of all the administrative and executive affairs, consistent with available appropriated funds;
- f. Sign checks for all payments by the Council, subject to the policies of the Council;
- g. Contract for, issue purchase orders for and approve payments for goods and services up to \$25,000. For payments over \$25,000, prior approval of the Council shall be required. The Executive Director shall periodically provide a report to the Council on all new contracts, purchase orders and payments over \$10,000 and any such expenditures anticipated for the following month;
- h. Provide other financial information to the Council as requested;
- i. Review all applications for construction and development, public capital projects, revisions of municipal and county master plans and development ordinances, and compliance actions, and submit recommendations therein to the Council in accordance with the procedures established by the Council for processing such applications and projects;
- j. Work with State agencies and independent authorities as authorized by the HWPPA to provide information to the Council, and as may be useful to implement the HWPPA;
- k. Evaluate proposed land acquisitions, purchase of development easements, purchase of Transfer of Development Rights, proposed State aid to counties and municipalities and make recommendations concerning the same;
- l. Ensure that the Council provides public notice for all meetings pursuant to the Open Public Meetings Act, these Bylaws and the Council's resolutions;
- m. Perform all duties as are incidental to the office of Executive Director; and
- n. Deliver forthwith a true copy of the minutes to the Governor.

Section 6. Term of Executive Director

The Executive Director shall serve at the pleasure of the Council on terms recommended by the Chair and approved by the Council. The Chair, in conjunction with the Personnel Committee, shall evaluate the Executive Director's performance at least annually.

III. Council Meetings

Section 1. Regular Meetings

Regular meetings of the Council shall be held at a time and place to be designated by the Council. The Council shall establish and publicize an annual meeting schedule that it may modify with appropriate advance public notice given pursuant to the Open Public Meetings Act. Adequate notice as defined under the Open Public Meeting Act shall be provided for all regular meetings of the Council, including sending notice to the official newspapers designated by resolution of the Council.

Section 2. Special Meetings

Special meetings of the Council may be called at any time by the Chair. Upon request from any member of the Council, the Chair shall poll the members for the purpose of determining if a special meeting should be held, and shall schedule the meeting if a majority so desires. The Chair may fix the time and place for any special meeting. The Executive Director shall provide notice of the meeting in accordance with the Open Public Meetings Act.

Section 3. Emergency Meetings

The Chair may call emergency meetings at any time as provided for in the Open Public Meetings Act.

Section 4. Quorum and Telephone Participation at Meetings

Eight members shall constitute a quorum. Members shall be permitted to participate in Council meetings (and vote) by telephone so long as the member can hear the public, the public can hear the member.

Section 5. Majority Vote

No action may be taken by the Council except upon the affirmative vote of a majority of the total authorized membership.

Section 6. Minutes

Minutes of each meeting shall be taken and shall reflect the presence of each member in attendance and the substance of the matters discussed. A true copy of the minutes of every meeting of the Council shall be prepared and forthwith delivered to the Governor. No action taken at such meetings by the Council shall have effect until the Governor's statutory period of review has expired. If, within this period, the Governor returns the copy of the minutes with a veto of any action by the Council at that meeting, the action shall be of no force or effect.

Section 7. Order of Business

Council meetings shall be guided by Roberts Rules of Order. The Order of Business, unless modified by the Chair, shall be as follows:

- a. Reading of Open Public Meetings Act statement
- b. Roll Call
- c. Pledge of Allegiance
- d. Approval of Minutes
- e. Reports
- f. Action, Motions and Resolutions
- g. Other Items of Interest
- h. Public Comments
- i. Executive Session
- j. Adjournment

Section 8. Executive Session.

Executive Sessions of the Council may be held for reasons authorized by the Open Public Meetings Act.

Section 9. Fiscal Year.

The Fiscal year of the Council shall be the fiscal year used by the State of New Jersey.

Section 10. Amendment.

The provisions of these Bylaws may be amended by the affirmative vote of a majority of the total authorized membership of the Council at any regularly scheduled meeting, if advance notice of at least ten (10) State working days has been given to all Council members and if notice has been provided pursuant to the Open Public Meetings Act.

Section 11. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity, partial invalidity or unenforceability of any one provision or portion shall not affect the validity or enforceability of any other provision or portion hereof.