

**DRAFT – FOR CONSIDERATION BY THE HDC BANK BOARD OF DIRECTORS  
AT THE MAY 6, 2010 MEETING**

**HIGHLANDS DEVELOPMENT CREDIT BANK  
MINUTES OF THE MEETING OF JANUARY 7, 2010**

**PRESENT**

SCOTT WHITENACK	)	CHAIRMAN
DALE DAVIS III	)	DIRECTOR
THEODORE MAGLIONE	)	DIRECTOR
SUSAN CRAFT	)	DIRECTOR
JOHN WEINGART	)	DIRECTOR
RALPH SIEGEL	)	DIRECTOR

**ABSENT**

MICHAEL HALPIN	)	DIRECTOR
KENNETH KLIPSTEIN	)	DIRECTOR

**CALL TO ORDER**

The Chairman of the Board, Scott Whitenack, called the 8<sup>th</sup> meeting of the Highlands Development Credit Bank Board of Directors to order at 1:05 pm.

**OPEN PUBLIC MEETINGS ACT**

Chairman Whitenack announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, and that the Highlands Development Credit (HDC) Bank had sent written notice of the time, date, and location of this meeting to pertinent newspapers of circulation throughout the State and posted the same on the Bank's website.

**ROLL CALL**

Chairman Whitenack introduced the members present.

**CHAIRMAN'S REPORT**

Chairman Whitenack thanked Paula Dees and announced her retirement. She has provided administrative support to the Highlands Council and Highlands Development Credit Bank in her capacity as the Executive Director's Executive Assistant noting her interest in the mission of the Highlands and that she served on a local board in her community. He also announced the resignation of Director Peterson who has resigned to become a State Assemblyman and thanked him for his service.

**PLEDGE OF ALLEGIANCE** was then recited

*Director Craft joined the meeting.*

**APPROVAL OF MINUTES for November 5, 2009.** *Mr. Weingart introduced a motion to approve the minutes. Mr. Maglione seconded it. Messrs. Halpin and Klipstein were absent. Mr. Siegel abstained. All other members present voted to approve. The motion was APPROVED 5-0.*

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**EXECUTIVE DIRECTOR’S REPORT**

Ms. Swan began her report with a Plan Conformance update. She noted that the Highlands Act specified that 15 months from the adoption of the RMP, municipalities and counties in the Preservation Area were to file petitions and resolutions for conformance with the goals, policies and standards of the RMP. These petitions and resolutions were due on December 8, 2009. Staff received a total of 56 municipal submissions covering 95% of the Preservation Area and 35% of the Planning Area, representing 395,660 acres in the Preservation Area and 153,942 acres in the Planning Area, for a total acreage of 549,602 acres (or 64%) of the Highlands Region. She reiterated that the Planning Area petitions and resolutions are voluntary submissions and not binding until Council action and municipal ordinance. She also noted that two municipalities (Wharton and Parsippany-Troy Hills) submitted petition materials but had yet to adopt a resolution.

Ms. Swan continued showing a slide that illustrated the Preservation Area municipalities that had submitted their Conformance Petitions and Resolutions. She then began a County by County summary of the municipalities that had submitted their documentation beginning with Bergen County. Mahwah submitted a petition for both the Preservation and Planning Area while Oakland submitted for the Preservation Area only. These submissions represented 100% municipal conformance with the Act and 87% of the land area of Bergen County within the Highlands Region.

With respect to Hunterdon County, Ms. Swan noted that the county had also achieved 100% municipal conformance with the Act, with 99% of the land area represented by the following municipalities: Alexandria, Bethlehem, Bloomsbury, Califon, Clinton, Clinton Township, Glen Gardner, Hampton, High Bridge (ordinance), Holland, Lebanon Borough, Lebanon Township, Tewksbury, and Union.

Ms. Swan continued with Morris County whose municipalities are 100% in conformance with the Act representing 64% of the county’s land area. The following municipalities submitted petitions for the Preservation Area only unless otherwise noted: Boonton Twp., Chester Township (both), Denville (both), Jefferson, Kinnelon (both), Montville, Mt. Arlington, Mt. Olive, Pequannock, Randolph (both), Rockaway Twp. (both), and Roxbury, Washington Twp. (both). There are no resolutions from Parsippany-Troy Hills or Wharton Borough, but they did submit their module materials. Ms. Swan commented that many Planning Area municipalities in Morris County are continuing to work with the Highlands Council under a Notice of Intent.

Passaic County was the next slide shown revealing 100% municipal conformance with 98% of the county’s land area represented by Bloomingdale (both), Ringwood, Wanaque (both), and West Milford. She mentioned that Pompton Lakes is continuing to work in the Planning Area.

For Somerset County, Ms. Swan commented that there is a small portion of Bedminster in the Preservation Area and that the township submitted a petition for that area. Far Hills submitted a petition for conformance although it is entirely within the Planning Area. Submissions for Somerset County indicate 100% municipal conformance with the Act.

Sussex County had 100% municipal conformance with the Act with all Preservation Area municipalities submitting their petitions as follows: Byram (both), Green, Hardyston, Hopatcong, Ogdensburg, Sparta, Stanhope (Planning Area), and Vernon.

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Warren County had 71% municipal conformance with the Act with 11 out of 13 municipalities submitting Petitions for Plan Conformance. Independence and Mansfield have yet to Petition according to Ms. Swan, but she indicated that there had been a recent meeting with Independence and also inquiries from Mansfield. Those municipalities that did submit were (all Preservation Area unless noted): Allamuchy, Franklin, Greenwich (both), Hackettstown, Harmony, Liberty, Lopatcong (both), Oxford, Pohatcong (both), Washington Twp. (both), and White.

Ms. Swan concluded the Plan Conformance update by discussing Plan Conformance in the Planning Area. She noted that Planning Area municipalities do not have a RMP Conformance submission deadline and continue to work under a Notice of Intent. However, the next 2009 Plan Conformance Grant Program deadline is March 1, 2010, for Planning Area municipalities to prepare a draft Housing Element and Fair Share Plan in order to have adopted plans completed by June 8, 2010 (COAH's approved extension deadline). She commented that many of the municipalities that submitted a Petition just for the Preservation Area may still submit a Petition for the Planning Area representing approximately 130,000 acres. There are 18 Planning Area only municipalities that continue to work under a Notice of Intent: Milford, Chester Borough, Hanover, Mendham Borough, Mendham Twp., Mine Hill Twp., Morris Plains, Mountain Lakes, Riverdale, Pompton Lakes, Bernardsville, Franklin Borough, Hamburg, Alpha, Belvidere, Frelinghuysen, Phillipsburg, Washington Borough.

Ms. Swan also mentioned that Highlands Council staff had contacted the Pinelands Commission regarding their experience with having a deadline for submissions of petitions. Pinelands Commission staff explained that there were extensions granted for up to two years before all were required conformance petitions were submitted.

Lastly, Ms. Swan explained the correlation between RMP Conformance and TDR. She stated that as staff is reviewing the RMP Conformance submissions staff they are focusing on the capacity analysis results. Through this review staff will be able to determine which municipalities have the infrastructure capacity (water supply and sewer and/or septic capacity) to support additional growth and will encourage them to examine their municipal options through a TDR grant.

### **TDR Legislative Update**

Ms. Swan began this portion of her report by explaining that the Highlands Council had sent a letter to the Governor in November 2009 supporting legislation that would enable potential Highlands TDR receiving zones to be located anywhere in the State, not just the seven Highlands counties. She stated that Highlands Council staff had testified during the last two months in support of two bills that would extend the areas eligible to participate as Highlands receiving zones. On December 3, 2009, staff testified in support of the Senate bill, S2639, while on January 4, 2010, staff testified in support of the companion bill in the Assembly, A2202. She noted that Senator Smith and Assemblyman McKeon had been the respective sponsors of these bills both of which were voted out of Committee.

Mr. LeJava continued the presentation with an explanation regarding the steps necessary to sell HDCs to the HDC Bank.

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**TDR Proposed Timeline**

Ms. Swan continued the presentation with a discussion regarding the proposed timeline for hardship cases. She explained that staff was recommending a deadline and notice to the public to ensure that all hardship cases would be considered during a specific timeframe for the first round of funding.

The deadline for HDC Allocation applications to be received would be March 1, 2010, for first round hardship consideration. In February, 2010, the HDC Bank would begin to review HDC Certificate application materials and their receipt would have a deadline of April 15, 2010, for first round hardship consideration. Ms. Swan continued noting that consideration and prioritization of potential HDC hardship purchases by the HDC Bank would take place in March and April 2010 and staff recommendations would be made to the HDC Bank Board at the May meeting for deliberation and action by the HDC Bank Board.

There was additional clarification given by Ms. Swan and Mr. LeJava that anyone could apply for HDC Allocation during this period, but that the HDC Bank Board had prioritized the hardship cases to be reviewed first. There was a suggestion by Director Davis that future deadlines be announced so the public would know what to expect for the future. Also, it was discussed that offer letters for hardship cases would not exceed the \$10 million allocated for bank purchase. Mr. LeJava responded to a question as to the dollar amount of HDC credits represented by the five residential hardship applications received to date. Mr. LeJava stated that the value of the estimated HDC range for these five parcels was between \$340,000 and \$480,000. Chairman Whitenack asked the Directors if there were any further questions and finding none asked for a voice vote on the timeline. All the directors voted in the affirmative to accept the staff recommendation.

**Highlands TDR Program Update**

Ms. Swan showed a slide reviewing the HDC Allocation Applications received to date. She stated that that Highlands Council has received a total of eleven applications, with nine applications concerning residentially zoned property and of those, five applications are seeking hardship consideration. There are two applications that concern non-residentially zoned property and those have been referred to the consultant under contract for evaluation as specific site information must be analyzed. Both of those applicants are also seeking hardship consideration. Ms. Swan also noted that there is one application that is for a residentially zoned property in the Planning Area, and that such an application is premature because development on that parcel may not be limited until Planning Area conformance is achieved.

**HDC Certificate**

Mr. LeJava continued the presentation showing a slide of the HDC Credit Certificate noting that it was in the same form as had been shown at earlier HDC Bank meetings with the addition of a change on the second page to note that the information is for recordkeeping purposes. This notation was added based on comments from the HDC Bank Board. Director Craft asked if the HDC Certificates would be issued by block and lot and Mr. LeJava responded that they would be issued by parcel and filed by block and lot at the municipal and county level.

**Status of TDR Feasibility Grants**

The final portion of the presentation was a slide detailing the eleven TDR Feasibility grants awarded to date, including a recent grant to Long Hill Township, a municipality outside of the Highlands Region.

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Director Craft asked about the timing of the funding availability for the \$10 million authorized by Executive Order #114. Ms. Swan responded that, according to the Department of Treasury, the funds would be available by the end of March 2010. Ms. Craft also asked if a landowner exercises a Highlands Exemption to build one house whether that landowner would still be eligible for HDC Credits. The response was that the portion that was not built on could still have some development potential and therefore eligibility; however, if the property owner fully developed the property under the Highlands rules, the development rights would be used for that purpose. Mr. Borden commented that specificity with respect to this issue could be added by NJDEP when it issues Highlands permits to provide clarity to the property owner. He noted that there could be additional capacity for septic density if a project did not utilize all of the density allocated and that capacity could be eligible for future credits. There was some additional discussion with respect to this interpretation being consistent with the Highlands Act and Ms. Swan responded that to date large lot landowners who had met with staff were clear on the parameters of their applications. It was also noted that the selling of development rights through TDR would preclude applying for farmland preservation.

**I. CONSIDERATION OF RESOLUTION FOR 2010 SCHEDULE – (voting matter  
with public comment)**

Chairman Whitenack commented that the proposed meeting schedule was the minimum for meetings and as the need arose, there would be additional meetings noticed and scheduled.

*Director Craft introduced a motion to approve this resolution. Director Maglione seconded it. Messrs. Klipstein, Siegel and Halpin were absent. All other members voted to approve 5-0. The resolution was APPROVED.*

*Director Siegel joined the meeting as he had been in transit.*

Director Craft asked about the status of the Deeds of Easement. Ms. Swan responded that the Deeds of Easement are at the Attorney General's office for review and that upon receipt with comments, the Highlands Council will make a decision as to whether formal action will be taken to approve.

**PUBLIC COMMENT**

**David Shope, Long Valley**

Mr. Shope asked how many acres were represented by the 5 hardship cases noted in the presentation to represent \$380,000 to \$400,000+ dollars. He also asked who paid the soft costs that were mentioned. He commented that Ms. Swan's presentation characterized conformance as it had at the Highlands Council in December, but conformance was not approved as yet. He asked for a definition of "hardship" asking whether age was a hardship. He also noted that he was one of nine people suing the State of New Jersey with respect to the Highlands Act.

**Helen Heinrich, New Jersey Farm Bureau**

She asked Chairman Whitenack to consider an informal meeting where questions could be asked by the public that would generate a discussion that could benefit all. She also asked if there would be a list of towns that had infrastructure capacity and she was directed to the Highlands Council website to the build out reports that the Council has posted. She also wanted to know if there was any progress in the towns that had received a TDR grant to study feasibility and if the chart of the Process to Purchase would be on the website. Mr. Borden indicated that the PowerPoint presentation containing the chart would be posted online as soon as possible.

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Mr. LeJava mentioned that the soft costs are currently to be paid by the applicant. However, he mentioned that there would be a discussion at the May Bank meeting as to whether a portion of those costs might be borne by the State for hardship cases only. Mr. LeJava stated that this discussion can only occur after a specific estimate has been established for the value of HDCs to be purchased during the first round of hardship consideration. Director Siegel asked for a definition of soft costs and Mr. LeJava explained that such costs include a title search, recording fees and attorney review of various aspects depending on the situation. Mr. Borden reiterated that staff is trying to quantify what the soft costs would be for hardship cases for the discussion in May. Director Craft asked if a survey would be required and Mr. LeJava replied that it would not be required.

There was a motion to adjourn at 2:05 pm.

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Development Credit Bank Board.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Paula M. Dees Executive Assistant