

NEW JERSEY HIGHLANDS COUNCIL

SMART GROWTH AND ECONOMIC DEVELOPMENT COMMITTEE CHAIR REPORT FOR THE MEETING OF FEBRUARY 23, 2006

On February 23, 2006, the Smart Growth and Economic Development Committee held a meeting at the New Jersey Highlands Council office in Chester, New Jersey. Notice of the committee meeting was provided to the Highlands Council's official newspapers and was also provided to the public on the Council's web site. Council members present at the meeting were Committee Chair Ben Spinelli and Council members John Weingart, Kurt Alstede, Mimi Letts, Jack Schrier and Liz Calabrese. Council staff present included Dante Di Pirro, Tom Borden, Steve Balzano, Jeff LeJava, and Ross MacDonald. The items on the agenda includes the review of the policy matrix relating to the Transfer of Development Rights (TDR) program, the review of the process by which sending and receiving zones would be identified, and the policy matrix for the financial component of the Regional Master Plan.

Mr. Balzano provided an overview and scope of the Highlands TDR program and specified that the purpose of this Committee meeting would be to focus on the criteria for identifying "sending areas" and voluntary "receiving areas." Land suitable for either of these areas would need to meet a series of criteria agreed upon by the Council Members. It was highlighted that the TDR process above all would need to be simple, efficient and user-friendly. Mr. Balzano highlighted that it would only be a supplemental resource to help compensate property owners and by no means the only economic resource. Mr. LeJava was asked to elaborate on the specifics of the proposed TDR narrative criteria and the policy matrix recommendations.

Mr. LeJava summarized the staff's recommendation to utilize narrative criteria to satisfy the legislative mandate that the Highlands Council identify TDR sending zones in the Preservation Area and voluntary TDR receiving zones in the Planning Area within 18 months of the enactment of the Highlands Act. He stated that narrative criteria for sending zones would ensure that those properties in the Preservation Area that have been affected by the Highlands Act and its implementing regulations will be able to participate in the TDR program. On the other hand, the criteria for voluntary receiving zones would enable municipalities to understand what types of areas in Planning Area are appropriate to become voluntary receiving areas despite the fact that the information and data to support those determinations is still in development. Mr. LeJava emphasized that the TDR criteria serve as the first step in a process to determine whether a particular property is entitled to send or receive TDR credits. Prior to adoption of the Highlands Region TDR Program, the Highlands Council will have to consider how TDR credits are allocated to a property, how those credits are valued, and how a particular property's TDR credits should be prioritized for acquisition.

Councilmember Schrier requested a discussion of the adequacy of meeting the legislative mandate through narrative criteria. Mr. Borden and Mr. LeJava discussed the bifurcated provisions in the Highlands Act to identify TDR sending and receiving zones in February before the scheduled June adoption of the Regional Master Plan ("RMP") and stated that the Highlands Act specifies that the early examination of TDR zones consider the information gathered to date. The data and information that have been developed to date such as the capacity of existing water supply and wastewater infrastructure, as well as the extent of ecological resources for a given area, are essential to determining which areas in the Planning Area are appropriate as voluntary receiving zones. It was discussed that the data and

information for a carrying capacity analysis is still under development, and without sufficient data, a specific identification of specific voluntary receiving zones would be premature.

The Committee discussed the use of narrative criteria for the identification of lands within the Preservation Area that are appropriate as sending zones. Mr. LeJava discussed the proposed narrative criteria for sending zones as any land in the Highlands Preservation Area provided that the land could have been developed as of August 9, 2004, based upon zoning and land use regulations then in effect, on which development is now precluded or severely constrained by the restrictions imposed pursuant to the Highlands Act.

Committee members discussed adding language to state that the sending zones would include, but not be limited to, forested land, farmland, and other environmentally sensitive land. After discussion, it was determined that these examples may lead property owners to conclude that less sensitive land would not be eligible. The consensus was reached to keep the sending zone criteria as broad as possible to make it known that other lands, such as commercially zoned lands in the Preservation Area may qualify as sending zones. Mr. Spinelli stressed the importance that, while these narrative criteria are limited to the Preservation Area, the RMP will identify critical resource areas in the Planning Area that may also be eligible as sending zones. The last paragraph in the sending zone narrative criteria was pointed out as recognition that the Highlands Council may modify the criteria and identify other areas in the entire Highlands Region.

Mr. LeJava discussed the proposed narrative criteria for voluntary receiving zones as land that is appropriate and suitable for development containing limited conservation value, with access transportation, that is proximate to concentrated development and population, that is underutilized or previously developed, or land outside the Highlands Region in State Planning Area 1, 2 or 3, or designated centers. In addition, voluntary receiving zones would have to demonstrate that there was adequate water and wastewater infrastructure and that the area had the capacity to support increased development above that allowed in the existing municipal zoning.

Committee members suggested that the criteria that voluntary receiving zones have limited conservation values should apply as a threshold criteria and it was agreed to move that specific criterion to the first paragraph. In response to a question, Mr. LeJava clarified that properties in the Preservation Area might also be suitable for voluntary TDR receiving zones and that the last paragraph gave the Highlands Council the authority to modify the criteria. Mr. Balzano stated that he had received comments seeking the addition of a demonstration of economic viability. The role of developers and their role in the process was discussed and the examination of a project's economic promise. Committee members discussed the appropriateness of the review by the Highlands Council of economic viability, and after much discussion it was determined to add this criterion to the narrative criteria. Lastly, it was decided to delete the criteria for land outside the Highlands Region at this time.

Ms. Letts raised concern whether there would be sufficient incentives to entice the designation of voluntary receiving zones. She was concerned that the \$15,000 per unit impact fee may not adequately offset the additional school and affordable housing obligations created by increased density and suggested that the Highlands Council will need to examine whether additional incentives should be recommended. Mr. Spinelli noted that the issue of providing incentives is central to the success of the program and suggested that the Highlands Council must be prepared to promote the program throughout the seven counties in the Highlands Region.

In response to questions from the public regarding consistency with the State TDR law, the Council staff discussed that the Highlands Act specifies that the Highlands Council must develop a regional TDR program for the Highlands Region and that it is to be consistent with the State TRD law. It was explained that the Highlands Act specifically recognized that the Highlands TDR would not always be entirely consistent with the State TDR law such as the obligation of the Council to perform a real estate analysis for the entire region.

Mr. Spinelli noted that the Committee was pressed for time and requested that the Financial Component issues be discussed in the next meeting of the Committee. After opening the meeting for any additional public comment, the Committee adjourned.