

NATURAL RESOURCES COMMITTEE

REPORT FOR THE JUNE 16, 2005 MEETING

Introduction

On June 16, 2005, the Natural Resources Committee held a meeting at the New Jersey Highlands Council office in Chester, New Jersey. Notice of the meeting was provided to the public on the Highlands Council's web site. Council members present at the meeting were: Tim Dillingham, Eileen Swan, Tracey Carluccio and Kurt Alstead. Council staff members present were: Adam Zellner, Dante DiPirro, Steve Balzano, Tom Borden, Lynn Brass-Smith, Kim Kaiser, and special consultant Dan VanAbs. Three matters were on the agenda: NJDEP rules, public input on the rules and forestry determination methodology. The meeting was called to order at 10:20 a.m. by Committee Chair Mr. Tim Dillingham.

1. NJDEP Rules: Carry over discussion from June 9 Natural Resources Committee Meeting

At the Natural Resources Committee meeting of June 9, the Committee discussed the NJDEP Highlands rules and considered recommendations it would like to make to the full Council. The Committee hopes to conclude that discussion today. The recommendations would be presented to the full council at the Council meeting on June 23.

Committee Chair Dillingham opened the meeting by listing the matters to be discussed or discussed further: right of entry, forestry exemptions and HAD. Council staff members Tom Borden and Lynn Brass-Smith presented the carry over discussion issues.

Right of Entry - The DEP rules do not provide for the assessment of civil penalties in the event that Highlands Council staff is prohibited from entering property. Under the Act, the Council could still go into court to seek injunctive relief ordering entry to be given. The Committee felt that at this juncture, there were more important issues to pursue.

Forestry - The statutory definition of agricultural development contained in the Act does not include forestry. The Committee felt that they should not go beyond the language of the Act by tinkering with the statutory definition. It was noted that Section 30(a)7 in the Act does exempt forestry in accordance with an approved woodlot management plan.

A second forestry issues is that the DEP rules add the words "or for public lands" to the exemption for forests with approved forest management plans. This has the effect of excluding those private forest landowners who are managing, or wish to manage, their properties under an approved woodlot management plan, but are not interested in enrolling in the tax assessment program (because tax benefits are irrelevant to their tax situation or in their opinion not worth the time and expense). It would be beneficial to the natural resources for such properties to still be eligible for the exemption. It was agreed that the language should be revised so as not to exclude private owners with approved woodlot management plans simply because they are not enrolled in the farmland assessment property tax program.

Highlands Applicability Determination (HAD) - There are activities that are clearly exempt under the Act but that the DEP rules still require a HAD from the Department (an environmental permit from the NJDEP triggers this process). It was agreed that exemption #1 (single family dwelling for own use), exemption #8 (trails with non-impervious surface), and exemption #7 (forest management plan with suggested language change noted above) should not be required to obtain a HAD, pursuant to Section 2.4 in the rules.

2. Public Comment

The Highlands Council and Natural Resources Committee have received comments about the DEP Highlands rules. The comments have been diverse: some contend that the rules are too restrictive; others too restrictive; others contain loopholes that should be closed. Numerous comments addressed the following: linear development (private driveways) and accompanying environmental implications; septic density (88 vs. 25 acres and 50% forest cut off); exemptions and the corresponding environmental impacts; 3% impervious cover limitation; and restrictions upon recreational uses/maintenance. The Natural Resources Committee will present a summary of these issues to the DEP.

3. Committee recommendations on NJDEP Rules

After concluding the discussion of the recommendations, the Committee agreed to recommend that comments be listed in a letter to the NJDEP. The Committee directed staff to draft the letter. Tim Dillingham summarized the agreement on the letter to include the following:

Comments:

- The rules should not constrain the Highlands Council's ability to analyze resources and issues on a more specific level (example – watershed based analysis). This is the “harmonizing” provision.
- The rules should provide a procedure for conflict between the rules and the Highlands Regional Master Plan.
- An alternate methodology for the 16-point system current provided for in the DEP rules should be considered.
- To be consistent with the Act, linear development should exclude private driveways and roads, and then authorize crossings through a waiver process.
- Existing LOI's should not take the place of a Highlands open waters delineation or 300-foot buffer determination.
- The reliance provision of HRAD's should be eliminated.
- The public comment period on applications should be expanded from 30 to 45 days.
- Brownfields should be more broadly defined, but not so as to impact the waiver process.
- The Section 36 performance standards (6.2) should be tightened up and include a process for the applicant to demonstrate compliance.
- The list of exempt activities that are not be required to obtain a HAD should be expanded to include exemptions #1, 7 (with wording change) and 8.

Additional Issues:

- A simplified permit process should apply to land management to promote good land stewardship.
- Fees should be equitable for applicant and appropriate for the work performed by the Department.
- The forestry exemption language should be modified to exempt private landowners with an approved woodlot management plan but who do not file for farmland assessment.
- Existing scenic attributes should include federal public land.
- Threatened and endangered species habitat assessments should require consultation with the USFWS.
- Forest mitigation should follow an established hierarchy.
- Graduated standards for steep slope protection should be considered.
- C-1 provisions of the antidegradation and stormwater regulations should apply to all Highlands open waters.
- 3.4(a)2 should add language to make it clear that wastewater facilities may only be authorized for a HPAA *with a waiver*.

It was also recognized that the Natural Resources Committee and Highlands Council staff should continue to work with the NJDEP on the rules beyond the 45-day comment period.

The Committee authorized staff to prepare a resolution to authorize the Chairman and the Chair of the Natural Resources Committee to transmit a letter of rule recommendations to the NJDEP, and to authorize the Natural Resources Committee to continue the interagency consultation with the NJDEP on behalf of the Highlands Council.

Council member Kurt Alstead did not support the resolutions based primarily on his differing views of linear development and septic density.

4. NJDEP Rules – Upland Forest Determination

Steve Balzano provided an overview of the proposed alternate methodology to determine an upland forested area. The methodology is a more accurate representation of an upland forest and provides for better enforcement. The methodology is a tiered approach that corresponds to mature and secondary growth forests. Mature forests use a basal area process whereas secondary growth forests use a stem count/fixed plot process. Agricultural uses such as tree farms would not be considered upland forest areas.

The Committee authorized the staff to prepare a resolution to for the Highlands Council to provide notice of its intent to establish an alternative method of identification for upland forested areas in the Highlands Region, and to solicit public input on a draft alternative methodology for the identification of upland forest areas.

5. Public comments

Wilma Frey, Highlands Coalition - Rules should recognize stewardship plans that aim to protect habitat.

Gregg Sipple, Warren County Planning Department - the 16-point system proposed by the NJDEP to determine an upland forest is flawed. The alternative methodology proposed by staff would be acceptable.

Bill Wolfe - The rules at 3.4(a) will promote new development by allowing for extension of sewer lines.

Tim Dillingham adjourned the meeting at 12:45 p.m.