

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF OCTOBER 13, 2011

PRESENT

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

ABSENT

JAMES MENGUCCI)
JAMES VISIOLI)

CALL TO ORDER

Chairman Rilee called the 108th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:06 pm.

ROLL CALL

Roll call was taken. Council Members Michael R. Dressler, Robert Holtaway, James Mengucci and James Visioli were absent. All other Council Members were present.

OPEN PUBLIC MEETINGS ACT

Mr. Borden announced that the meeting was called 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 on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF SEPTEMBER 15, 2011

Mr. Schrier introduced a motion to approve the minutes and Mr. Richko seconded it. Messrs. Dressler, Holtaway, Mengucci and Visioli were absent. Mr. Walton abstained. All other members present voted to approve. The minutes were APPROVED 8-0, with one abstention.

CHAIRMAN'S REPORT

Chairman Rilee had nothing to report.

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EXECUTIVE DIRECTOR'S REPORT

Chairman Rilee asked for Ms. Swan's Executive Director Report. Ms. Swan reported that Council Member Holtaway is a proud grandfather and currently in Raleigh-Durham, NC. Ms. Swan stated that Mr. Holtaway may not be in attendance for today's meeting.

Ms. Swan then gave a brief summary update to the Council on Plan Conformance Petition reviews. She reported that to date 65 Petitions have been submitted from 60 Municipalities and 5 Counties. Of these, 53 have been deemed administratively complete and have been posted to the Highlands Council website (including 2 Counties). Of these, 30 municipal Petitions and 2 county Petitions have been approved as follows: Townships – Bethlehem, Byram, Chester, Denville, Franklin (Warren), Green, Hardyston, Holland, Lopatcong, Mahwah, Mount Olive, Oxford, Pohatcong, Rockaway, Sparta, Tewksbury, Washington (Morris) & West Milford; Boroughs – Alpha, Bloomsbury, Bloomingdale, Califon, Glen Gardner, Hampton, High Bridge, Kinnelon & Lebanon and Wharton; Towns – Clinton, Hackettstown; and Counties - Passaic and Somerset.

At today's meeting, the Council will be considering Petitions for Plan Conformance from Ringwood Borough (100% Preservation Area), Town of Philipsburg (100% Planning Area), and Lebanon Township (Preservation and Planning Area). Ms. Swan reported should the Council approve these three Petitions, the Council will have approved 33 of the 60 municipal Petitions (55% of the total Petitions and nearly 65% of the complete Petitions). Ms. Swan then noted upcoming Petitions for meetings of the Highlands Council are Townships of Allamuchy, Bedminster, Montville, Parsippany-Troy Hills, and Washington (Warren); and the Boroughs of Oakland and Far Hills.

Ms. Swan then showed maps which represented the Plan Conformance progress since December 16, 2010 through today's meeting. Ms. Swan noted that today's Petitions, if approved, will take effect after the Governor's review period of the Council's minutes and showed the map that would result from that action. Ms. Swan showed that the map reflected those municipalities with lands in the Preservation Area lands where conformance is mandatory and in Planning Area where it is voluntary.

Ms. Swan then provided information on the implementation of approved Petitions:

- Bethlehem – Planning Area Petition Ordinance
- Byram – Planning Area Petition Ordinance, Highlands ERI, and Wastewater Management Plan (Sussex County endorsed)
- Califon – Highlands ERI and Master Plan Highlands Element
- Hampton – Planning Area Petition Ordinance introduced
- High Bridge – Planning Area Petition Ordinance, Highlands ERI, Master Plan Re-examination Report, Master Plan Highlands Element, and Highlands Area Land Use Ordinance
- Holland – Planning Area Petition Ordinance, Master Plan Re-examination Report, Highlands Checklist Ordinance
- Lopatcong – Highlands ERI
- Passaic County – Highlands ERI and Master Plan Highlands Element, introduced Land Development and Land/Facilities Regulations.

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Ms. Swan then provided an update on the Plan Conformance Grant Program and showed the average amounts requested for reimbursement by participating municipalities. Ms. Swan advised the Highlands Council that on average the expenses of the seven Modules are very close to the projected base amounts, with certain exceptions, as set forth in the following chart.

<u>Towns</u>	<u>Base Amount</u>	<u>Average</u>	<u>Number</u>
Module 1	\$15,000	\$13,839	73
Module 2	\$10,000	\$ 6,784	72
Module 3	\$ 7,500	\$15,501	62
Module 4	\$ 2,000	\$ 3,141	64
Module 5	\$ 2,500	\$ 6,887	56
Module 6	\$ 5,000	\$ 4,455	53
Module 7	<u>\$ 8,000</u>	<u>\$ 7,449</u>	50
Module Subtotal	\$50,000	\$58,056	
Municipal Response Costs	\$ 8,000	\$ 7,041	23
Plan Conformance Cost	\$58,000	\$65,070	

Ms. Swan also reported the average award amounts for implementation plans based on approved Highlands Implementation Plan and Schedules:

<u>Implementation Plans</u>	<u>Average Amount</u>	<u>Number</u>
Highlands Center/Redevelopment Plan	\$17,500	18
Sustainable Economic Development Plan	\$16,538	13
Wastewater Management Plan	\$3,433	30
Stream & Lake Protection Plan	\$31,032	25
Water Use & Conservation Management Plan	\$58,000	15
Habitat Conservation & Management Plan	\$17,429	21
Agriculture Retention/Farm Preservation Plan	\$10,808	13

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Ringwood Borough, Passaic County

Chairman Rilee introduced the Resolution. Ms. Swan reported that Ringwood Borough sends their apologies that they have no one in attendance at today’s meeting, however Ms. Swan and Tom Borden have been asked to make a presentation at the Borough’s Planning Board Meeting at the end of the month. Ms. Swan also recognized Jim Hutzemann, Water Resource Engineer and Highlands Council Staff Liaison for Ringwood Borough.

Ms. Swan presented background statistics as they pertain to Town of Phillipsburg:

- Incorporated: 1918
- Population 2010: 12,228
- Land Area: 18,226 acres / 28.48 sq. mi.
- Preserved Lands: 12,459 acres
- Wetlands: 914 acres
- Total Forest: 12,871 acres

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Ms. Swan also presented significant Highlands statistics and background statistics as they pertain to Ringwood Borough:

- Preservation Area Lands: 18,226 acres – 100%
- Protection Zone – 15,943 acres – 87.5%
- Existing Community Zone – 1,713 acres – 9.4% (Roads 3.1%)
- Highlands Open Water Protection – 10,092 acres – 55.4%
- Critical Wildlife Habitat – 14,639 acres – 80.3%
- Forest Resource Area – 17,035 acres – 93.5%

**Ringwood Borough
Background Statistics – Land Use**

NJDEP Land Use/Land Cover (2007)	Pres	Percent
Residential (Single & Multi Family)	2,255	12.4%
Commercial (Retail)	162	0.9%
Industrial & Transportation & Utilities	259	1.4%
Agriculture (Crops & Plantations)	62	0.3%
Recreational Lands (Public & Private)	246	1.3%
Extractive Mining	54	0.3%
Other Urban or Built-Up Land	125	0.7%
Subtotal Developed Lands	3,163	17.4%
Mixed Forest	11,767	64.5%
Shrub & Scrub	83	0.5%
Mixed Wetlands	914	5.0%
Barren Lands	45	0.2%
Water	2,254	12.4%
Subtotal Natural Lands	15,063	82.6%
Total	18,226	100.0%

Ms. Swan then showed a movie representing a ‘fly over’ of Ringwood Borough. The movie offered an opportunity to focus on the landscape of the Borough, the infrastructure and the built and natural environments. Ms. Swan also showed the land use ordinance maps for the Borough. Ms. Swan reported that a Comment/Response Document included detailed response to all public comments received and was posted on the website. Ms. Swan provided an overview of the RMP consistency analysis as follows:

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	
Module 6 Land Use Ordinance	X	
Module 7 Petition for Plan Conformance	X	

Ms. Swan noted that the public comment period on Ringwood’s Petition opened August 10, 2011 and closed August 25, 2011. Public Comments were received from:

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- Ronald Pagano, landowner in Ringwood Borough (requested an RMP Update for a proposed senior community housing project; however, an RMP Update is not appropriate and there was no municipal request for a Map Adjustment); and
- Erica Van Auken, on behalf of the New Jersey Highlands Coalition (generally supports the Petition and the Borough's stated goals of redevelopment and ecotourism)

Ms. Swan then summarized the Staff Recommendations for Ringwood Borough's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Checklist Ordinance
- Adoption of Completed ERI, Highlands Element, Land Use Ordinance, and Updated Zoning Map
- Compliance with Fair Housing Act
- Sustainable Economic Development Plan
- Water Use and Conservation Management Plan
- Habitat Conservation and Management Plan
- Lake Restoration Management Plan
- Stream Corridor Restoration/Protection Plan

Ms. Carluccio made a motion on the Resolution for Ringwood Borough. Mr. Richko seconded it. Ms. Carluccio commented that this is a good Petition.

Public Comments

Ronald Pagano, landowner in Ringwood Borough – Mr. Pagano was looking for guidance from Council to build a senior community on his property which he has planned since 1999. Mr. Pagano said he submitted comments and does not have a response from Council. Ms. Swan reported that the responses were posted on the Highlands website. Mr. Pagano asked if he may attend the Ringwood meeting Ms. Swan and Mr. Borden are attending. Ms. Swan stated that it is a public meeting. Acting Chairman Schrier suggested to Chairman Rilee that Council provide a hard copy to Mr. Pagano of the Council responses to his comments. A hard copy of the Highlands Council responses was handed to Mr. Pagano for his review.

David Shope, owns property in Lebanon Township – Mr. Shope does not approve of this Petition. Mr. Shope does not feel Council should require Ringwood Borough to do a Water Use and Conservation Management Plan as one of the conditions due to the fact that the Borough has a reservoir. Mr. Shope reviewed the March 2004 public hearing on the Highlands Act held in Ringwood Borough and numerous people from the Borough raised the issue of a water fee that would compensate landowners for their loss and for the State's benefit.

Erika Van Auken, New Jersey Highlands Coalition – Ms. Van Auken commented that the Coalition generally supports Ringwood Borough's Petition for Plan Conformance and the Borough's redevelopment efforts and their sustainable ecotourism to generate revenue. Ms. Van Auken commented that the Coalition does have concerns regarding some of the proposed sites that infringe on important Highlands resources. The Coalition also has concerns with regard to the municipal sponsored COAH site which abuts a Superfund site. Ms. Swan responded to Ms. Van

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Auken's comments to say that regarding the COAH site, the Borough has withdrawn from the Peter's Mine Road site as noted in Council's response. Ms. Swan also noted that critical resources will be protected through a Land Use Ordinance and any redevelopment is subject to the Highlands Act.

Mr. Pagano stated for the record that he is not for the plan at this time.

Council Comments

Council Member Dougherty asked for clarification on the Housing Element and Fair Share Plan for Ringwood Borough. Mr. Dougherty questioned the use of the word discharging on Page 4 of the report when referring to affordable housing obligation. Mr. Borden responded that Council is deferring action on the Borough's Fair Share Plan until such time until there is clarity with the affordable housing policies of the State either through the Supreme Court or the Legislature. Mr. Borden stated that the use of the term discharge in the report was referring to DCA's discharge of their obligation to review the RMP in examining Fair Share Plans.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 9-0.

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by the Town of Phillipsburg, Warren County

Chairman Rilee introduced the Resolution. Ms. Swan acknowledged David Maski, Planner for Town of Phillipsburg. Ms. Swan also recognized Chris Danis, Principal Planner and Highlands Staff Liaison for Phillipsburg.

Ms. Swan presented background statistics as they pertain to Phillipsburg:

- Incorporated: 1861
- Population 2010: 14,950
- Land Area: 2,133 acres / 3.3 sq. mi.

Ms. Swan also presented significant Highlands statistics as they pertain to Phillipsburg:

- Planning Area Lands: 2,133 acres – 100%
- Existing Community Zone: 1,579 acres – 75%
- (Roads 18.7%)
- Protection Zone: 70 acres – 3.3%
- Conservation Zone: 65 acres – 3%
- Highlands Open Water Protection: 414 acres – 20%

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**Town of Phillipsburg
Background Statistics – Land Use**

NJDEP Land Use/Land Cover (2007)	Plan	Percent
Residential (Single & Multi Family)	810	38.0%
Commercial (Retail)	200	9.4%
Industrial & Transportation & Utilities	331	15.5%
Agriculture (Crops & Plantations)	45	2.1%
Recreational Lands (Public & Private)	101	4.7%
Military	3	0.2%
Other Urban or Built-Up Land	212	9.9%
Subtotal Developed Lands	1,702	79.8%
Mixed Forest	227	10.7%
Shrub & Scrub	65	3.1%
Mixed Wetlands	19	0.9%
Barren Lands	8	0.4%
Water	104	4.9%
Subtotal Natural Lands	424	19.9%
Total	2,126	99.7%

Ms. Swan then showed a movie representing a ‘fly over’ of Town of Phillipsburg. The movie offered an opportunity to focus on the landscape of the Township, the infrastructure and the built and natural environments. Ms. Swan noted that the Ingersoll Rand property which has been before Council has been recognized by Phillipsburg and redevelopment ordinances for that site are in place. Ms. Swan also showed the land use ordinance maps for the Town.

Highlands Center

Ms. Swan reported that Phillipsburg’s Petition was accompanied by a request for Highlands Center designation for the entire municipality. A long industrial and commercial history is now resulting in redevelopment efforts focused on former industrial properties at the Ingersoll Rand site and along the Delaware River. Phillipsburg has functioned as a regional center for decades, shares an important border with Easton, PA and is accessible from a well-developed road and bus transit network. The proposed Highlands Center will differ from prior Highlands Centers as it includes the entire Town of Phillipsburg. She noted that the Highlands Center includes a coordinated effort between the municipalities of Lopatcong Township, Alpha Borough, Greenwich Township and Pohatcong Township, all of which have submitted Petitions for Plan Conformance regarding their full municipalities, to address the capacity conditions of the Phillipsburg STP service area. Ms. Swan noted that Greenwich Township has yet to be approved by the Council. The Highlands Center recognizes the importance of existing redevelopment areas such as Riverfront and Phillipsburg Commerce Park (former Ingersoll Rand property). The Highlands Center planning incorporates protection and support for historic resource features, including the Morris Canal Greenway and Delaware Riverfront Area, promotes tourism opportunities for the Town and local and regional economic development. Ms. Swan then showed a map which outlines the Highlands Center for Phillipsburg.

Ms. Swan reported that a Comment/Response Document included detailed response to all public comments received and was posted on the website. Ms. Swan provided an overview of the RMP consistency analysis as follows:

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Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	Final adopted plan to be submitted to DCA
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	Modified to reflect municipal-wide Highlands Center (includes TDR examination)
Module 6 Land Use Ordinance	X	Modified to reflect municipal-wide Highlands Center
Module 7 Petition for Plan Conformance	X	

Ms. Swan reported that the public comment period for the Town of Phillipsburg’s Petition for Plan Conformance opened September 21, 2011 and closed October 6, 2011. Notice was given in area newspapers as well as on the Highlands Council website and through the Highlands Council e-mail alert system. Public comments were provided by the following individuals/entities:

- David Maski, P.P. on behalf of the Town of Phillipsburg (requested designation as a growth area under the Permit Extension Act – included request in the Consistency Report)
- Erika Van Auken, New Jersey Highlands Coalition
- Wilma Frey, New Jersey Conservation Foundation
(both of these comments generally supported the Petition and the focus on economic development and historic protection and expressed concern regarding Karst features)

Ms. Swan then summarized the Staff Recommendations for Phillipsburg’s Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Petition Ordinance
- Adoption of Completed ERI, and modified Highlands Center Element and Land Use Ordinance to reflect Highlands Center conditions
- Compliance with Fair Housing Act
- Redevelopment and Brownfield Planning Study
- Wastewater Management Plan – coordinate multiple municipalities
- Stream Corridor Protection & Restoration Plan

Mr. James made a motion on the Resolution for the Town of Phillipsburg. Mr. Francis seconded it.

Council Comments

Mr. Francis commented that for a town that is almost exclusively within the Existing Community Zone it is appropriate to address it as a designated Highlands Center but, more importantly, it is critical that regional planning takes in to account the adjoining municipalities. Ms. Carluccio commented that this is the first time Council is seeing a Petition like this. Ms. Carluccio commented on the importance of the preserved areas particularly near the river and asked how Phillipsburg does their Karst protection currently. Ms. Swan commented that Phillipsburg is aware of the guidelines

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for future planning and protecting the critical Highlands areas. Mr. Maski commented that currently Phillipsburg's Karst protection ordinances are weak and the Town sees Plan Conformance as an opportunity to help that area.

Mr. Walton asked how Phillipsburg envisions being part of the TDR Program. Mr. Maski responded that it is an open question right now for Phillipsburg but if TDR encourages development and redevelopment then it will work. Mr. Walton stated that he is currently on the fence about the Petition regarding the TDR and for it to be successful in order to compensate landowners. Mr. Maski stated that Phillipsburg will take a serious look at TDR and that the Council may use Phillipsburg as an example of the mechanisms to improve the incentives to accept TDR. Mr. Maski further stated that Phillipsburg is very receptive to additional development and if TDR helps to promote additional development it will be a good outcome.

Chairman Rilee commented that applicant is willing to consider TDR and has been the most positive applicant regarding the TDR Program and does not know if the mechanism is there for this Town to make it work. Mr. Walton commented that applicant has won his vote because of his willingness to consider TDR.

Mr. Alstede asked about the extension of the Raritan Valley line to Phillipsburg. Mr. Maski responded that there was a meeting over the summer and that the extension of the Raritan Valley line to Phillipsburg is not going to happen at this time because of the State, not because of the towns. Mr. Maski sees the extension of the line to be very helpful to Phillipsburg but the State sees it more of a liability. Asked why NJTPA seems to be opposed to the extension of the line, Mr. Maski feels that it is a financial issue. Ms. Carluccio added that Phillipsburg is way ahead of transportation than a lot of towns. Mr. Schrier asked Chairman Rilee if it would be better to have the issue of the Raritan Valley line to be a separate item for Council discussion.

Public Comments

Monique Purcell, Department of Agriculture - Ms. Purcell commented that the Department of Agriculture fully supports Phillipsburg's Petition. It is a great example of regional planning, a potential for TDR and transportation. Ms. Purcell commented that this Petition is a good opportunity for Council to see what can be done as far as policy decisions to make Phillipsburg a vibrant community.

David Shope, owns property in Lebanon Township – Mr. Shope commented that the initial purchase price for TDRs include a discount to the market price. Mr. Shope commented that Council did not have to approve Hackettstown and feels the same with Phillipsburg. Chairman Rilee commented that the Highlands Act does not mandate a TDR Program.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that the NJ Conservation Foundation supports Phillipsburg's goal of revitalizing their historic community and urges them to pursue the listings and prepare a Historic Preservation Element as part of its Plan Conformance and Center Designation to ultimately support an ordinance. Ms. Frey also commented on her concerns on carbonate rock and the need for strong protection due to serious constraints.

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Erika Van Auken, New Jersey Highlands Coalition – Ms. Van Auken commented that the Coalition supports Phillipsburg’s Petition for Plan Conformance and look forward to seeing the work and the council will do to reinvigorate Phillipsburg and protect the resources.

Council Comments

Chairman Rilee asked if there were any further comments from Council Members. Mr. Alstede commented that his vote against Hackettstown was due to their reluctance with the TDR. He is encouraged to hear about Phillipsburg’s interest in considering TDR. Mr. Alstede asked how the Council’s approval will supports this town regarding TDR Program. Chairman Rilee responded that funding a study of the potential for TDR is direct support from the Council. Ms. Swan responded that there are benefits in the Highlands Act, \$15,000 per unit impact fees and \$250,000 in planning grants. She added the other requirement of the TDR study is to complete a real estate market analysis which will provide the economic and zoning analysis of where TDR is realistic and economically viable for the developer. Ms. Swan further stated that the distinction between Hackettstown and Phillipsburg was that Hackettstown had recently approved numerous residential projects and has limited infrastructure to approve additional developments. Ms. Swan noted that Phillipsburg has an incentive to work with us because of our grant funding to help them study it. Mr. Alstede is encouraged that Phillipsburg is considering TDR and would like to see the Council endorse the Raritan Valley line extension to Phillipsburg.

Mr. James asked if Council could take a position with the State regarding the rail line. Mr. Alstede made a motion to propose an amendment to the resolution to study the extension of the Raritan Valley Line. There was Council discussion on whether to amend the current resolution and what the wording would be. Ms. Carluccio was uncomfortable with the discussion as there was no analysis of this issue. Mr. Walton commented that it would be an improvement to the community and the region. Acting Chairman Schrier suggested the Chairman Rilee that perhaps it would be best to have the Raritan Valley discussion a separate issue by Council.

Ms. Swan suggested that perhaps Council should discuss this at another time and Chris Danis, who is the liaison on Phillipsburg and our lead on transportation issues so we can have her look at it and report back to Council. Mr. Alstede asked if Council endorsed the concept of the extension of the Raritan Valley line in the RMP. Ms. Swan concurred. Chairman Rilee obtained the consent of Mr. James and Mr. Francis to amend the motion such that the resolution would reference the RMP language in Chapter 5, Part 5 referring to the Raritan Valley line extension. Ms. Carluccio commented that it is a study.

All members present voted on the Resolution by roll call as amended. The Resolution was approved by a vote of 9-0.

Consideration of Resolution – Proposed Highlands Redevelopment Area Designation for Former Fenimore Sanitary Landfill, Block 7404, Lot 1, Roxbury Township, Morris County

Chairman Rilee recused himself from this Resolution as the Mayor of Roxbury. Mr. Borden noted that this was consistent with advice provided by the State Ethics Commission.

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Acting Chairman Schrier introduced the Resolution to Council. Ms. Swan gave a presentation regarding the proposed Highlands Redevelopment Area Designation. Ms. Swan reported that the proposed designation of a Highlands Redevelopment Area is for a brownfield site to allow for the construction of a solar energy array. The proposed project is the redevelopment of the Former Fenimore Sanitary Landfill, located in the Preservation Area of Roxbury Township (in 1979 all landfill operations ceased). The proposed solar arrays will be constructed upon on capped landfill areas in phases. The photovoltaic panels would be capable of generating up to 10 megawatts of electrical power and would encompass approximately 50 acres of the 100 acre site. The Highlands Redevelopment Area would authorize the proposed solar array redevelopment on top of the constructed landfill cap. She noted that it was critical to the Council's deliberations to acknowledge the limited jurisdiction of the Council because all landfill remediation activities are exempt under Exemption #15 of the Highlands Act.

Ms. Swan then presented maps showing the site in 1963, 1979 and 2002. Ms. Swan also displayed a conceptual redevelopment map with solar arrays and the proposed Highlands Redevelopment Area Plan maps showing the limit of landfill, the forest areas and open water buffer area.

Ms. Swan then presented the Fenimore Landfill Timeline:

- November 2, 2009 – Applicant meets with Highlands Council to discuss sequence of actions. Applicant then pursued designation of Highlands Brownfield with NJDEP
- August 18, 2011 – NJDEP designates Highlands Brownfield
- August 31, 2011 – Applicant submitted petition for a Highlands Redevelopment Area Designation
- September 6, 2011 – Highland Council deems petition complete
- September 23, 2011 – Highlands Council posts Draft Consistency Determination and Draft Staff Recommendation Report on website
- October 6, 2011 – NJDEP issues Administrative Consent Order and Landfill Closure Plan Approval

Ms. Swan noted the comment period began September 23, 2011 and ended October 7, 2011. Public Comments were received from:

- Township of Roxbury, Russell Stern, Director of Planning (detailed comments regarding 1) Project Jurisdiction; 2) Sufficiency of Application; 3) Visual and Other Project Impacts 4) Economics; 5) Scheduling and Phasing)
- New Jersey Sierra Club, Jeff Tittel, Director (supported the landfill closure and green energy project)
- New Jersey Highlands Coalition, Erica Van Auken, Campaign and Grassroots Coordinator
- ANJEC, David Peifer, Highlands Project Director
(both were concerned that closure will not be properly completed)

Ms. Swan reported that the staff recommendation is to approve the proposed Highlands Redevelopment Area designation subject to the following conditions that through the HPAA process, except to the extent that these conditions are demonstrated to impede the proper closure of the landfill under NJDEP's Administrative Consent Order and Landfill Closure Plan Approval:

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1. The application for a HPAA must address how solar panel and related construction will be phased, consistent with the Landfill Closure Plan, where certain areas are capped and solar panels installed as the applicant concurrently moves to the capping of other portions of the landfill;
2. The encroachment into a Highlands Open Waters buffer shall be entirely within a previously disturbed area, which would not result in a net impact to the functional value of the buffer. However, to the extent feasible, establishment and maintenance of a vegetated buffer between the stream reach and the project area will be required;
3. To minimize potential impacts from the solar array on stream water quality and habitat, a condition of this approval is the establishment and maintenance of a vegetated buffer along the edge of the relocated stream including any rip-rap, outside of the designated Highlands Brownfield. This condition shall be addressed through a minimum 50-foot vegetated buffer consisting of layered woody and herbaceous species, except the buffer may be smaller where it would conflict with NJDEP's Administrative Consent Order and Landfill Closure Plan Approval.
4. It must be demonstrated that solar panels can be effectively constructed and maintained (consistent with the Landfill Closure Plan) along the northeastern border of the constructed landfill cap; this area will be sloping and is adjacent to a steep ridge;
5. The remainder of the property outside of the proposed Highlands Redevelopment Area shall be protected through a conservation restriction. If any disturbance of the area outside of the Brownfield is required for access to the transmission grid, mitigation will be required by the Highlands Council before any such disturbance occurs;

Council Member Dressler called in to the meeting via telephone conference at 2:33pm. Ms. Swan noted that Council Member Dressler is eligible to vote on this Resolution as Council discussion and deliberation has not yet occurred and Council Member Dressler has received materials in his packet which covered the discussion up to now.

6. The solar array shall be screened from the viewshed along Mountain Road and along all existing private development through a minimum of 75 feet of dense vegetated cover. Berms may be used to supplement the vegetated buffer, but structures such as fences shall not substitute for the vegetated buffer. It is recognized that trees and other woody species cannot be planted within the landfill cap (roots would compromise the integrity of the cap), and that in the area along Mountain Road, in the vicinity of Lookout Drive, the designated Highlands Brownfield directly abuts Mountain Road. As a condition of this approval, the applicant shall establish an earthen berm to screen the viewshed along Mountain Road (in a manner consistent with the Landfill Closure Plan) which shall be seeded and planted with native herbaceous species. The applicant shall provide a screening plan for review and approval by the Highlands Council prior to any solar work in the vicinity of Mountain Road and the intersection of Lookout Drive and Vanover Drive;
7. The stormwater regulations must be followed in the project design through the HPAA with redevelopment waiver, as part of the NJDEP permitting process. The Highlands Council expects that under the NJDEP waiver, the applicant shall supply a stormwater management plan and a construction implementation plan that minimizes disturbance during and after construction. As a condition of this approval, the applicant shall demonstrate that the solar panels can be constructed effectively while maintaining the integrity of the proposed

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- stormwater management features (e.g., the proposed forebay swales) and be consistent with the Landfill Closure Plan; and
8. The applicant must demonstrate that the solar panels can be installed without compromising the integrity of the landfill cap and will meet the conditions of the Landfill Closure Plan.

Mr. James made a motion on the Resolution. Mr. Dougherty seconded it.

Council Comments

Mr. Francis asked what the criteria for designation of the site as a brownfield and the relationship between the Highlands Council and NJDEP and noted that it will not be a handicap but a positive use of the property. Ms. Swan noted that NJDEP designated this site as a track one brownfield as a sanitary landfill and the Council's role to examine whether redevelopment is appropriate on the site with the assumption that the site will be properly closed and capped. The proposed conditions were developed based upon the concerns expressed by Roxbury Township to address residents. The conditions include the requirement to screen the solar arrays through berms and landscaping. Berms are required because trees may not be located on the landfill capping areas. The designation by the Highlands Council is a prerequisite for the next step which is the review of a Highlands Preservation Area Approval (HPAA) with a redevelopment waiver which is issued by NJDEP. The comment and response document also addressed the jurisdiction of Roxbury Township to require site plan approval for the solar array under the Municipal Land Use Law.

Mr. Richko asked if any construction of the solar arrays could occur on the site until NJDEP approved the landfill closure plan. Ms. Swan noted that NJDEP has approved the closure plan and that the plan requires the area of the waste to be capped. The solar arrays may be constructed on the capped areas. Ms. Carluccio asked why certain aspects of the information submitted the NJDEP were not yet complete and why the landfill closure was approved. Ms. Swan noted that the Highlands Council's jurisdiction does not include the conditions of the closure plan as the Highlands Act exemption #15 provides a complete exemption for remedial activities on the landfill. The closure plan does include phases to cap certain areas first at which time the solar arrays would be constructed.

Ms. Carluccio stated that this was a great step forward to control the contamination from the landfill and to have a beneficial reuse of the capped landfill. She asked if additional requirements could be imposed such as stream monitoring, improvements to the area outside of the landfill cap, and requiring additional vegetation. Ms. Swan noted that the application to the Council is for the solar redevelopment and that the Council can impose conditions with respect to the redevelopment but that the remedial activities are under NJDEP's sole jurisdiction.

Mr. James asked what entity controlled the landfill and whether BPU would be regulating the project as a utility. Ms. Swan noted that the applicant, Strategic Environmental Partners, L.L.C., owned the property but she was not aware if and how the solar array would be regulated by BPU. Mr. Richko expressed support for the proposal.

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Public Comments

Russell Stern, Roxbury Township Planner – Mr. Stern thanked the Highlands Council for providing the community the comment process which is not typical of a state agency and to welcome this extent of comments/questions which Roxbury provided in a letter. Mr. Stern also thanked staff for entertaining Roxbury's comments and questions, answering them to the extent that they could realizing that a lot of the questions/comments were posed to NJDEP as they have authority over the landfill remediation. Mr. Stern commented that the site is not a typical redevelopment site in an industrial zone. Mr. Stern asked what the NJDEP and Highlands Council can do to mitigate the impacts to the community. As there is over 30 years of growth on the property, there is no indication of a landfill without walking on the site. He noted the buffers to screen the property can be larger based upon a more detailed analysis. The Township's other main concern is how it will impact the residents of the area especially the truck traffic.

Robert Deutsch, property owner – Mr. Deutsch purchased the property near the site approximately 7-8 months ago. Mr. Deutsch expressed concern for the project and asked what Roxbury Township gains from this type of solar array installation and that there are better uses of the property. He noted the site will be difficult to screen.

Mr. Holtaway was in attendance at 3:08pm.

David Peifer, ANJEC – Mr. Peifer realizes that he should be commenting to NJDEP as his concerns relate to the remediation of the landfill. He noted his concerns over the leachate collection system and the impact to local roads. Mr. Schrier agreed that any concerns should be addressed to NJDEP.

Bill Kibler, Raritan Headwaters Association – Mr. Kibler commented that he supports the redevelopment of brownfields in the Highlands however on the Fenimore Landfill he strongly suggest that the Council communicate to the applicant and NJDEP the concerns to assure that the clean-up design respects, protects, and restores Highlands Resources to the maximum degree practicable. He expressed concern over timing of the process and financial assurance. Mr. Kibler submitted his statement for the record.

William P. Primus, landowner/resident – Mr. Primus commented on his safety concerns with this installation as there are no fences to stop children. Mr. Primus asked if the project fails who will be responsible for maintenance, who will monitor the site over a period of time during the installation.

Erika Van Auken, New Jersey Highlands Coalition - The New Jersey Highlands Coalition supports the concept of redevelopment and solar projects in the Highlands; however, their primary concern is the proper closing of the landfill.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that Council should postpone this redevelopment because of many unknowns. The site should not be disturbed and should be left alone. Ms. Frey further commented that Council does not need to facilitate needs of the landowner.

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Council Comments

Mr. James asked what the Township's position is on this site and redevelopment. Mr. Stern responded to say that the Township has not taken an official position on this. Mr. James asked who is responsible for the remediation. Ms. Swan responded that NJDEP is responsible for the closure and that the Highlands Council authority involved the redevelopment of the site. She noted that a representative from NJDEP was present. Mayor Rilee noted that Roxbury Township expressed an interest to be more involved in the remediation process.

Mr. Alstede stated that he could not see how the Council would not approve the redevelopment of solar facilities on a remediated and capped landfill. Ms. Carluccio expressed support for capping the landfill and allowing the solar array but expressed concern that many issues were unsettled and thought it may be best to withhold approval until the site was remediated. Mr. James noted that certain financial incentives relating to the solar installation may be expiring and that inaction may undermine the entire project. Ms. Swan noted that staff had sufficient information to make the recommendation to approve the project.

Mr. Dressler left the meeting via telephone conference at 3:43pm and was in attendance at 3:44pm.

Mr. Holtaway sought advice whether he could vote on the project and Mr. Borden advised that he could as the portion of the briefing he missed was simply a summary of the materials he received in detail and a public comment of an adjacent landowner opposed to the project.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 8-2 with one abstention.

Chairman Rilee returned to the meeting and a break was called at 3:46pm.

Mr. Schrier left the meeting at 3:46pm.

The meeting reconvened at 3:53pm.

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by the Township of Lebanon, Hunterdon County

Chairman Rilee returned back to the meeting and introduced the Resolution.

Ms. Swan excused herself from the meeting as a resident and former Mayor of Lebanon Township.

Mr. Borden gave a brief presentation of Lebanon Township. Mr. Borden first presented background statistics as they pertain to Lebanon Township:

- Incorporated: 1798
- Population 2010: 6,588
- Land Area: 20,270 acres / 31.7 sq. mi.

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- Preserved Lands: 4,947
- Wetlands: 1,479 acres
- Total Forest: 12,270 acres (60%)

Mr. Borden also presented significant Highlands statistics as they pertain to Lebanon Township:

- Preservation Area Lands: 20,264 acres – 99.97%
- Planning Area Lands: 6 acres – 0.03%
- Protection Zone: 13,153 acres – 65%
- Conservation Zone: 5,889 acres – 29%
- Existing Community Zone: 755 acres – 3.7% (Roads 2.3%)
- Forest Resource Area: 18,052 acres – 89%
- Critical Wildlife Habitat: 13,429 acres – 66%
- Highlands Open Water Protection: 7,746 acres – 38%

Mr. Borden showed a map of Lebanon Township in 1930 and the present which depicted the growth over the years of the Township. Mr. Borden then displayed a chart on the background statistics regarding Lebanon Township’s land use.

**Lebanon Township
Background Statistics – Land Use**

NJDEP Land Use/Land Cover (2007)	Plan	Pres	Percent
Residential (Single & Multi Family)	0	3,272	16.1%
Commercial (Retail)	4	151	0.8%
Industrial & Transportation & Utilities	0	139	0.7%
Agriculture (Crops & Plantations)	0	3,679	18.1%
Recreational Lands (Public & Private)	1	131	0.7%
Extractive Mining	0	31	0.2%
Other Urban or Built-Up Land	0	216	1.1%
Subtotal Developed Lands	5	7,621	37.6%
Mixed Forest	1	10,518	51.9%
Shrub & Scrub	0	464	2.3%
Mixed Wetlands	0	1,476	7.3%
Barren Lands	0	14	0.1%
Water	0	172	0.8%
Subtotal Natural Lands	1	12,644	62.4%
Total	6	20,264	100.0%

Mr. Borden continued with the presentation by showing the land use ordinance maps for the Township. He reported that a Comment/Response Document included detailed response to all public comments received and was posted on the website. Mr. Borden provided an overview of the RMP consistency analysis as follows:

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Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	
Module 6 Land Use Ordinance	X	
Module 7 Petition for Plan Conformance	X	

Mr. Borden noted that the public comment period on Lebanon Township’s Petition for Plan Conformance opened August 18, 2011 and closed September 9, 2011. Notice was given in area newspapers as well as on the Highlands council website and through the Highlands Council e-mail alert system. Public Comments were received from:

- Helen Heinrich, on behalf of the New Jersey Farm Bureau (Supported Petition and its emphasis on Agricultural Retention/Farmland Preservation Plan)
- Erica Van Auken, on behalf of the New Jersey Highlands Coalition (Supported Petition and resource planning)
- David Shope, Lebanon Township Landowner (Provided comments regarding septic density, agricultural value, ERI, and the Highlands Municipal Build-Out Report)

Mr. Borden then summarized the Staff Recommendations for Sparta Township’s Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Petition Ordinance
- Adoption of Checklist Ordinance
- Adoption of Completed Highlands Environmental Resource Inventory, Master Plan Element, and Land Use Ordinance
- Compliance with Fair Housing Act (Plan Submitted for Certification)
- Water Use and Conservation Management Plan
- Habitat Conservation and Management Plan
- Stream Corridor Protection & Restoration Plan
- Agriculture Retention Master Plan Element
- Green Building & Environmental Sustainability Master Plan Element

Ms. Carluccio made a motion on the Resolution for Lebanon Township. Mr. Dougherty seconded it.

There were no Council comments.

Public Comments

David Shope, owns property in Lebanon Township – Mr. Shope commented that he did not see Council’s response to his comments as he is not on the internet. A copy of the responses was

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given to Mr. Shope. Mr. Shope is against Lebanon Township opting in even though it is virtually mandatory and only has an effect on six acres. The Township will be required to have a Water Use and Conservation Management Plan which benefits only our downstream neighbors. Mr. Shope added that he asked in his comments for the blocks and lots which are in the six acres of the Planning Area.

Bill Kibler, Raritan Headwaters Association – Mr. Kibler commented that he lives in Califon and would be remiss if he did not say something positive about his neighbors. Mr. Kibler is in fact one of those downstream neighbors even though Califon is a Highlands community we are downstream with significant portion of Lebanon Township. The Association supports the approval of this application and we are glad to see another community moving towards Plan Conformance.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that she is a neighbor of Lebanon Township and is supporting this application. Ms. Frey noted that the Foundation supported the Township's original master plan way before the Highlands Act was passed which actually resulted in decreasing potential density in the town and helped fight off a development on Lebanon Mountain which is now protected open space.

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich commented that progress in the language which alerts towns to having work on supporting liability of agriculture and having in their top priority list an agricultural retention plan is very welcomed. Ms. Heinrich also commented that the Farm Bureau is in Court with the NJDEP on the density standards and they have not been answered as of yet and the questions are before the Science Advisory Committee.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 10-0

Public Comments

Hank Klumpp owns 150 acres in Tewksbury Township – Mr. Klumpp commented his concerns that his questions have not been addressed by the Council or Legislature on his property values. Mr. Klumpp submitted a handwritten statement for the record. Mr. Klumpp also commented about his concern that his handwritten comments are not attached to the minutes at the meeting. Mr. Borden responded that his handwritten comments are on the website and are attached to the minutes submitted to the Governor's Authority Unit.

David Shope, owns property in Lebanon Township – Mr. Shope gave a quick scan of the Highlands Council responses to his comments and he commented that Lebanon Township's own census data says that the average household size is 2.79 people. Mr. Shope said that this is the real data not the NJDEP's presumption data which is 4. Mr. Shope further commented that this has an effect on the septic density.

Ron Pagano – Mr. Pagano thanked the Council for the responses to his comments and that he plans to go forward with his plans for approval and hope the Highlands can help him with his project. He mentioned that there are various studies on the property and it would be a tax ratable.

Chairman Rilee closed the public portion of the meeting.

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Mr. Walton made a motion to adjourn the meeting. Mr. James seconded it. The meeting was adjourned at 4:11pm.

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: 12/2/11

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

Vote of 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 Schrier						✓
Councilmember Visioli					✓	
Councilmember Walton			✓			
Chairman Rilee			✓			

PUBLIC COMMENTS SUBMITTED

Memorandum to: New Jersey Highlands Water Protection and Planning Council

From: Raritan Headwaters Association

Re: Redevelopment Area Designation, Former Fenimore Landfill

The Raritan Headwaters Association (Raritan Headwaters) respectfully submits the following comments regarding the proposed redevelopment area designation for the property known as the Former Fenimore Landfill. The site is located in Roxbury Township, within the watershed area of the Raritan Headwaters Association.

Raritan Headwaters strongly supports the redevelopment of brownfields in the Highlands. However, before a site is considered for a redevelopment area designation as a brownfield, the environmental conditions on the site must first be evaluated, potential environmental threats must be properly characterized, and an appropriate remedial action plan must be in place. None of those steps appear to have been taken in the case of the Fenimore Landfill. We have deep concerns about the process by which this redevelopment area designation is being sought, especially because serious environmental conditions on the site have not been properly addressed. The Fenimore Landfill was not built to current engineering standards for landfills, it was never properly closed, and an appropriate remedial action plan does not appear to be in place. We suggest that the Highlands Council convey these concerns about impacts to Highlands Resources to the applicant and to the NJDEP.

Pursuant to New Jersey statutes, a brownfield is defined as "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." (N.J.S.A. 58:10B-23.d) Once a site such as the Fenimore Landfill has been designated a brownfield, there is an explicit presumption that the site is contaminated with hazardous waste. In the case of the Fenimore Landfill, the extent of that contamination does not appear to have been properly characterized. The type and volume of hazardous waste disposed of at the site has not been determined. It does not appear that adequate groundwater, surface water, air, or soil sampling has been done.

Brownfields redevelopments have excellent potential to remediate serious impacts to our environment while restoring contaminated properties to economically viable uses while directing development in the Highlands to appropriate areas. However, we must ensure that contamination caused by the Fenimore Landfill is properly characterized and fully remediated before any steps are taken to redevelop the site.

We understand that the consistency review was performed by the Council assuming a satisfactorily remediated condition and that site remediation is NJDEP's responsibility. However, we strongly suggest that the Council communicate these concerns directly to the applicant and, most importantly to NJDEP, to assure that the clean-up design respects, protects, and restores Highlands Resources to the maximum degree practicable.

My name is Hank Klumpp. I live in Tewksbury and own 150 Acres in the Highlands Preservation Area.

Last night I was shopping in the A+P in Warren for my daughter who lives there. A lady wearing a jacket that said New Jersey Legislature on it was also checking out. I asked her about her jacket and she told me she works for assemblyman Jon Bramnick. I was wearing a jacket that said my property values have been stolen and I asked her what she knew about the Highlands Act. She said she knew very little. I told her Bramnick voted for the Act and

explained my concerns. She said she could not believe how unfair the situation is as it stands. I guess I can take from this that Bramnick's office is not working too hard to help people to be compensated for stolen property values. He - like most legislatures - are concerned with other matters like Bramnick's concern with making it illegal to use a cell phone while riding a bike.

WHATEVER !!!

The fact that I have not heard from any of you leads me to believe

that you have not done anything
to help me yet. Are you telling
me it has only been 7 years
so I should be patient??

Hank Klumpp

Hank Klumpp
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