

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF JULY 19, 2012

PRESENT

JIM RILEE)	CHAIRMAN
TRACY CARLUCCIO)	COUNCIL MEMBERS
MICHAEL FRANCIS)	
ROBERT HOLTAWAY)	
BRUCE JAMES)	
JAMES MENGUCCI)	
MICHAEL TFANK)	
CARL RICHKO)	
MICHAEL SEBETICH)	
JAMES VISIOLI)	
RICHARD VOHDEN)	
ROBERT G. WALTON)	

ABSENT:

KURT ALSTEDE)
TIMOTHY P. DOUGHERTY)
MICHAEL R. DRESSLER)

CALL TO ORDER

Chairman Rilee called the 116th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:02pm.

ROLL CALL

Roll call was taken. Council Members Alstede, Dougherty and Dressler were absent. All other Council Members were present.

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 JUNE 21, 2012

Mr. Vobden introduced a motion to approve the minutes and Mr. Visioli seconded it. All members present voted to approve. The minutes were APPROVED 9-0, with three abstentions.

CHAIRMAN'S REPORT

There was no report by Chairman Rilee.

EXECUTIVE DIRECTOR'S REPORT

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Mr. Feyl noted two additions to the Executive Director's report: 1) a summary page of activities during the month; and 2) as expressed by Council last month regarding the Executive Director's authority as outlined in Resolution 2012-18, project reviews will be supplied to Council. This report has been tracked as of the first of the year. Regarding Plan Conformance, Council staff has met with three municipalities that had delayed conformance and where advancement of those plans now appears feasible. Mr. Feyl also reported that Council staff has reestablished a Constituent Support Team, which will rotate staff members on a daily basis to address constituent matters. In all, ten teams have been formed to help bring disciplines together to discuss and make decisions and recommendations. Mr. Feyl added that to date there have been 26 Wastewater Management Plan (WMP) drafts completed and staff is scheduled to draft seven more. Lastly, Mr. Feyl reported a suggestion made by Council Member Holtaway to have a monitor placed in front of the Council Members to view presentations at Council meetings in addition to the screen behind them. Mr. Feyl concluded his report by congratulating Chairman Rilee for his work on the MOU.

COMMITTEE REPORTS

Mr. Vohden, Chair for the Bylaws Committee, reported that the Committee will have its first meeting at the Highlands Council office on Friday, July 27, 2012 at 2:30pm. The Council Bylaws may be found on the Highlands Council's website and Council Member's Manual. Bylaw Committee members are: Council Members James, Francis, Dougherty and T'fank.

Resolution – Memorandum of Understanding Between The Highlands Water Protection and Planning Council And The New Jersey Department of Environmental Protection

Chairman Rilee introduced the Resolution.

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

Chairman Rilee introduced Ray Cantor, Esq. from NJDEP and appreciated all his help with the MOU.

Public Comment

David Shope, owns property in Lebanon Township – Mr. Shope commented on the definition of the word "exempt." Mr. Shope read the definition from the Black's Law Dictionary which states: "To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from militia service; To relieve certain classes of property from liability to sale on execution." Mr. Shope commented that the Highlands Act was to exempt property owners who fell under a certain criteria from the provisions of the Highlands Act and this resolution is tying the exemption to the action of conformance with municipalities. Chairman Rilee responded that the exemption can be granted by the NDEP or Highlands Council. Chairman Rilee further stated that what has been authorized under this MOU is that the municipality may act instead of the other two entities. Mr. Shope questioned what would happen in Mansfield Township's case where no petition has been made for plan conformance in the Preservation Area. Mr. Shope objects to the resolution until it is clarified to the point where a landowner (no matter what the actions of his government are) stands with getting an "exemption."

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Julia Somers, Executive Director of New Jersey Coalition – Ms. Somers note that, although she knows it was through no fault of the Council, the MOU was available for review by the public only recently. Ms. Somers had the following questions: 1) when does the training begin and would the public be able to attend these training session?; 2) would public records of exemptions granted by municipalities be kept at the Highlands Council and will it be available on the Highlands Council website?; 3) in the resolution where paragraph begins NOW, THEREFORE, BE IT RESOLVED, Ms. Somers asked what the following words meant “hereby authorizes its Chairman and Executive Director to make any necessary, minor, non-substantive amendments, in keeping with this resolution...” Ms. Somers believes it is sensible for municipalities to be able to issue simple exemptions, but she is not sure the Council is ready to make this change. Ms. Somers is concerned about “exemption creep,” because there is no creation of a deed restriction to record the exemption granted and no mention of it in the resolution. Ms. Somers is also concerned if there is an appeal of an exemption granted and it comes to Council for review and is inappropriate, how does that exemption become nullified?

Chairman Rilee referred Ms. Somers question to Lewin Weyl of DAG’s office. Mr. Weyl responded that in paragraph C.4. there is a provision that any party can appeal within twenty (20) days of issuance of the exemption determination and the Highlands Council and the NJDEP shall examine any such exemption appeals based upon a de novo review.

Ms. Somers asked if a municipality goes through the training and is granted the authority to approve exemptions, but repeatedly does so inappropriately or incorrectly does the Council have the opportunity to pull back that authority. Chairman Rilee responded that this is a Memorandum of Understanding that can be terminated in 60 days and NJDEP can reconsider these exemptions.

Lastly, Ms. Somers commented that a town has to register an ordinance to permit it to do this, can that town add the ability to request a fee. Chairman Rilee assumed this would fall under the Municipal Land Use Law, but will have that clarified.

Ms. Somers concluded that the most important thing is the issue of some kind of record so property owners (or when there is a change in property ownership) understand if they can keep the same exemption over and over again as she does not believe that was anticipated by the Act.

Monique Purcell, Department of Agriculture – Ms. Purcell commented that she supports this resolution and feels towns should be making these decisions and it is a step in the right direction.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer commented that he supports the concept of this resolution, but echoes the comments of Ms. Somers about the fee issue due to tight budgets at the municipal level. Mr. Peifer is concern about the appearance of Council creating another unfunded mandate and towns need to know clearly what they hold. Mr. Peifer commented on training and strongly supports the Coalition’s comments regarding including the public in these training sessions as well as landowners. Mr. Peifer expressed concerns about towns re accurately recording easements and whether or not those easements would be of the standard that Council would require. Mr. Peifer concluded that this will help people feel more connected to the process and the voluntary option is good.

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich indicated that the farm bureau would support anything that simplifies the process. She asked for clarification about whether or not the 15 exemptions that apply in the Planning Area would still be available in municipalities that had not opted

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in for Plan Conformance in the Planning Area. Ms. Heinrich specifically expressed concerned about exemption #7 regarding woodland management in the Planning Area and said that woodland management plans are required by the state forester for farmland assessment and should not require involvement from DEP, the Council or the municipality. Ms. Heinrich feels exemption #7 was a big mistake in the Act and woodland management should be easy to get no matter where you need to go to get the exemption.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey supports the comments of the Highlands Coalition and ANJEC and is concerned that the reporting process of the exemptions should be standardized and formalized and all of these exemptions should come to the Council so that there is a central repository that one can review. Mr. Frey also referred to the resolution on page 4 (C.4.) that there is a provision for appeal and it says that “there would be twenty days from the effective date to do an appeal” and even though appeals would not be expected often, she feels twenty days is too short of a period and should probably change to sixty days for review.

Council Discussion

Mr. Francis stated that he is a true believer in “home rule” and the responsibility of municipal land use boards. He is confident that this is an excellent start and it allows Council to look at larger issues.

Mr. Holtaway echoed the sentiments that this MOU is a start. He further inquired about a process to review any perceived errors that are made in granting exemptions.

Mr. Feyl responded that he thinks Council can appeal or uphold an exemption, and that the MOU has been examined quite extensively. He further clarified that the number of times this has been employed by NJDEP or Council is really rather infrequent. Mr. Feyl reported that, according to a document obtained by a member of the press and shared with Highlands Council staff, in 2011 there were 58 applications for HADs [Highlands Applicability Determination] from NJDEP in 2012 there have been 36 applications so far, so this is not a wide spread situation. Mr. Feyl further added that the MOU will help dispel many of the misunderstandings about the Highlands and makes the legislation more acceptable. He feels implementation of the MOU is manageable and does not see any wiggle room for any misinterpretation. Mr. Feyl also reported that, according to this document, between the years 2004-2012 there were a total of two woodland management applications. Mr. Feyl added that Council staff will work on a plan for implementation discussing the collaboration with NJDEP and the legal issues and will provide something for Council to review. Mr. Feyl commented that this is recognized as a public trust.

Mr. Richko commented that he is in favor of the intent of this MOU, but wants to make sure that the homeowners, future homeowners, towns in the Highlands region, and the integrity of the Highlands Act are protected. Mr. Richko referred Council to page 3, C.3., which states: “Require that the Conforming Municipality provide a copy of each exemption application and municipal exemption determination be provided to the Highlands Council and to the NJDEP within ten (10) business days of the date of issuance.” Mr. Richko commented that there was nothing in the MOU specifying that the Council has the ability to review or override decisions. Mr. Richko acknowledged that the Executive Director just clarified that the Council would have the opportunity to review. Mr. Richko feels that should be specified in writing in the MOU, and specify that it has to be within a specified time.

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Chairman Rilee responded that this is no different than any other issue the municipality has to deal with.

Mr. Richko responded that he is talking about a copy of the exemption from the municipality where there is no mention what to do if there is a mistake or if something is incorrect.

Chairman Rilee responded that towns deal with these types of situations now with NJDEP through all permits that are required and this is no different. Chairman Rilee read the municipal issued exemptions, emphasizing that they were fairly simple and straightforward:

1. Construction of a single-family dwelling, for an individual's own use.
2. Construction of a single-family dwelling with conditions.
4. Reconstruction for any reason of any building or structure, with conditions.
5. Any improvement to a lawfully existing single-family dwelling, with conditions.
6. Any improvement, for non-residential purposes; to a place of worship owned by a non-profit entity, society or association.
7. Any activity conducted in accordance with an approved woodland management plan.
8. The construction or extension of trails with non-impervious surfaces on publicly or privately owned lands.

[Note: Complete Municipal Issued Exemption language is on page 2 of the Memorandum of Understanding in a footnote.]

Mr. Richko commented that his concern is that there does not seem to be an ability to change a mistake. Mr. Richko is not against the MOU, but wants to make sure we have the proper language and the intent is to protect the homeowners and the Highlands Act.

Mr. Richko then refers Council to page 2, the fourth WHEREAS clause which refers to the goals and provisions of the RMP. In N.J.S.A. 13:20-14 under c. it states: "The Council may revoke a conformance approval granted pursuant to this section or section 15 of this act, after conducting a hearing, if the council finds that the local government unit has taken action inconsistent with the regional master plan." Mr. Richko asked if the language in the MOU resolution will supersede the language in the Act. Mr. Weyl asked Mr. Richko if his question is: Does the MOU resolution override the RMP? Mr. Richko concurred. Mr. Weyl responded "no."

Mr. Walton left the meeting temporarily at 4:42pm.

Mr. Feyl commented that part training could specify that if an exemption is deemed inappropriate, the Council could return it to the municipality for remedial action.

There was continued discussion about different scenarios regarding homeowners and future homeowners and what restrictions would be implemented.

Mr. Weyl said his recommendation would be for a homeowner to have a formal notice of the exemption because it would protect the property owner when they want to sell a property: they have something that shows a prospective buyer the limit of an exemption. He compared this to any home improvements done indicating a seller would want to show the buyer that proper permits were obtained for work completed.

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Mr. Walton returned to the meeting at 4:43pm.

Ms. Carluccio suggested that an exemption determination should come back to the Highlands Council so the Council knows what exemption determinations have been made on a monthly basis. Ms. Carluccio added that Council should have the ability to review and approve exemptions until the Council gets a feel for what is going on.

Mr. Vohden stated that he would like to see NJDEP exemptions that were denied.

Ms. Carluccio made a motion to amend this resolution so a that monthly report be made available to Council on the exemptions before they are approved and implemented at the local level to oversee the impacts on Highlands resources.

Chairman Rilee responded that the agreement as written has been signed by Commissioner Martin.

Ms. Carluccio also expressed concern about the words “Conforming Municipalities” in the Resolution and wondered at what point in the process does the MOU consider a municipality to be in conformance. Ms. Carluccio added that a municipality has many conditions for Plan Conformance and suggested that the adoption of the Land Use Ordinance should be approved before Council gives the municipality the delegation to authorize exemptions under the MOU.

Ms. Carluccio questioned whether or not there is a requirement to have a notice of exemption recorded publicly. Mr. Weyl commented that it is not required in the MOU or referenced in the resolution because if one is exempt than they are not eligible to come to NJDEP or Council to get that exemption. It is merely recognition but as Mr. Shope initially read, if it is exempt the property owner need not go to the government to secure that recognition of the exemption. It is a practical matter and it is not an obligatory requirement. Ms. Carluccio further asked if the notice is mentioned in the MOU. Mr. Weyl responded that it is up to the Council and the municipalities to decide where to recognize the issuance of exemptions.

Mr. Walton commented that this is a good start and that the exemption is presumed. Mr. Walton vehemently opposes any requirement that Council provide a record or database to make this more cumbersome or onerous for municipalities. Mr. Walton stated this is remarkable that a government agency yields power to someone else. Mr. Walton commented that the 88 municipalities and counties in the Highlands region have done a fantastic job years prior to the Act and the notion that municipalities cannot approve exemptions is wrong.

Mr. Visioli commented that some Council Members are getting “wrapped around the axle” and he is in favor of home rule.

Mr. James asked who can appeal. Chairman Rilee commented that he assumed it would be an aggrieved party.

Mr. Richko responded that he agrees and disagrees with his Council Members’ comments.

Mr. Richko made a motion to amend this resolution to add on the top of page 3 that towns must adopt their Land Use Ordinance before they are able to authorize exemptions. Ms. Carluccio seconded the motion.

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Chairman Rilee asked for a roll call on the amended resolution.

All members present voted on the amended Resolution. A roll call was taken. The amended Resolution was REJECTED by a vote of 2-10.

Chairman Rilee called a roll call vote on the original resolution.

All members present voted on the Resolution s. A roll call was taken. The Resolution was APPROVED by a vote of 10-2.

Resolution – Approval To Extend The Fiscal Year Budgets 2012 At The Same Average Monthly Spending Level

Chairman Rilee introduced the Resolution.

Mr. James made a motion to approve the Resolution and Mr. Visioli seconded it.

Public Comment

Julia Somers, Executive Director of New Jersey Coalition – Ms. Somers questioned what this resolution means. Mr. Holtaway responded that we are into 2013 and we do not have a 2013 budget so it is a temporary budget to continue business.

There was no Council Discussion.

All members present voted on the Resolution. A roll call was taken. The Resolution was APPROVED by a vote of 12-0.

Chairman Rilee opened the meeting for public comments.

Public Comments

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer commented on two issues. The first issue was regarding the Fenimore Landfill in Roxbury Township.

Chairman Rilee recused himself regarding Mr. Peifer's comments on Fenimore Landfill. Council Member Holtaway was asked by Chairman Rilee to conduct the meeting.

Mr. Peifer noted that the Highlands Council had previously approved a Highlands Redevelopment Area Designation for the former landfill, for a project to install solar panels. Mr. Peifer noted that during the requisite remediation of the landfill prior to any redevelopment, the NJDEP sought to revoke the consent order it had issued to allow remediation because of additional pollutants discovered and non-compliance issues. He also noted Township complaints regarding truck traffic and safety. Mr. Peifer urged the Council to withdraw the Redevelopment Area Designation until these issues were satisfactorily resolved.

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Chairman Rilee returned to the meeting at 5:14pm.

Mr. Peifer also expressed concern regarding the proposed Split Rock Reservoir Boat Ramp. A Highlands Preservation Area Approval (HPAA)is being sought by NJDEP Fish Game and Wildlife for the proposed project. Mr. Peifer stated that a site plan was presented to the Rockaway Township Planning Board by the contract engineer at a public information meeting, at which, no NJDEP representatives were present. Mr. Peifer stated that the engineer explained that the contract is split and that 60% is designated for the proposed boat ramp and that 40% is designated for new parking lot, which is on a different lot than the boat ramp and not part of the HPAA application. Mr. Peifer stated that based on this presentation, the HPAA application under review by Council staff does not disclose the entire extent of the project. He noted that there are two other projects in the vicinity, reconstruction of the Susquehanna Roseland power line and the reconstruction of the Split Rock dam, which should be cumulatively reviewed by the Highlands Council.

Julie Somers, New Jersey Highlands Coalition - Ms. Somers recognized that it was not the fault of the staff regarding the timeframe for posting of the agenda. Chairman Rilee stated the agenda would not have been posted had they not had an approved the MOU and he apologized for the delay. Ms. Somers also stated that they have not seen towns come before the Council for Plan Conformance in some time and she named some of those towns and wanted to know where they are in the Plan Conformance process. Executive Director Feyl responded that there are three municipalities in active discussion with Highlands staff and staff continues to work with the others. Chairman Rilee responded that there is no slow down in towns conforming and that there has been a turnover in staff, but things are moving forward. Ms. Somers also stated there are two key ordinances to keep track of: the checklist ordinance and the land use ordinance and stated these ordinances are extremely important landmarks in conformance and she would like the Council updated when these landmarks are met. Executive Director Feyl stated that staff continues to meet with towns (1-3 per week) regularly to discuss the land use ordinance and they have many questions concerning this ordinance before they adopt it, and those questions are being addressed via these conversations.

Jerry Kern, property owner in Pohatcong Township –Mr. Kern thanked the Council for simplifying the regulations for landowners. Mr. Kern commented that he heard nothing about compensation of landowners during this meeting. Mr. Kern asked if a copy of the checklist ordinance may be provided to him.

David Shope, owns property in Lebanon Township – Mr. Shope doesn't understand why it takes training sessions and anything other than a building inspector or zoning board to look at the deed and say that you owned the property before the magic date of May 2004. Mr. Shope spoke of a newscast he viewed which stated that United Water is leaking 25% of its processed water and the state average is 15% of leakage, and landowners have their equity stolen so others can squander it. Mr. Shope submitted a letter regarding nitrate solutions and asked for a response.

Mr. Holtaway made a motion to adjourn the meeting and Mr. Visioli seconded. The meeting was adjourned at 5:28pm.

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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: 9-26-12

Name: Annette Tagliareni
 Annette Tagliareni, Executive Assistant

**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 Mengucci			✓			
Councilmember Richko			✓			
Councilmember Sebetich			✓			
Councilmember T'fank			✓			
Councilmember Visioli			✓			
Councilmember Vohden	✓		✓			
Councilmember Walton		✓	✓			
Chairman Rilee			✓			