

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF MAY 15, 2014

PRESENT

JIM RILEE)	CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
TRACY CARLUCCIO)	
MICHAEL R. DRESSLER)	
TIMOTHY P. DOUGHERTY)	
MICHAEL FRANCIS)	
ROBERT HOLTAWAY)	
BRUCE JAMES)	
CARL RICHKO)	
MICHAEL TFANK)	
RICHARD VOHDEN)	
ROBERT G. WALTON)	

ABSENT

MICHAEL SEBETICH)
JAMES VISIOLI)

CALL TO ORDER 130TH meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:03pm.

ROLL CALL

Roll call was taken. Council Members Richko, Sebetich and Visioli were absent. All other members were present. *The following staff members were present: Margaret Nordstrom, Andrew Davis, Chris Danis, Kim Ball Kaiser, Corey Piasecki, Jim Hutzelmann, Carole Dicton, and Tom Tagliareni. Also present was Christopher Howard, Governor's Authorities Unit.*

OPEN PUBLIC MEETINGS ACT

Ms. Tagliareni announced that the meeting is being held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6. The Highlands Council sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted notice on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF APRIL 17, 2014

Mr. Tjank introduced a motion to approve the minutes. Mr. Vohden seconded it.

All members present voted to approve the Minutes of April 17, 2014. The minutes were APPROVED 11-0.

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CHAIRMAN'S REPORT

Chairman Rilee referred to a draft letter which was sent to Council Members for review. This letter expressed support for renewal of the dual appraisal process, and suggested the law be extended not only for farmland but for other open space purposes, as is currently provided for in the law. The Chairman requested a motion for approval to send the letter.

Mr. Holtaway made a motion, and Mr. Francis seconded it. The Council unanimously approved of the motion.

Chairman Rilee announced that comments on Fenimore will be taken at the end of the meeting, similar to last month as he will need to recuse himself.

ACTING EXECUTIVE DIRECTOR'S REPORT

Ms. Nordstrom gave the Acting Executive Director's report to update the Council on some staff activities. Ms. Nordstrom announced that Council will consider Oakland Borough's Petition for Plan Conformance at today's meeting and will consider another municipality over the summer. Ms. Nordstrom complimented Council staff for their efforts in making this happen.

Ms. Nordstrom reported on plan conformance implementation activity since Council's last meeting: Washington Township (Morris County), Checklist Ordinance deemed consistent.

Ms. Nordstrom announced that the second round of Highlands Area Exemption Certification training was held in May. Council Member Francis participated in the program. Ms. Nordstrom also noted that Gary Montroy, Business Administrator at Mahwah Township, gave a testimonial about the program to say it is not complicated, easy to implement, and staff is very helpful.

In closing, Ms. Nordstrom made note of a new summary memo which will be added to summarize what is in the resolution attached to it. This memo is available to Council and the public.

COUNCIL MEMBER REPORTS

There were no council member reports.

Chairman Rilee announced the Resolution.

Resolution – Petition for Plan Conformance submitted by the Borough of Oakland, Bergen County

Mr. Tjank made a motion on the Resolution. Mr. Vobden seconded it.

Chairman Rilee acknowledged representatives from Oakland Borough in attendance today: Councilmen Chris Visconti and Pat Pignatelli; Richard Kunze, Borough Administrator; and Steve Lydon, Planning Consultant.

Pat Pignatelli, Oakland Borough Councilmen – Mr. Pignatelli commented that the Borough of Oakland looks forward to working with the Highlands Council. As a health officer for 36 years, Mr.

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Pignatelli understands the value of the natural resources and the negative impact development can have on open space. Mr. Pignatelli thanked Council staff for their help and hopes Council moves forward with Oakland's Petition for Plan Conformance.

Ms. Nordstrom announced that staff member James Humphries will provide a PowerPoint presentation for Oakland Borough's Petition for Plan Conformance.

Mr. Humphries began a PowerPoint presentation which may be found on the Council's website:

http://www.nj.gov/njhighlands/about/calend/2014_meetings/may15/HighlandsCouncilMeeting_May_2014.pdf

Public Comment

Erica Van Auken, New Jersey Highlands Coalition – Ms. Van Auken commented that the Coalition supports Oakland Borough's petition for plan conformance. Ms. Van Auken added that the Coalition has addressed their comments to NJDEP on the Bi-County development project. Ms. Van Auken added that Council needs to have a seat in the discussion with the NJDEP regarding this development.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that she supports Oakland Borough's petition for plan conformance, but seconds Ms. Van Auken's comments regarding Bi-County development and that Council should weigh into this project.

Council Comment

Mr. Holtaway asked what jurisdiction Council has on this development and agrees from an environmental standpoint that it is 1950's thinking. Chief Counsel Davis responded that this is litigation between NJDEP and the property owner, and Council was not involved. Chief Counsel Davis added that this does not impact the petition for Plan Conformance.

Ms. Carluccio asked if staff could prepare a consistency determination out of the settlement agreement as a normal course of business. Chief Counsel Davis responded that Council might in the future, in response to a specific development application, but added that, at the present time, there is no specific development approval before the Council, and only a petition for plan conformance.

Ms. Carluccio suggested that Council staff look into it and make comments on the settlement agreement and what development applications may come out of it. Chairman Rilee responded that it is appropriate to ask Chief Counsel to look into the settlement agreement.

Mr. Dressler suggested that Council send a letter to NJDEP to state that Council is against this development. Chairman Rilee responded that he does not agree that action be taken at this time but does authorize Council staff to research and get back to Council regarding this development. Ms. Nordstrom added that Council staff will be happy to do this.

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Ms. Carluccio also suggests that the center grant be “pulled” from Oakland’s petition for plan conformance.

Mr. Vohden commented that he cannot vote yes on this resolution since property owners have not been compensated.

Mr. Richko was present at 4:16pm.

There was continued discussion regarding the Pinnacle/Bi-County project and the level of approvals. Chief Counsel Davis suggested that technical questions regarding the effect of the proposed settlement of the litigation between a property owner and the DEP might be directed to Mr. Humphries, who is the staff member assigned to this petition. The Chairman agreed, and asked Mr. Humphries to respond. Mr. Humphries noted that part of the settlement agreement involves the fact that the property does have previous approvals and is eligible for an exemption. Mr. Humphries noted that since it is eligible for an exemption it falls under the original waste water management plan approved in 1990. Mr. Humphries added that there are more issues in the settlement agreement but that is one of the bases of the agreement and comments are being accepted on those determinations which Council staff can review further.

Chairman Rilee authorized staff to research the Pinnacle settlement agreement and get back to Council.

A roll call vote was taken. The resolution was APPROVED 8-4.

COMMITTEE REPORTS

Budget & Finance Committee

Chairman Rilee announced the Resolution.

Resolution – Approval of Contract to Develop a Fiscal Impact Assessment of the Highlands Water Protection and Planning Act and Associated Regional Master Plan

Chairman Rilee announced that this resolution was tabled last month and public comments were received at that time.

Mr. Francis made a motion on the Resolution. Mr. Richko seconded it.

Council Comment

Mr. Walton commented that he reviewed the resolution with staff and is still troubled. Mr. Walton added that he plans to vote no.

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Mr. Vohden asked if the Budget & Finance committee reviews the RFPs and suggests that the committee review RFPs prior to staff's recommendation.

A roll call vote was taken. The resolution was APPROVED 9-3.

Chairman Rilee announced the Resolution.

Resolution – Approval of Contract Modification for Water Use and Conservation Management Planning

Committee Chair Holtaway reported that the Budget and Finance Committee discussed this resolution at their meeting on May 8, 2014. Mr. Holtaway reported the resolution is for a modification of the Water Use and Conservation Management Plans (WUCMP) required by the RMP for protection of water resources. The current program was authorized via Resolution 2009-26 for an amount not to exceed \$1,000,000 with approximately \$500,000 to be used to develop the pilot program and the remaining to assist non-pilot towns. Since 2009 the Council has had in place a contract and scope of work with CDM Smith for their specialized technical assistance in developing these plans for an ongoing pilot program. Currently, there are 10 pilot project study areas involving 19 municipalities. To date 32 municipalities have a task included in their Plan Conformance Grant to develop and implement a WUCMP and are in need of specialized technical assistance. CDM Smith's technical expertise is needed for the program beyond the previously identified pilot areas and staff levels are not able to meet the anticipated workload relating to this task. Municipal professionals may require a significant learning curve to be able to perform the WUCMP work themselves and benefit from additional technical expertise. The proposed contract modification is based on the same scope of work as the 2009 contract agreement and the 2009 hourly bill rates. Staff recommends a contract modification to assist staff and municipalities with this complex and technical work. Staff proposes to use \$150,000 of the previously approved funding for direct technical guidance to Highlands staff, and to allow for CDM Smith to provide technical assistance to conforming and non-pilot municipalities in developing WUCMPs. This technical assistance may also support the RMP Monitoring Program development and next steps for the RMP Update process. Mr. Holtaway represented that the Budget and Finance Committee recommends Council approve this resolution to authorize a modification for Water Use and Conservation Management Plans.

Mr. Holtaway made a motion on the Resolution. Mr. Francis seconded it.

Public Comment

David Shope, owns property in Lebanon Township, NJ - Mr. Shope commented on Chairman Rilee's comments on page 2 of the Budget & Finance Committee minutes of May 8, 2014 regarding data analyses moving forward in the technical assistance. Chairman Rilee responded that he did not want previous data to be the end all. Mr. Shope commented that all assumptions should be on the table.

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Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich commented that these plans are important and she is interested in what is in these plans and what is covered. Ms. Nordstrom responded that these plans are not finished at the moment.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer supports this contract modification and is awaiting the 32 towns who have been tasked with doing this work. Mr. Peifer urged Council to support this resolution.

There were no Council comments.

A roll call vote was taken. The resolution was APPROVED 12-0.

Chairman Rilee opened the meeting for public comments. He asked the public to reframe from commenting on Fenimore issues at this time as he will need to recuse himself for an Executive Session and Vice-Chair Alstede will chair that portion of the meeting along with public comments regarding Fenimore.

Public Comment

Julia Somers, New Jersey Highlands Coalition – Ms. Somers requested that Council make a presentation on how the new COAH rules will impact conforming towns and how it may impact their conformance obligations.

Hank Klumpp, owns property in the Highlands Preservation Area – Mr. Klumpp asked for the scientific findings that put his property in the preservation area. Mr. Klumpp also commented that 30% of open space funding should go to property owners. Mr. Klumpp also asked about the status of the committee for property owners.

Robert Bracken, Board of Directors of New Jersey Builder's Association – Mr. Bracken has concerns regarding Council's review of the RMP and would like the review to be as open and transparent as possible.

Mr. Tjank left the meeting temporarily at 4:57pm.

David Shope, owns property in Lebanon Township, NJ – Mr. Shope commented on issues raised by Mr. Moffitt in September, 2013 submitted to Council. Mr. Shope asked what criteria were done for an investigation which he asserted had taken place. Mr. Shope added that Council has an opportunity during the RMP update process to correct what he characterized as “past misdeeds.”

Mr. Tjank returned to the meeting at 5:00pm.

Mr. Dressler asked Chairman Rilee to appoint a committee to address property compensation issues to report out by September with recommendations. Chairman Rilee responded that he will look into it for next meeting.

Public portion of the meeting was closed at 5:04pm.

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Chairman Rilee announced that he has recused himself from matters related to the Fenimore landfill, and that Vice-Chair Alstede would take over for this portion of the meeting, which concerned an Executive Session and public comments regarding the Fenimore landfill. Chairman Rilee then left the meeting room.

Vice-Chair Alstede announced the Resolution.

Resolution – Executive Session

Mr. Davis read into the record:

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., permits the holding of closed sessions by public bodies in certain circumstances, and the Council is of the opinion that those circumstances presently exist; and

WHEREAS, the general nature of the subject to be discussed is pending litigation in connection with the Fenimore Landfill, for which advice from counsel subject to the attorney-client privilege is required, and other matters involving attorney-client privilege.

NOW, THEREFORE, BE IT RESOLVED, that the Council may enter into closed session at its public meeting of May 15, 2014, for that purpose. It is anticipated at this time that the nature of the closed session will be made public upon completion or resolution of the issues to be discussed, except any matter protected by the attorney-client privilege will not be disclosed.

Mr. Walton made a motion to go into Executive Session. Mr. Holtaway seconded it.

A roll call vote was taken. The resolution was APPROVED 11-0.

[EXECUTIVE SESSION]

Mr. Dressler left the meeting at 5:58pm.

Vice-Chair Alstede closed the Executive Session and resumed the New Jersey Highlands Water Protection and Planning Council meeting at 5:58pm. Vice-Chair Alstede opened the meeting to public comment regarding Fenimore landfill.

Vice-Chair Alstede stated that Council is sympathetic to the residents of Roxbury Township and asked Chief Counsel Davis to make some comments regarding the Fenimore landfill:

Chief Counsel Davis noted the following:

- Highlands Council adopted resolution on October 13, 2011 designating a portion of the Fenimore landfill as a “Highlands Redevelopment Area.”
- As a precedent to that action under the Highlands Act and NJDEP Highlands Rules, the NJDEP had to first designate that site as a brownfield site under their jurisdiction. The applicant had to get that site designated as a brownfield and then came to Council to ask for a “Highlands Redevelopment Area.” Under Exemption 15 of the Highlands Act brownfield

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remediation is exempt from the jurisdiction of the Highlands Council and solely within the purview of the state NJDEP.

- Highlands Council redevelopment designation was in response to an application that contemplated an ultimate end use on that site of a solar facility.
- Council's actions in 2011 were from a purely planning point of view, consistent with some of the goals in the RMP to find and promote beneficial reuse of brownfields. The redevelopment designation was approved with conditions that certain Highlands resources were protected and those were conditions of the redevelopment area approval but that redevelopment area approval did not address technical human health requirements with respect to the operation or continued operation of the landfill or closing of the landfill.
- The requirements that the Council imposed in connection with the redevelopment designation would only apply once the landfill was capped and closed with the approval of the NJDEP; then and only then, if and when that happens and when an ultimate end use is proposed for the site, would the Highlands Council weigh in on the ultimate end use of the property to determine whether or not that end use and the plans for that end use are consistent with the Highlands resource protections that were built into this Council's redevelopment designation.
- This is procedurally, administratively, and legally the bases of the Council's action and takes us to where we are today.

Vice-Chair Alstede opened the meeting for public comment specific to Fenimore landfill and comments are limited to three (3) minutes each.

Public Comment

Melissa Dachisen, Roxbury Township, NJ – Ms. Dachisen commented on how her family's way of life has changed due to the Fenimore landfill. Ms. Dachisen submitted pictures for the record.

Victor Dean, Ledgewood, NJ – Mr. Dean commented on his family's health issues due to the Fenimore landfill.

Barbara Giaquinto, Ledgewood, NJ – Ms. Giaquinto asked if Council's function is to protect the Highlands. Ms. Giaquinto urged Council to help with the Fenimore issue.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer commented on the Fenimore landfill and that Council and Council staff should be actively involved regularly with NJDEP to monitor and provide input with the capping and cleaning of the landfill. Mr. Peifer renews his request to Council to remove the redevelopment designation until the landfill is capped, cleaned, and closed.

Michelle Oliveira, Roxbury Township – Ms. Oliveira, a mother of two children, commented that her children suffer health issues due to the unhealthy air levels which at times put children in lockdown at their schools. Ms. Oliveira urged the Council to help with the Fenimore landfill issues.

Ken Collins, Andover, NJ – Mr. Collins commented that, in his opinion, Council broke the law by allowing Exemption 15 to move forward. Mr. Collins asked for the resolution number which

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granted the exemption 15. Chief Counsel Davis responded that the resolution number is 2011-35 dated October 13, 2011, and that it is available on the Council's website. Mr. Collins asked if Council looked into rescinding its decision. Mr. Collins asked Council to provide the residents of Roxbury Township with a detailed explanation and legal justification for the granting of this exemption.

Marie Felix, Flanders, NJ – Ms. Felix commented on the health issues her family has suffered. Ms. Felix urged Council to do something.

Marion Emery – Ms. Emery commented on her health effects due to the Fenimore landfill. Ms. Emery stated that she wears a gas mask because of the fumes due to the landfill. Ms. Emery urged Council to do something about this issue.

Arron Markworth, Flanders, NJ – Mr. Markworth asked Council to uphold the Highlands Act and stop NJDEP from making a bad situation permanently worse. Mr. Markworth also asked Council to investigate the series of events that led to this issue and form a committee to address this issue. Mr. Markworth submitted his comments for the record.

Brenda Parr, Ledgewood, NJ – Ms. Parr urged Council to help the residents of Roxbury Township and stop what is happening with the Fenimore landfill to help them to do a full investigation of this issue.

Elliott Ruga, Senior Policy Analyst, New Jersey Highlands Coalition – Mr. Ruga commented that today the people of Roxbury are here to beg the Highlands Council for help, and he stated that this is “an opportunity.”

Kathy Panetta, Ledgewood, NJ – Ms. Panetta told her story about the health effects she and her family have had and asked Council to look at the RMP and see if the Fenimore site is congruent to the plan.

Mr. Tjank left the meeting temporarily at 6:39pm.

Marguerite Gargiulo, Flanders, NJ – Ms. Gargiulo wrote a letter to Governor Christie to meet with the REACT group. Ms. Gargiulo asked for Council to help in any way.

Mr. Tjank returned to the meeting at 6:47pm

Mr. Vobden left the meeting temporarily at 6:47pm.

Carl Panetta, Ledgewood, NJ – Mr. Panetta commented on how the way of life has changed since the Fenimore landfill. Mr. Panetta commented that this is an important situation which is out of control.

Mr. Vobden returned to the meeting at 6:50pm.

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Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that Council has some responsibility to react in a positive way to this issue in the Highlands. Ms. Frey added that Council should take all evidence presented to Council and go to NJDEP and the Federal Environmental Protection and advocate for the residents of Roxbury Township.

Bill Marocco (sp?), Roxbury Township, NJ – Mr. Marocco thanked the Council for listening to the people of Roxbury. Mr. Marocco commented that no environmental investigation has been completed. Council needs to take a vested interest in this land and this project and make sure the NJDEP adheres to the RMP. Council should also look at Section 81 k. of the Highlands Act and make sure the DEP is following it and that they also follow the technical requirements NJ 726c for landfill remediation.

Kathy Hart, Succasunna, NJ – Ms. Hart gave her views on NJDEP regarding the Fenimore landfill issue. Ms. Hart urged Council to return the Roxbury community to the way it was before and asked Council to be an advocate.

Bob Madaros (sp?), Ledgewood, NJ – Mr. Madaros is a retired electrical engineer and has been fighting this landfill for over ten years. Mr. Madaros requests Council's assistance on this issue which affects the entire water system flowing down the Raritan River.

Mr. James left the meeting at 7:11pm.

Bob Schultz, Succasunna, President, REACT – Mr. Schultz suggested that Council has the power to rescind the exemption from the NJDEP. It will give the people of Roxbury some power to fight this issue.

Mark Bertneskie (sp?), Vernon, NJ – Mr. Bertneskie suggested that Council is slowly developing a regional problem with this landfill issue and Council should fix it.

Vice-Chair Alstede commented that Council understands what the residents of Roxbury are going through and certainly wishes Council had more jurisdiction to do something to help, but there are realities in place by law that bound the Council. If there is going to be an issue involving the landfill, Vice-Chair Alstede commented that he will be here, as he was elected Vice-Chair for the next year. Vice-Chair Alstede further commented that this is not an end tonight and Council will certainly continue to monitor the situation but does not want to give any false hopes on what Council can do because there are real boundaries. Council's interest in this situation is sincere and genuine. Vice-Chair added that Highlands staff is available to get copies of documents available to the public and to get a better understanding of the timeline or what Council can and cannot do and what the Legislature empowers us to do.

Council Comment

Ms. Carluccio commented that clearly the public is bringing to Council a public health and environmental health issues. Ms. Carluccio commented that Council has certain responsibilities by the Highlands Act and as a water resource agency Council has broad powers. Ms. Carluccio agreed

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with Mr. Peifer and Ms. Frey's statements made earlier. Ms. Carluccio proposed that Council rescinds the redevelopment area designation.

Ms. Carluccio made a motion to rescind the redevelopment designation decision. Mr. Dougherty seconded the motion.

Vice-Chair Alstede asked for the advice of Chief Counsel if Council needs to go into Executive Session. Chief Counsel Davis commented that Council can go into executive session on this matter, but his concern was that no public notice was given to take action on this motion, and advised that taking such action could be viewed as inconsistent with the Open Public Meetings Act.

Mr. Dougherty, who had seconded Ms. Carluccio's motion, stated that he agreed with the advice of the attorney, and that this matter would have to be publicly noticed. He stated that he would agree to table this matter on that basis.

Vice-Chair Alstede, on the advice of Chief Counsel, asked for a motion to table this motion until June's meeting.

Mr. Holtaway made a motion to table. Mr. Vobden seconded.

A roll call vote was taken. The MOTION TO TABLE was APPROVED 8-1.

Mr. Dougherty requested the Chief Counsel to prepare a memo explaining N.J.S.A .13:20-6 (l) of the Highlands Act regarding examinations and investigations so Council has a better understanding of Council's responsibilities and rights

Mr. Holtaway made a motion to adjourn the meeting. Mr. Walton James seconded it. The meeting was adjourned at 7:28pm.

CERTIFICATION

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

Date: 6/20/14

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

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**Vote on the Approval of
These Minutes**

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	✓	_____	_____	_____
Councilmember Dougherty	_____	_____	_____	_____	_____	✓
Councilmember Dressler	_____	_____	_____	_____	_____	✓
Councilmember Francis	_____	_____	_____	_____	_____	✓
Councilmember Holtaway	✓	_____	✓	_____	_____	_____
Councilmember James	_____	_____	_____	_____	_____	✓
Councilmember Richko	_____	✓	✓	_____	_____	_____
Councilmember Sebetich	_____	_____	✓	_____	_____	_____
Councilmember Tfrank	_____	_____	_____	_____	_____	✓
Councilmember Visioli	_____	_____	✓	_____	_____	_____
Councilmember Vohden	_____	_____	✓	_____	_____	_____
Councilmember Walton	_____	_____	✓	_____	_____	_____
Chairman Rilee	_____	_____	✓	_____	_____	_____