

**NEW JERSEY HIGHLANDS COUNCIL
NATURAL RESOURCES COMMITTEE**

**CHAIR REPORT
FOR THE MEETING OF FEBRUARY 14, 2008**

On February 14, 2008, the Natural Resources Committee held a meeting at the New Jersey Highlands Council office in Chester, New Jersey. Notice of the meeting was provided on the Highlands Council's website. Council members present included the Committee Chair Tim Dillingham, Scott Whitenack, and Erik Peterson (Mr. Peterson via phone conference). The Highlands Council staff included Eileen Swan, Tom Borden, Dan Van Abs, Chris Ross, Erin Lynam and Casey Ezyske. The meeting was called to order at 10:10 a.m.

Mr. Dillingham provided an overview of the agenda items which included discussion of staff reviews of two Water Quality Management Plan (WQMP) amendment proposals (Pinnacle and Trump National Golf Club).

Pinnacle WQMP Amendment

Mr. Dillingham asked the staff to present a summary of its review of the proposed Pinnacle WQMP Amendment. Erin Lynam indicated that this is a proposed amendment to the Northeast WQMP through the Borough of Oakland Wastewater Management Plan (WMP) to allow for construction of the proposed Pinnacle Tract, a 209-unit residential development within Oakland Borough, Bergen County. In June of 2005, the NJDEP determined that the project qualified for Exemption 17 of the Highlands Act (Affordable Housing). While the development is exempt from the Highlands Act, it is still subject to NJDEP's Water Quality Management Planning Rules requiring an amendment to the WQMP and WMP, which is the subject of this review. Ms. Lynam noted that the project site was part of a 1991 settlement of a builder's remedy lawsuit.

Ms. Lynam explained that the proposed project site encompasses 84.5 acres and that the proposed development consists of 77 four-bedroom single family homes, 104 three-bedroom townhouses and apartment-style homes, 28 affordable units, a clubhouse, local roads, and associated infrastructure. The projected wastewater flow from this development is 66,555 gallons per day (gpd), according to the WQMP amendment application. Ms. Lynam noted that while the Existing Community Zone (ECZ) and Protection Zone (PZ) of the Land Use Capability Zone Map dissect the project site, the development footprint is almost entirely within the PZ and therefore, the proposed development was reviewed against PZ policies.

Ms. Lynam stated that the review of the proposed WQMP amendment reveals several inconsistencies with the Final Draft RMP which include alteration of Highlands Open Water protection areas and riparian areas, critical habitat, forests, prime ground water recharge areas, and expansion of water and wastewater into those areas. However, she noted that since this project is exempt from the Highlands Act, the inconsistencies to be further considered are limited to those matters that are addressed by Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15, which do not include consideration of prime ground water recharge areas. Ms. Lynam stated that the staff recommendation is that NJDEP not approve the application unless it is modified to address the following inconsistencies:

- **Highlands Open Waters** - There is encroachment into the 300-foot stream protection buffers/riparian areas, which is inconsistent with the objectives of the Final Draft RMP. The proposed construction of stormwater outfalls within the riparian area of the C1 tributary would be inconsistent with RMP policies prohibiting land uses that would alter or be detrimental to the water quality of a Highlands Open Water. Similarly, alteration of natural vegetation in the site's riparian corridors would alter or be detrimental to threatened and endangered species habitat, which would be inconsistent with RMP policies prohibiting land uses that would alter or be detrimental to habitat quality of a Riparian Area.

- **Critical Habitat** – NJDEP made a determination regarding the project's potential impacts on barred owl habitat, but the record indicates that NJDEP's findings apply specifically to those areas affected by freshwater wetlands

and transition areas. Despite NJDEP's determination that the specific area of the site functions as a migration corridor for barred owl, but not breeding or nesting habitat, the staff recommends that any disturbance to the mapped habitat for barred owl will result in forest fragmentation, which would be inconsistent with the RMP policy prohibiting the alteration or disturbance of critical wildlife habitat. These areas should be protected from damage or destruction resulting from indirect impact of development activities.

- **Water Availability** - The proposed water use is inconsistent with the RMP because it exceeds the 27,600 gpd in conditionally available water for the three subwatersheds, and because it does not provide for 125% mitigation of the increased depletive water use even if modified to stay within the conditionally available water. She noted that the project is inconsistent with the RMP general prohibition on extending water systems and wastewater service areas in the Preservation Area or Protection Zone.

Tom Borden completed the staff overview by noting that this exemption (Exemption 17 - Affordable Housing) does expire three years after final approvals have been issued.

Mr. Dillingham invited the applicant's representative to speak. Dennis Toft, attorney for the applicant, indicated that the project is reaching its 20th-year anniversary. He provided a brief administrative history and explained how the project's scope has been greatly scaled down over the years (from 600 units at one time down to 209 units today). He stated his belief that the applicant has gone to great lengths to comply with all NJDEP requirements. He then introduced Dr. Raymond Walker, a consulting scientist for the applicant, to present a technical rebuttal to the Council staff recommendation memo. Dr. Walker read from a prepared statement (a written copy of the prepared statement was submitted to Council staff).

Dr. Walker noted that with respect to encroachment into the Highlands Open Water protection area buffer, that the applicant had worked with NJDEP and that construction of the proposed stormwater outfalls is consistent with the Flood Hazard Area Control rules. The applicant submitted a stormwater management plan and had obtained both a stream encroachment permit and a transition area waiver. Dr. Van Abs asked whether the stream encroachment permit is conditioned upon approval of the WQMP amendment, and Dr. Walker noted that it is. In regard to critical habitat, Dr. Walker noted that the applicant conducted extensive surveys of the entire site and did not encounter the state threatened barred owl, and that NJDEP did not question the results. It was determined that the site features marginal habitat for barred owl and that the great horned owl exists on-site, which poses a serious predatory threat to the barred owl. Dr. Van Abs asked whether NJDEP had provided a written conclusion regarding the entire site; Dr. Walker reiterated that NJDEP had not questioned the results and that he would look to see whether a written finding had been prepared. Mr. Borden and Dr. Van Abs noted that the Council staff would seek an affirmative decision (written correspondence) regarding the study's determination from the NJDEP.

With respect to the water availability issue (i.e., exceeds conditionally available water for the three subwatersheds and does not provide 125% mitigation), Dr. Walker stated that the project site falls only within two HUC14 watersheds. Ms. Lynam clarified that the source water is from three HUC14 subwatersheds and it is the source water that is the subject of the respective RMP policy. Dr. Walker noted that the borough of Oakland has indicated that it has adequate capacity to serve the project and that the NJDEP Bureau of Water Allocation has also indicated that there is sufficient water available. Dr. Van Abs stated that the NJDEP uses a different metric for determining water availability than the Council staff and he further noted that the NJDEP is soon changing their metric. Dr. Walker concluded his prepared statement by noting that the project meets all of NJDEP's regulatory requirements while fulfilling the town's affordable housing obligations.

Dr. Van Abs summarized the keys points before the Committee:

- Critical Habitat – staff requires an affirmative NJDEP decision regarding absence of barred owl habitat or that the project does not disrupt any such habitat
- Highlands Open Waters Buffer Areas – Highlands Open Waters include all open waters (including seeps, springs, wetlands, etc.) and the project does encroach into these buffers, which is inconsistent with the goals, policies

and objectives of the RMP. Compliance with NJDEP rules does not address all RMP issues.

- Water Availability - the staff analysis was with regard to the RMP and not the NJDEP water allocation rules and the proposed project is inconsistent with the goals, policies and objectives of the RMP regarding water availability. Therefore, there is the potential for the first issue to be addressed, and the latter two issues are acknowledged to exist, with the applicant believing that they are not legally applicable due to prior NJDEP findings and permit decisions.

Mr. Toft indicated that on behalf of the applicant, he will submit to the Council the NJDEP's official determination regarding the critical habitat as well as a position statement regarding the Highlands Open Waters buffer areas and water availability. Mr. Dillingham invited members of the public to offer comment. Following is a brief summary of the public comments provided:

- Borough of Oakland has been trying for some time to purchase the site for open space
- The 80-acre site is part of a 220-acre continuous ridge line
- The site serves as a migratory path between critical habitats
- Does not believe the project is exempt; COAH plan (Round 2) has not been certified
- Believes that the site certainly contains barred owl habitat. Further, some believe that the studies the applicant conducted were conducted during the wrong season of the year (alleging that surveys were conducted between June and August and Division of Fish and Wildlife indicates that barred owl surveys should take place between March through May)
- Believes that the proposed water allocation would not be adequate for summer flows
- Notes that many groups and individuals have long opposed the project
- Concerned that removing over 60,000 gpd out of the Ramapo River and its watershed would result in negative impacts on water quantity and quality
- Notes the glaring inconsistencies of the project with the RMP, including the degradation and impact of Pond Brook and the fragmentation of habitat, particularly the continuous ridge line
- In 2004, the Highlands Coalition created a list of "bad" proposed projects in the Region, and this was one of them (the only listed project in Bergen County)
- The site maps identify only building footprints; not the limits of disturbance
- Pollutant loadings would increase and the Ramapo River already has a proposed Total Maximum Daily Load (TMDL) for phosphorous and nitrogen. The proposed project would increase phosphorous loads from 0.1 lb to 1.4 lbs/acre and nitrogen loads would increase from 3 to 15 lbs/acre.

Mr. Dillingham asked staff about the TMDLs noted. Dr. Van Abs stated that the staff does not have pollutant loadings data and noted that NJDEP, as part of its EO 109 analysis, would not approve the project if it violated a TMDL. Mr. Toft noted that TMDL data is in the applicant's stormwater management permit, which will be provided to Council staff. Dr. Van Abs noted that it is a proposed TMDL.

Mr. Dillingham suggested that the Committee could accept the staff recommendations and then advise the Council of that decision. Mr. Whitenack suggested that the Committee should wait to act until the staff has had a chance to review the subsequent materials that the applicant would provide as a result of today's discussion. Mr. Borden noted that since this project is an exemption, the Committee and staff could prepare the NJDEP recommendation letter and the Council has the ability to utilize the call-up procedure prior to the staff/Committee sending the letter to NJDEP. Mr. Dillingham stated that if the Committee members agreed, the Committee would accept the staff recommendation (there were no objections). Mr. Dillingham instructed the staff to review the subsequent material from the applicant and to direct that information as appropriate, to prepare the NJDEP recommendation letter, and to notify the Council of the call-up period.

Trump National Golf Club WQMP Amendment

Mr. Dillingham asked the staff to present a summary of its review of the proposed Trump National Golf Club WQMP Amendment. Chris Ross indicated that this is a proposed amendment to the Upper Raritan WQMP and the Somerset

County WMP to allow for the expansion of the sewer service area of the Trump National Golf Club by a little over an acre and to increase the water allocation for new golf course irrigation. The sewer service area expansion would support four new three bedroom guest cottages and the proposed increase of flow would be approximately 11,000 gpd. Ms. Ross indicated that Trump National is also proposing to reclaim water for beneficial reuse of up to 650,000 gpd of wastewater diverted from the nearby Environmental Discharge Corporation (EDC) Sewage Treatment Plant to be utilized for golf course irrigation. Further, Trump National has applied to NJDEP to increase its existing water allocation permit from 10.1 million gallons per month (mgm) to 19.4 mgm for a total of 646,666 gpd in support of the golf course, of which about 616,000 gpd is needed for irrigation. Dr. Van Abs noted that the use of EDC treated effluent has been opposed by both Trump National and the Township of Bedminster, but its inclusion in the WQMP amendment is based on NJDEP direction to the applicant.

Ms. Ross stated that the review of the proposed WQMP amendment reveals several inconsistencies with the Final Draft RMP which include the disturbance of Highlands Open Water protection areas, riparian areas, forest resource areas, prime ground water recharge areas, and critical habitat. These areas should be avoided by the project except where NJDEP determines, using more site-specific information, that the resource constraint does not exist. The applicant apparently has provided sufficient information regarding critical habitat to make such a proof to NJDEP's satisfaction. She also noted that recent aerial photography shows that the golf course has already been constructed, which may affect findings regarding certain constraints.

Ms. Ross noted that the project site also both has, and would create, water availability deficits. The amount of water requested from EDC could leave the unnamed tributary that EDC currently discharges subject to much lower flows during low flow periods. Ms. Ross noted that the Final Draft RMP requires that transfers of water between subwatersheds may only occur in the absence of viable alternatives, which has not been proved at this point. She noted that the amount of additional potable water for the project would be within the available water, but the additional amount of irrigation water would exceed the available water for the three subwatersheds. Ms. Ross stated that the staff Council recommends that the applicant reduce the amount of consumptive use proposed or seek other measures to provide irrigation that do not cause or exacerbate deficits in net water availability.

Ms. Ross concluded by stating that it is clear that in order to be consistent with the Final Draft RMP the applicant would need to modify the proposed development. However, before finalizing these recommendations, the Highlands Council staff feels that a site visit may be warranted, consistent with the approach taken on other WQMP projects where significant disturbance/development had already occurred.

Mr. Dillingham invited the applicant's representative to speak. Edward Russo, project consultant for Trump National, provided information regarding the history of the golf club and the club's efforts regarding environmental stewardship. He presented an original site plan and a current site plan, which indicated substantially less construction on the site than what was once locally approved. He noted that neither the Trump organization nor the town has any interest in the EDC wastewater program that was described in the public notice, and he indicated that the club has substantial on-site water resources that would exceed the needs of the proposed project (he noted that he would leave reports/studies with the staff that would demonstrate the ample capacity). Mr. Russo spoke of forest management and critical habitat management efforts underway at the club and he mentioned the extensive activities conducted in the riparian corridor to remove invasive species and to replant native trees. He also spoke of a monitoring committee that conducts on-going monitoring activities including water quality. Mr. Russo provided the staff with numerous documents and reports on each of these topics.

Dr. Van Abs suggested that in the recommendation letter to NJDEP, that the Committee recommends that the EDC component of the plan be removed. Mr. Dillingham concurred but further asked staff to clarify the potential for water deficits. Dr. Van Abs indicated that based on what Mr. Russo indicated about on-site water storage (that information was previously not made available to staff), Trump National was claiming sufficient on-site water storage that such that there would be no consumptive water use that would affect the water deficit. However, staff would have to review the data and reports provided before making that determination. Tom Borden indicated that staff needs to obtain and review NJDEP's proposed water allocation permit. Mr. Dillingham noted that given the need for additional data review

and a potential site visit, that this project would be held over until the next Committee meeting. Mr. Dillingham invited members of the public to comment.

A Bedminster township representative indicated that the township passed a resolution on February 4, 2008 that opposes the WQMP amendment because of the EDC component. The township does not want an infrastructure pipe of any kind extended into the rural country side. Other members of the public spoke; following is a brief listing of the comments expressed:

- It is clear that the major issue is water availability. It should be ensured that none of the three HUC14 subwatersheds be in deficit
- A golf course is not an “essential” of life
- Is against the EDC proposal
- The unnamed tributary that EDC currently discharges to supports a healthy biotic community
- The project should avoid prime ground water recharge areas
- The project should not negatively impact forests
- Is concerned if the grassland bird habitat conservation area is big enough

Mr. Dillingham asked Mr. Borden what the project timeline is. Mr. Borden stated that the next Council meeting, after the meeting on February 28th is March 6th. Mr. Dillingham instructed the staff to provide a project status memo to the Committee by February 28.

Before adjourning the meeting, Mr. Dillingham asked for clarification regarding the impervious surface methodology that is available for public comment on the Council website. Mr. Borden explained that the methodology is only applicable to proposed redevelopment site designations in the Preservation Area. It needs to be reviewed in that context; it will never be used as part of any project development review. Mr. Dillingham indicated that the staff should conduct another presentation regarding the methodology to the Committee. He invited members of the public to comment. One speaker noted that the TR-55 curves used in the methodology may not be appropriate in that she has seen flaws in its use during site review. Dr. Van Abs noted that this methodology has nothing to do with development reviews and that it should not be utilized in that manor. Another commentator requested that additional scenarios as examples be added to the methodology document. Mr. Dillingham indicated that written comments should be submitted to the Council during the comment period which extends until March 3. A final commentator noted that there is discomfort among municipalities about where redevelopment may occur; the term redevelopment is a loaded word.

Mr. Dillingham adjourned the Natural Resource Committee meeting at 12:40 p.m.