



JON S. CORZINE  
Governor

**State of New Jersey**  
Highlands Water Protection and Planning Council  
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JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

**MEETING AGENDA**  
**Thursday, October 30, 2008 - 4:00 p.m.**

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – September 18, 2008
6. CHAIRMAN'S REPORT (and Council Member Reports)
7. EXECUTIVE DIRECTOR'S REPORT
8. CONSIDERATION OF RESOLUTION – *Development of Affordable Housing Guidelines for P.L. 2008, c.46 and Executive Order 114* - (voting matter with public comment)
9. CONSIDERATION OF RESOLUTION – *Authorizing the Execution of a Memorandum of Understanding with the Council on Affordable Housing* - (voting matter with public comment)
10. CONSIDERATION OF RESOLUTION – *Approval of Procedures for Highlands Redevelopment Area* - (voting matter with public comment)
11. CONSIDERATION OF RESOLUTION – *Approval of Certain Planning Assistance Grants* - (voting matter with public comment)
12. CONSIDERATION OF RESOLUTION – *Approval of Procedures for Highlands Scenic Resource Inventory* - (voting matter with public comment)
13. PUBLIC COMMENTS
14. EXECUTIVE SESSION – *Litigation filed regarding the Regional Master Plan and Contract Negotiation regarding Memorandum of Understanding* - (if deemed necessary)
15. ADJOURN

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF OCTOBER 30, 2008

**PRESENT**

JOHN WEINGART ) CHAIRMAN

BILL COGGER ) COUNCIL MEMBERS

MIMI LETTS )

KURT ALSTED )

JANICE KOVACH )

ELIZABETH CALABRESE )

TAHESHA WAY )

SCOTT WHITENACK )

GLEN VETRANO )

**VIA TELECONFERENCE**

JACK SCHRIER )

DEBBIE PASQUARELLI )

ERIK PETERSON )

**ABSENT**

TRACY CARLUCCIO )

TIM DILLINGHAM )

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 78th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:09 pm.

**ROLL CALL**

The members introduced themselves.

**OPEN PUBLIC MEETINGS ACT**

Chairman Weingart 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 Council had 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.

Chairman Weingart apologized to the public and stated that an Executive Session would commence first (prior to the open session).

**APPROVAL OF MINUTES OF September 18, 2008**

*Mr. Cogger introduced the motion to approve the minutes. Ms. Letts seconded the motion. Ms. Way, Mr. Alstede, Mr. Vetrano, Mr. Peterson, Ms. Carluccio, and Mr. Dillingham were absent. All other members present voted to approve. The minutes were APPROVED.*

## **EXECUTIVE SESSION**

*Chairman Weingart introduced the motion for an Executive Session regarding pending litigation of the adoption of the Highlands Regional Master Plan and contract negotiation of a memorandum of understanding (MOU) with the Council on Affordable Housing. Ms. Calabrese introduced the motion and Ms. Kovach seconded it. The motion was approved. After the Executive Session, the Highlands Council moved to resume open session. The Chairman gave a brief overview of the discussion of the Executive Session regarding litigation that was filed regarding the Highlands Regional Master Plan as well as the MOU with COAH.*

## **CHAIRMAN'S REPORT**

Chairman Weingart spoke of the Highlands Development Credit Bank and his responsibility to appoint a nine-member Board of Directors. He announced that the Highlands Council had previously solicited resumes from interested candidates and that after reviewing the slate of candidates he has chosen three Board Members from the Highlands Council: Scott Whitenack, Erik Peterson, and himself. In addition, he announced that he has also appointed the following Board Members: Susan E. Craft Susan (Executive Director of the State Transfer of Development Rights Bank), Theodore Maglione, Ken Klipstein (Director, Watershed Protection Programs, New Jersey Water Supply Authority), Dale Davis (Stony Hill Gardens), and Michael Halpin. The Chairman announced that he will also be appointing a member of the Garden State Preservation Trust.

Chairman Weingart noted that Commissioner Lisa Jackson has been named as the Chief of Staff under the Governor.

Ms. Way, Mr. Alstede, and Mr. Vetrano joined the meeting.

Chairman Weingart stated that the resolutions would be considered first followed by the Executive Director's report.

## **RESOLUTIONS**

### **I. CONSIDERATION OF RESOLUTION – Development of Affordable Housing Guidelines for P.L 2008, c.46 and Executive Order 114 (voting matter with public comment)**

Ms. Swan introduced the first resolution which addressed P.L. 2008, c.46 and Executive Order 114. Ms. Swan reviewed that on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, c. 46, to create a responsibility for the Highlands Council to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments. She also specified that on September 5, 2008, Governor Corzine signed Executive Order 114 which requires the Council to coordinate with COAH consistent with the RMP for conforming municipalities and address P.L. 2008, c.46. She explained that in order to comply with the new requirements of P.L. 2008, c.46 and the direction set forth in Executive Order 114, the Highlands Council must develop additional guidelines for the provision of affordable housing in the Highlands Region. Ms. Swan noted that there would be an open public process for these new guidelines including a public comment period.

Mr. Borden explained that P.L. 2008, c.46 creates a new obligation for the Highlands Council under the Fair Housing Act. Accordingly, the affordable housing guidelines will be created as an

obligation under the Fair Housing Act rather than an amendment to the Highlands Regional Master Plan as required by the Highlands Act.

Mr. Cogger asked about the effective date of the requirements and Mr. Borden stated that legal advice on this issue has been sought.

Ms. Pasquarelli asked about the necessity of the resolution. Ms. Swan explained that this will start the process for the work to be done. Ms. Pasquarelli asked why a resolution is necessary and why it cannot be done by a motion. Mr. Borden stated that the resolution was to make it abundantly clear to the public that this will be carried out under a formal process involving public comment.

Mr. Peterson joined the meeting via teleconference.

#### **PUBLIC COMMENT:**

**Jeff, Tittel, NJ Sierra Club:** He stated his support for doing this by resolution. He also asked whether EO 114 amends the Highlands Act and what actions may be necessary due to that fact.

**Hal Danielson:** He asked about how this is going to effect commercial development or the expansion of commercial development. He noted the COAH obligations regarding commercial development. Mr. Danielson wanted to know if this is being addressed.

Ms. Letts expressed concerns about the wording about “maximizing affordable housing” and exactly what it means. Ms. Swan explained that it is just to maximize available opportunities, premised upon the highlands regulations. She explained that the wording is directly from EO 114.

*Mr. Vetrano moved the motion to approve resolution, Ms. Calabrese seconded the motion. Ms. Carluccio and Mr. Dillingham were absent. Ms. Pasquarelli was opposed. All other members present voted in favor. The resolution was APPROVED.*

#### **II. CONSIDERATION OF RESOLUTION – Authorizing the Execution of a Memorandum of Understanding with the Council on Affordable Housing - (voting matter with public comment)**

Ms. Swan noted that Lucy Vandenberg, the Executive Director of COAH, was present at the meeting and was available should there be any questions. She explained that both she and Mr. Borden attended the COAH meeting that took place the day before. She also acknowledged the receipt of a letter from the Fair Share Housing Center from Kevin Walsh suggesting an amendment to the MOU. All Council members received a copy of this letter.

Ms. Swan introduced the resolution regarding the MOU with COAH. She explained that the MOU has been a priority as a result of EO 114 which required approval of an MOU on or before November 4, 2008. She reviewed the MOU, its objectives, as well as its history. She explained that the second portion of the MOU discusses the process of working with COAH specifically regarding the affordable housing and the conservation of the natural resources.

Ms. Swan explained that the MOU set forth a process to seek an extension of time, from December 31, 2008 to December 8, 2009 for conforming municipalities in the Highlands Region for filing a petition for Substantive Certification. Conforming municipalities submitting a resolution of intent

to both the Highlands Council and COAH will receive an extension. Upon approval of this resolution, documentation will be sent to the municipalities explaining the extensions, providing the resolution for the Notice of Intent to conform, the resolution of intent to petition COAH, and a copy of the MOU.

She explained that towns that submitted the two resolutions would then be eligible to have their projections for affordable housing adjusted through a Highlands build out consistent with the RMP if they conformed to the plan.

*Mr. Cogger moved the motion to approve resolution, Ms. Kovach seconded the motion.*

#### **PUBLIC COMMENT:**

**Julia Somers, NJ Highlands Coalition:** She expressed that she had difficulty understanding the MOU. She had concerns regarding the lack of detail within the MOU. There is a lot of detail to come, but she does congratulate the Highlands Council on coming this far

**Jeff Tittel, NJ Sierra Club:** He stated that this is moving in the right direction, but many areas need to be fleshed out – specifically regarding implementation. He noted the lawsuits regarding EO 114. He stated that Highlands needs to amend their plan and assure that COAH also amends their regulations as things progress. Mr. Tittel expressed the large numbers that were initially set out by COAH, hopefully will be reduced and that the reduced numbers will be set in rule to protect those plans. He also noted that the 3,000 units prior to Round 3, he believes that many of these numbers may not be viable. He has concerns that for municipalities that do not conform, their obligations will increase. The requirements will have to go somewhere, so there may be pressure to place that housing in inappropriate areas. Mr. Tittel is also concerned about the word feasible within the MOU and the need to make it clearer. He is supportive of limiting housing by the available water, sewer, and resources. He expressed the necessity for adoption by COAH not just an MOU. He has additional concerns about TDR – setting aside 20% may make in infeasible financially. Regarding the COAH rules, the section requiring towns to meet certain densities, the Highlands are unique and should be recognized by COAH. There needs to be further work passed the MOU so that COAH's regulations reflect the Highlands Plan. IF COAH doesn't work the Highlands Council it will open a very large loophole.

**Wilma Frey, NJ Conservation Foundation:** She expressed a concern regarding paragraph 13 – about the adjusted growth protections. She stated that the stricter standards that may be set by a municipality are not addressed by this paragraph. This could be a conflict of interest.

Ms. Pasquarelli stated that there needs to be more work regarding the implementation of the master plan with the COAH rules. She felt that the MOU is not so much a resolution of conflict as it is a capitulation to the COAH regulations. The Highlands Council needs to push harder for their goals and the protection of natural resources. She stated that she would like to make an amendment to this resolution. Specifically, item 15 in the MOU (page 8) which addresses the same issue Ms. Frey discussed. She asked that this item be deleted, since it implies that this doesn't support the ability for stricter standards. The Highlands Council should be supporting municipalities who choose to use the stricter standards as set for the in the RMP. She also felt that towns should be able to use the RMP even if they don't conform. Ms. Swan stated that the towns can use the data to work with COAH on adjusted numbers but are not entitled to use the numbers that are the result of

conforming if they do not take on those additional protections through conformance. It is only within conformance that they follow all of the protections of the RMP. If the town isn't conforming with the RMP, they should not be using those numbers. On their own they can use the data and science from the RMP to work with COAH on adjusted numbers. Chairman Weingart asked if there was a second to the amendment and there was no second.

Ms. Pasquarelli also discussed item 18, and that it is important to note that both agencies will look for realistic opportunities and the need for affordable housing. Chairman Weingart reminded members that if amendments are made to the MOU, then COAH will have to review it which will not allow the deadline to be met. Ms. Pasquarelli asked for the additional language "and COAH" after Highlands Council in item 18. Chairman Weingart asked for a second to her proposed amendment and there was no second. Then Ms. Pasquarelli presented an amendment regarding item 27; she suggested that language be added regarding the letter of intent not be binding. Ms. Swan stated that documentation will be sent to the municipalities regarding it being non-binding and that it is in the sample resolution. Mr. Schrier said he understands what Mr. Tittel's concern about the COAH numbers being forced to go up in the Planning Area. He asked for Mr. Borden to look into that possibility.

*Ms. Pasquarelli opposed the motion. ALL members present voted in favor. The resolution was APPROVED.*

Chairman Weingart stated his appreciation for all of the work put into the MOU both from the Highlands Council staff and COAH staff. Ms. Swan thanked Lucy Vandenberg for her work.

### **III. CONSIDERATION OF RESOLUTION – Approval of Procedures for Highlands Redevelopment Area - (voting matter with public comment)**

Ms. Swan noted that on June 16, 2008, the Highlands Council released a revised procedure for the designation of redevelopment areas in the Preservation Area, along with a summary of changes from the draft procedures of May 2007. Comments were received by July 16, 2008. She explained that the Council staff has prepared a summary of public comments received on the June 2008 draft along with proposed Council responses. A final procedure has been developed for Council review. The staff recommends adoption of the procedure.

She then reviewed changes that were made to these procedures. Specifically, the Highlands Council began discussing the Procedures for the Highlands Redevelopment Area Designations at its September 18, 2008 meeting. The Highlands Council staff made edits to the document based upon that discussion. One change was made to the flow chart on page 2 to reflect the requirement of 70% of an "area affecting" (added term) multiple contiguous parcels covered with impervious surface. The definition of Highlands Redevelopment was changed to reference the Redevelopment Program in the RMP. A step (c) was added to Section 1.7 (Preliminary Determination) that Council staff shall prepare a preliminary findings report that will be provided to the public and the applicant so that it may be determined if the proposed project may be modified to avoid any inconsistencies with the RMP.

*Ms. Kovach moved the motion to approve resolution, Ms. Letts seconded the motion.*

#### **PUBLIC COMMENT:**

**Julia Somers, NJ Highlands Coalition:** She stated appreciation for increased public involvement, specifically making more documentation and background information available. She made suggestions to better inform and involve the public.

**Jeff Tittel:** First, he noted that redevelopment sites should be reviewed as possible affordable housing. Also, they should be looked at for mixed use. Regarding Highlands Redevelopment areas, if it can be all of part of a property, he asked for clarification regarding the language. For section 3, minimum feasible alteration and approval of aquatic areas and water quality, he stated concern about weakening the anti-degradation policy. These areas should be used for restoration. Lastly, for section 4 he expressed the concern about extension of sewers and stated that the language needs to be tightened.

**Hal Danielson:** Regarding COAH, he stated that the state shouldn't have COAH. He believes much of the MOU is unnecessary. It is yet to be discussed how jobs are to be provided.

Ms. Swan stated that having affordable housing within redevelopment is addressed in the plan. She explained that part of a parcel can be designated for redevelopment and the rest can be deed restricted.

*ALL members present voted in favor.*

#### **IV. CONSIDERATION OF RESOLUTION – Approval of Certain Planning Assistance Grants - (voting matter with public comment)**

Chairman introduced the resolution noting that there are 13 grants for consideration. Ms. Swan stated that if these grants go through, 46% of the acreage of the Highlands will have gone through the initial assessment grants. She asked if the resolutions can be set into one resolution except for the Town of Clinton (consideration of which Ms. Kovach will be recusing herself).

The Highlands Council initiated a grant application process for Initial Assessment grants to municipalities within the seven Highlands Counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000. Council staff reviewed the grant applications and recommend grants for Council consideration. Ms. Swan reviewed the history of grants for each of the following Townships applying for initial assessment grants:

- a. Bernards Township - Applying for an initial assessment grant in the amount of \$15,000. Previously they had a COAH Third Round grant for \$7,500 which was approved 12/12/05 and paid 5/15/06.
- b. Boonton Township - Applying for an Initial Assessment Grant in the amount of \$15,000. Previously they had a COAH Third Round Grant in the amount of \$7,500 approved 5/31/06 and declined by the Township 12/14/06.
- c. Califon Borough - Applying for an Initial Assessment Grant in the amount of \$20,000 (\$5,000 of which is for initial stream/flooding study). Previously they had an MP3 Grant which involved a study of on-site alternative wastewater technologies in the amount of \$12,790 approved 12/19/05 and paid \$12,245, 11/15/06.

- d. Denville Township - Applying for an Initial Assessment Grant in the amount of \$5,000. Previously they had a COAH Third Round Grant in the amount of \$7,500 approved 6/7/06 and paid 11/15/06.
- e. Glen Gardner Borough - Applying for an Initial Assessment Grant in the amount of \$15,000.
- f. Mahwah Township - Applying for an Initial Assessment Grant in the amount of \$15,000.
- g. Randolph Township - Applying for an Initial Assessment Grant in the amount of \$15,000. Previously they had a COAH Third Round \$7,500 approved 12/5/05 and paid 6/28/06. They also had an MP3 for a study to illustrate how a Planning Area municipality can work to protect environmental resources and biodiversity through regulatory, land management, and stewardship mechanisms. They were \$50,000 approved 12/19/05 and paid 11/15/06.
- h. Sparta Township – Applying for an Initial Assessment Grant in the amount of \$20,000. Previously they had a COAH Third Round in the amount of \$7,500 approved 2/17/06 which has been stalled.
- i. Tewksbury Township - Applying for an Initial Assessment Grant in the amount of \$15,000. Previously they had a COAH Third Round \$7,500 approved 12/12/05 and paid 5/15/06.
- j. Washington Borough - Applying for an Initial Assessment Grant in the amount in the amount of \$15,000. They are also applying for a TDR Grant in the amount \$35,000. Previously they had a COAH Third Round \$7,500 approved 12/5/05 and paid 11/15/06 and an MP3 Grant to develop a vision and strategies for implementing town center redevelopment while balancing small town character and quality of life in the amount of \$52,000 approved 12/12/05 and paid 8/24/06.
- k. Clinton Township - Applying for an Initial Assessment Grant in the amount of \$15,000. Previously they had a COAH Third Round \$7,500 approved 5/15/08 and not yet paid.

#### **PUBLIC COMMENT:**

**David Pfeifer:** He asked if the final reports of grants that have been completed will be available and in what format. Ms. Swan stated that those that the Council has in electronic format will be made available.

*For all but the Town of Clinton, Ms. Letts moved the motion to approve resolution, Ms. Calabrese seconded the motion. Ms. Carluccio and Mr. Dillingham were absent. ALL members present voted in favor. The resolutions were APPROVED.*

- l. Clinton Town - Applying for an Initial Assessment Grant in the amount of \$15,000. Previously they had a COAH No Substantive Certification Grant in the amount \$12,500 approved 12/19/05 and paid 3/24/08, as well as an MP3 for the development of a town water management plan in the amount of \$35,000 approved 2/15/07 and still pending, and a TDR Feasibility \$23,500 which was approved 4/10/08.

*For the Town of Clinton, Ms. Calabrese introduced the motion, Ms. Letts seconded the motion. Ms. Kovach abstained. Ms. Carluccio and Mr. Dillingham were absent. All other members present voted in favor. The resolution was APPROVED.*

Mr. Schrier excused himself from the meeting. The others remained via teleconference or were present.

**V. CONSIDERATION OF RESOLUTION – Approval of Procedures for Highlands Scenic Resource Inventory - (voting matter with public comment)**

Ms. Swan reviewed that on June 16, 2008, the Highlands Council released a revised Procedure for Nomination, Evaluation and Inventory of Highlands Regionally Significant Scenic Resources, along with a summary of changes from the draft procedures of September 2007. Comments were received by July 16, 2008. The Council staff has prepared a summary of public comments received on the June 2008 draft along with proposed Council responses. She explained that a final procedure has been developed for Council review. Staff recommends adoption of the procedure. The comments received were consolidated into 17 categories. The Council responses are intended to explain either how the draft procedure was modified to address specific comments or to provide a clear rationale as to why staff believes suggested changes were not necessary or appropriate. Edits made to the *Scenic Resource Procedures* correspond to the responses in the *Summary of Public Comments and Responses*. Further, as a result of Council discussions regarding the proposed Redevelopment Area Designation Procedures, the proposed Procedure for Nomination, Evaluation and Inventory of Highlands Regionally Significant Scenic Resources was modified to provide for public input following release of a draft staff recommendation, similar to the process for WQMP amendment reviews.

*Ms. Kovach introduced the motion, Ms. Calabrese seconded the motion.*

**PUBLIC COMMENT:**

**Wilma Frey, NJ Conservation Foundation:** She congratulated the Council on this procedure; particularly, the major change which has the proposed management plan not being required with the initial recommendation. She stated that once a resource is on the suitable list, the checklists and standards should refer to the list of suitable resources along with the existing list. Then it will get some recognition even while the management plans are not yet in place.

**Helen Heinrich, NJ Farm Bureau:** She stated that this needs a lot more detail, even though this is only the beginning. She stated that there are problems with this as it is very sketchy. There are hardly any signals that there is an agricultural areas that may be considered a scenic resource. There should be a separate set of standards for this area. She stated that they disagree with the idea of including those on the suitable list being included. The nomination itself draws attention. The danger is that it could affect the farm negatively. She noted that she will be submitting some research regarding the fact that the public doesn't know how to look at farms as scenic resources. The document she will be submitting has new references and information.

*Mr. Alstede was opposed, all others members present voted in favor. The resolution was APPROVED.*

Ms. Pasquarelli excused herself from the meeting.

## EXECUTIVE DIRECTORS REPORT

Ms. Swan reviewed sharing of information with the municipalities and counties, including sharing GIS mapping data. Also, the sample resolutions for both grant applications and the intent to conform will be sent. Work will be done with COAH, and a letter with dual letterhead will be sent explaining the MOU and the terms of the extensions. This will include a copy of the MOU, a copy of the sample resolution for the intent to conform, and from COAH a copy of the resolution of the intent to petition. It is believed that this will assist municipalities.

In terms of Plan Conformance Standards, 24 of the 25 documents are now available online. For the Plan Conformance process, the staff is working on a program to facilitate assisting municipalities through conformance. In order to assist with the immediate needs, on November 10<sup>th</sup> at 10 am, there will be a joint program with the New Jersey League of Municipalities to assist professionals from municipalities in looking at the MOU, EO114, and the beginning of the Plan Conformance process. The towns have been asked to send one professional, but there is an intention to have additional programs in the future. The staff will continue to go out to municipalities upon their invitation to assist with the processes. Ms. Swan noted that the cost of sending their professionals can be included as part of the Initial Assessment Grant.

Regarding WQMP reviews – the public review has been posted and the Hampton Farms Golf Club amendment has also been posted, with a comment due November 6<sup>th</sup>. For exemptions #9 and #11, which require that the project must be consistent with the intent of the Highlands Act, NJDEP has asked for comments from the Council regarding some of these exemptions. It was important to have good state agency coordination – a template has been developed to assist them. She noted that she didn't want to make these comments public until they can be reviewed and the Council can approve the format of the comments. Once the Council has reviewed and approved the template, these comments will be posted for the public. Ms. Swan stated that NJDEP was grateful to have received these comments.

She reviewed the first RMP Update. During the review of the WQMP amendments and a visit to Holland for an informational meeting it was noted that an Existing Community area designation appeared to be an error. The area had been mapped as Existing Community as it had been cleared and was devoid of natural indicators. The area was now large lot development and when reentered accurately into the LANDs system shows as Protection Zone. The Town officials had been advised of the update and had no objection.

In order to save time, she stated that she will not go over all of the meetings which have taken place. She noted that she and Mr. Borden continue to be available for meetings and informational sessions.

Mr. Vetrano excused himself from the meeting.

## PUBLIC COMMENT:

**Hal Danielson, President of Clean Burn:** He is in the business of mitigating the gases coming from coal plants. He stated that it is a shame that NJ needs COAH. NJ needs to be a more business friendly state, to help with job creation. He noted that many corporations have left NJ due to excessive taxation and regulations. He noted business that have left, and stated the NJ needs to work to retain these business and the jobs that come with them.

**Hank Klump:** He noted that he owns property in the Preservation Area and that his property values have been stolen. He discussed everyone's concerns about losing their retirement funds. He spoke about Executive Order for 10 million dollars for the TDR bank. He expressed that he deserves payment for the lost value of his property. While many people have argued that farmers still have their property, they don't understand that it is about their equity. The farmland equity is their safety net. The property is sold with great sadness and only when necessary. During the current financial crisis, people are waiting for help and it is on the way. The people in the Preservation Area are waiting for help, but will it ever come.

**Andy Drysdale:** He explained that he wrote this letter for the meeting that was cancelled. He noted that there is revenue that could be gained from drilling offshore in an environmentally safe way. He read his letter which discussed socialism and how it is negatively affecting people. Many people were damaged, including him and his wife, by the Highlands Act. The Governor and others new there was no money to compensate landowners. He discussed the financial crisis of Americans. The Highlands Act goes beyond Socialism and was not based on facts. It should be eliminated. He stated that he believes that there aren't enough interested parties in TDR. The affected property owners are one of the most endangered species.

Chairman Weingart introduced the motion to adjourn. Ms. Calabrese seconded the motion. All members present voted in favor. The meeting was adjourned.

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: 11/21/09

Name: Laura Forrest  
 Laura C. Forrest, Administrative Assistant

**Vote on the Approval of these Minutes**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede		✓	✓			
Councilmember Calabrese						✓
Councilmember Carluccio			✓			
Councilmember Cogger	✓		✓			
Councilmember Dillingham						✓
Councilmember Kovach			✓			
Councilmember Letts			✓			
Councilmember Pasquarelli						✓
Councilmember Peterson			✓			
Councilmember Schrier						✓
Councilmember Vetrano						✓
Councilmember Way						✓
Councilmember Whitenack			✓			
Councilmember Weingart			✓			

**PUBLIC COMMENTS SUBMITTED**

ANDREW DRYSDALE  
Land Surveyor  
32 East Fox Chase Road  
Chester, NJ, 07930  
Tel. 908-234-1079 Fax 908-234-1326

October 16, 2008

10/30/08

Highlands Council  
100 North Road  
Chester, NJ 07930

Creeping Socialism, Marxism or Communism as the case may be, is now negatively affecting people, not just in the so called 'Highlands Area' of New Jersey but all across the country. Many people including me and my wife Lois were severely damaged financially by the New Jersey Highlands Act which was passed in 2004. The Legislature and the Governor of New Jersey knew that they did not have the money to pay land owners for there losses as a result of this Act but they did it anyway.

Now, We as well as a huge number of people all across this country are being financially damaged by the liberal government creeps who, in the late 1990's, pressured banks and other lending institutions to loan money to people who could not pay it back. This problem was exacerbated by the high cost of fuel which raised the cost of just about everything.

The "Highlands Act" goes beyond socialism which is bad enough, but may well fit into one of the other categories first mentioned above. This Act was perpetrated for less than honest reasons using what sounded like noble causes, but were not based on facts. Such as clean water endangered species and scenic vistas. This liberal program as well as many others should be eliminated as soon as possible.

Given the state of the economy, do you think that anyone is champing at the bit to buy TDR'S? I do not think so. Don' t you think that water can be filtered? I think it can. Who is the most endangered species? I think it is the uncompensated land owners. How should we preserve scenic vistas? I think that incentives such as Cluster Zoning put in place by municipalities, not the state, would be very effective.

Sincerely,



Andy Drysdale

cc: Others

## **Julia Somers**

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**From:** "Elliott Ruga" <elliott@njhighlandscoalition.org>  
**To:** "Julia Somers" <Julia@njhighlandscoalition.org>  
**Cc:** <Mark@njhighlandscoalition.org>  
**Sent:** Thursday, October 30, 2008 12:08 PM  
**Subject:** Redev. Area Designation Procedures- Comments

Although we still believe the May, 2007 Draft Redevelopment Site Designation Procedures required a greater level of involvement and scrutiny by Highlands Council than the current draft, we appreciate the improved opportunities for public involvement than was proposed in the June, 16, 2008 draft, specifically, providing the public a summary of issues discussed during the pre-application meeting, providing the public with the staff's draft report and a minimum of 10 business day comment period prior to the Council's Determination and the requirement that the petitioner give public notice by publication of a legal notice at least 10 business days before the Council Meeting at which the Council will make its final determination.

In addition, we believe that by listing the resource protection criteria that must continue to be maintained under the granting of a waiver will better inform the petitioner as to the viability of his request for a waiver and will ultimately uphold the resource protections of the Act and the RMP.

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People are very concerned - worried -  
losing sleep - over the possibility of  
losing money, 401 K's, and all they  
have invested in during this  
financial crisis. It is an awful  
feeling - just ask any of us who  
have had their property values  
stolen from them in the Highland  
Preservation Area. We have been  
feeling the pain for over four  
years now. Where are the funds  
to rescue us?

Corzine has issued an

②

Executive Order to come up with  
10 million dollars to be put into  
the TDR Bank. My property,  
alone, had a real estate value  
of millions of dollars.  
I don't want to be greedy so  
just give me one million now  
and then one million a year until  
you have paid me what you have  
taken from me. To show you what  
a good guy I am, I won't even  
charge you for all the interest I  
am losing.

3

Uninformed people argue that farmers still have their farms - no one has taken the land - but they don't understand what has been taken. They don't understand equity and the fact that farmers are not developers, however, when all you have is tied up in your property - you don't know what the future holds. Farmland has often been in families for generations but the farmland real estate value is their financial safety net.

4

Farmland is often sold with great sadness and because of sheer necessity. The farmer is too old - has no family member to carry on - illness - or perhaps to help send grandchildren to college - whatever the case, the land was his investment - the money should be there.

For the current financial crisis - people are waiting for help - and help is on the way!

Landowners in the Highland

5

Preservation are waiting for  
help for their financial crisis -  
Is any help on the way?

Hank Klumpp  
24 Longview Road  
Lebanon, N.J. 08833  
908-832-7634

**SCENIC RESOURCE REFERENCES**  
**Prepared for the Highlands Council's Use**  
**By the NJ Farm Bureau**  
**October, 2008**

**The following references are provided because they describe the process by which the scenic resources of a rural, agricultural area can be identified and what expertise and public input is required. Most can be found online, but if not, the NJ Farm Bureau will provide the HLC and/or the Scenic Design Advisory Board with copies.**

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## COMMENTS ON THE OCTOBER 30, 2008 SCENIC RESOURCE DESIGNATION PROCEDURES

Helen H. Heinrich PP CLA for the NJ Farm Bureau – October 27, 2008

The NJ Farm Bureau believes that working agricultural landscapes are a scenic resource of a special type that can be worthy of management and protection if this poses no threat to agricultural viability and no loss of farmland use. Any such barriers to agricultural viability or loss of use must receive "fair compensation" as the Highlands Act promised. It is not equitable for the public to enjoy the benefits of a resource that must be provided at the expense of and detriment to the land owner.

Our comments will be followed by a statement of the **POTENTIAL HARM TO AGRICULTURAL VIABILITY** and in *bold italic font, suggestions for changes in these procedures.*

**1.1 Purpose and Scope:** to protect regionally significant scenic resources: maintain visual integrity, and scenic beauty of noteworthy viewsheds and natural and cultural features of regional significance in the Highlands.

While this is may be a worthy goal, our review of a number of other scenic resource programs nationwide shows that several critical steps in achieving this are lacking. So much is missing that the Highlands Council (HLC) should make the Scenic Resource Program including the scenic resource nominations and Scenic Resource master plan elements a low priority in the Plan Conformance process. These procedures must be improved to make the effort both effective and reasonable, and more time allowed for a meaningful public participation process resulting in consensus about what's "scenic". The task cannot be done effectively by Dec. 31, 2009?

For example:

### **A. What is meant by "scenic"? To whom must the resource be "scenic"?**

The definition of "**Scenic features/attributes**" (p. 12) may be those "which are distinguished from merely 'visual' features through an inclusive public process." There is no clear standard for this public process that attaches value to physical scenes.

Every other system of scenic resource identification depended upon many hours working with technical experts and a group of local citizens representative of the community to answer these questions for that place. To say something is "scenic" implies a value judgment that, in order to have community support and consensus, should be derived through a process as broad as possible.

But not only do these Procedures fail to provide clear definitions or to outline a process to do so in a public effort, but someone has decided already what is "scenic" in the Highlands (pgs 2-4):

- Scenic Byway
- Panorama and valley
- Ridgeline, mountainside and geological feature

- Natural feature, including vegetation and water features
- Cultural landscape, including community gateways, landmarks, and historic or archeological features.
  
- And publicly protected lands are already on the Highlands list of designated scenic resources – even lands preserved for active recreation (DEP Highlands rules N.J.A.C. 7:38-3.12(c))

Where does the working agricultural landscape with its variety of forms and characters fit into this list? Should it be included in the “cultural landscape” list of examples?

Studies show that special efforts must be made to help the nonfarm viewer to “see” the agricultural landscape. The public tends to prefer the landscape view with the least signs of human use, design and control, an inappropriate vision when dealing with many man-made landscapes in the Highlands, especially in the almost 200,000 acres mapped in the Agricultural Resource Area (ARA), where agriculture is to be continued and encouraged to be viable and sustainable. The public must be educated to recognize a “sustainable farm”, a “viable farm”, and the opinions of those farming must be incorporated into any ranking system.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: the variety and dynamics of Highlands agriculture must be identified and in the ARA at least given higher ranking over merely “natural” landscapes. There must be some form of compensation for protecting these resources for the general public. If they will be mapped and regulated anywhere in the Highlands without concern for the economic impact of so doing, there will be further deterioration of farm land values and more challenge to becoming a viable farm operation.**

***The Highlands Region has exhibited the character of a “working landscape” for centuries. This must be allowed to continue in accordance with the Highlands Act.***

***The HLC and the (SDAB) must develop separate standards and requirements for ARA for it to fulfill the Highland Act’s mandate to enhance and promote, or even maintain a positive business climate for the agricultural industry. It must ensure that persons knowledgeable about agricultural land patterns and practices as well as farm operators are included in designing the ranking criteria. It must educate the public about how to recognize the special qualities of a working agricultural landscape.***

**B. What are the definitions of “regionally significant resources”, or “noteworthy viewsheds” that municipalities and counties must, during Plan Conformance, feature in their required master plan elements?**

By what process will these be determined? Are there guidelines for this in some document other than this Procedure or the sections of the RMP?

- Does "regional" mean only the view from public roads – all, or "regionally significant roads"?
- Does this mean what can be seen from viewpoints on public trails?
- Does this mean resources that have the highest preference scores when rated by a diverse group of citizens?
- What is going to be the difference between a "regionally significant scenic resource" and a locally significant scenic resource? Or are all that are identified thereby "significant"?

Language on p. 6 implies that the nominating entity will know how to identify a "regionally significant scenic resource". Who will determine what the requirements for that designation are to be?

**POTENTIAL HARM TO THE AGRICULTURAL INDUSTRY: every acre could be defined as "scenic" especially in broad viewsheds over Highlands valleys. Every farm structure, whether currently useful or not, could be considered worthy of protection and required to be restored at the landowner's expense. The resulting drain on farm income and uncertainty about farm land use would thus further reduce the value of the property FOR FARMING PURPOSES.**

***The HLC must define "scenic resource" broadly enough to enhance and promote the agricultural industry at least in the ARA and decide the parameters of "regionally significant" and "noteworthy" or require that the Scenic Design Advisory Committee (SDAC) accomplish this task first in a legally defensible manner.***

### **1.2 Criteria for Designation of a Regionally Significant Scenic Resource**

Throughout this section, there are no standards or guidelines to determine what a "regionally significant scenic resource" is. It appears that "State and National byways guidelines" have determined the listed categories of resources, and criteria for designation as a National Wild and Scenic River are appropriate. But they are not appropriate to use without addition of criteria that reflect the current and future visual aspects of agriculture in the ARA.

For example, the goal to "preserve farmland and open space within the river corridor and the watershed" (**1.2.4 Natural feature**) only addresses visually apparent agricultural land without recognizing and supporting functional agricultural land use.

**(b) 5. Cultural landscape, including community gateways, landmarks and historic or archaeological features** (p. 3) – lists the US Department of the Interior types of cultural landscapes but relegates "agricultural landscapes" to the vernacular category alone. They could be historic sites, historic designed landscapes, and even ethnographic landscapes as well.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: the lack of agriculture-specific criteria could foster use of designations, criteria, and standards that are not descriptive of, or appropriate for, a working agricultural landscape.**

**Municipalities and counties with considerable lands in the ARA cannot use simple, generalized ranking systems and procedures that typically find only "natural" landscapes "scenic". To force ARA landowners to artificially maintain "natural landscapes" of some period in the past is denial of the regional significance of the agricultural industry reflected in the Highlands Act and its mandate to enhance and promote Highlands agriculture.**

***The HLC must give the SDAC better tools by seeking out identification systems used in similar agricultural areas or working with local farm experts to design one specifically for the Highlands.***

### **2.1 Highlands Regionally Significant Scenic Resource nomination process.**

- (a) **Timeframe** – states that conforming municipalities and counties "may" conduct a scenic resource nomination process as part of the conformance process. Yet Policies 4C 1 and 4C 2 (p. 295) of the RMP state that to conform, a municipality or county "must" have an approved Historic, Archaeological, and Scenic Resource master plan element. How can such a document be prepared without undergoing a rigorous, public process to identify such resources?

This element is defined by the MLUL as including "the location and significance of historic sites and historic districts, identification of the standards to be used to assess worthiness for historic site or district identification, and analysis of the impact of each component and element of the master plan upon their preservation."

Is this process going to be required early on in the Plan Conformance process or should a county or municipality wisely put off this time-consuming, expensive, and often contentious effort until it can be done in a responsive, responsible and legally defensible way?

This should NOT be a requirement of Plan Conformance to be done by 12 31 09 or in any short timeframe. To develop the "community consensus" required in this procedure in an equitable and legally defensible manner takes time and expertise that would not be possible given all the other plans conforming entities have to prepare and adopt.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: Scenic resource identification systems developed without public participation and testing, in a hurry to meet a plan conformance requirement, may lack the criteria that could reward productive, functioning farm operations and good stewardship while rating highly farm scenery ("horses and hay") that appeal to tourists, nonfarmers, and others who cannot recognize typical productive agricultural practices. This is unacceptable especially in the ARA where the permanent and preferred land use is to be agriculture.**

***The HLC must clarify in these procedures and the Regional Master Plan that this process is not required for Plan Conformance until appropriate standards and requirements are available and the petitioner has spent the time to develop a procedure that not only documents the existing agricultural landscape but also allows for changes to make the industry more economically viable. It should not lead to restrictions that reduce options and cost the landowner without compensation.***

**(c). Basis for nominations**

We welcome the strengthening of the public participation requirements for the nomination process. To identify rural agricultural scenic resource adequately will take time and much visual education.

The procedures outlined on p. 5 however either presuppose that the definitions of "scenic" and "regionally significant scenic resource" have already been determined by some consensus or leave the definition of "scenic" and especially" up to each petitioner instead of requiring them into using the same parameters. Or will the SDAB monitor the preferences of the counties and towns to make sure they are regional enough?

What is to be the role of the SDAB regarding guidelines, standards, model ordinances etc? Will it review and endorse any such work by the HLC staff?

**HARM TO AGRICULTURAL VIABILITY – Towns and counties proceeding to inventory scenic resources without consistent and appropriate standards and requirements will draw lines around farm properties without consideration for loss of value or use as a farm and without any planning for financial compensation**

***In order to designate rationally and effectively any scenic resource of regional significance, there must be limiting parameters adopted to keep the focus on a few resources rather than a multitude of personal preferences. The SDAB must develop definitions, standards, and requirements or oversee such work by the HLC before towns can add their nominations.***

***There should be a moratorium on development of municipal and county level scenic resource lists until the conforming entity first makes the effort, with appropriate guidelines and full public participation, to determine whether there are any truly "regionally significant " Highlands scenic resource that they must protect.***

**(d) Public Outreach**

Public outreach described on pgs. 6 and 7 says nothing about involving the public in ranking gradations of scenic resource, only in reviewing the resources already decided upon by some entity, possibly a private organization from totally outside the community. Local people have long historic knowledge of the local land uses and their own set of value determinations. This procedure leaves them out.

Other scenic resource identification systems used around the US involved the local residents in a major way to assure that the ranking of preferences truly reflect local conditions. This means more than just "reaching out" to the community. Designing the designation process can be an inclusive process leading to a local consensus about what is "scenic" AND worthy of protection or a top-down process with standards foreign to the existing landscape and community character. One advertised public meeting is totally inadequate to accomplish this process.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: with no general definitions of "scenic resource" or "regionally significant scenic resource" to depend upon, farmland owners would be at the mercy of whatever group takes on the nomination process. This cannot be resolved by means of only one public meeting.**

**Farmers fear that given the prevalent ignorance of the general public about agriculture and prejudice against it as a land use on the part of some groups, they would be presented with a list of scenic resources including vistas of farms, obsolete farm buildings, and requirements to replace certain crops or vegetative types to be more "scenic", as the basis of municipal protective regulation – with no say in how they were determined and no compensation.**

*There should be more complete guidelines written to help the nominating entities design a truly representative outreach process. The SDAC would then evaluate the local consensus as presented against their standards. Since any third party may be the nominating entity, this is even more critical.*

**(g) Role of interested third parties in the nomination process.**

There must be standards developed by the SDAB to determine which entities have standing to become "nominating entities". Otherwise, even a group of neighbors who don't agree with a farmer's Right to Farm could nominate resources that would try to remove aspects of the farm operation they do not favor.

The municipal or county government must adopt a supporting resolution formalizing permission for the entity to proceed. Not only is this essential since any scenic resource Management Plan must be enforced and implemented by a municipality, but it ensures a more thorough public knowledge of what's to occur and more public discussion later of the results.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: Groups with the resources to undertake the work may have a bias toward only certain types of landscapes, not recognizing the diversity within a community or country. There could be increased Right to Farm conflicts if persons or communities try to use the scenic resource nomination process to curb certain types of agriculture they considerable undesirable in their community.**

***The HLC must maintain this step: authorization via municipal or county resolution for the scenic resource analysis to go forward and approval of the Management Plan when completed.***

***The SDAB must set up a process to establish which groups have standing to be a "nominating entity". The municipality must ensure that the "nominating entity" coordinates its scenic resource protection effort with the other goals of its master plan and the RMP, to enhance agricultural viability, for instance.***

**(h)** A Scenic Resource Analysis and Management Plan is required only AFTER the nomination is approved. This seems to allow a nongovernmental nominating entity to proceed with the entire identification of resources without the knowledge and support of the municipality that will have to provide the protection mechanisms. There seems to be a step left out: municipal review and support by resolution of the scenic resource Analysis and Management Plan before it goes before the SDAB for the preliminary recommendation as eligible. –The municipality needs to have a part in determining what is to be regulated, not just approval of how to protect it. It needs to know what will be the cost to landowners and other residents. There needs to be discussion in at least one public meeting.

If a municipality or county is the nominating entity, how can it even nominate scenic resources if it does not simultaneously consider how to manage and protect them? Any nomination will affect landowners and potentially cost the community in compensation for lost use of land or land acquisition.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: a third party could be encouraged by these procedures to take shortcuts in identifying and analyzing the scenic resource while making nominations. There are private property and public fiscal effects that must be considered or the SDAB must reject the nomination effort and associate plans.**

**Just drawing a line around a "viewshed" or historic district/landscape will affect property use and property values based upon use. The municipal government needs to weigh the financial consequences of any protection plan and implementation measures.**

***There should be (1) municipal/county approval of allowing a third party identify and nominate scenic resource, (2) municipal/county approval of the Scenic Resource Analysis and the list of proposed nominations before it goes before the SDAB and finally(3) municipal/county approval of the Scenic Resource Management Plan. The municipal or county government must know how many resources are being proposed for designation and what the third party believes it must do to protect them. The affected property owners must know this also to understand the potential effects on their use of the land; municipal or county government and other residents need to understand the potential cost and the tax burden.***

## **2.2 Scenic resource evaluation process**

**(a) Basis for evaluation** includes determination whether there is proposed "an adequate protection mechanism as presented in the Mgt Plan". This contradicts the statements above that postpone development of the Plan until after the SDAB decides the resource is worthy of concern.

***Are scenic qualities and their potential for protection to be evaluated together?***

***There should be required a separate set of evaluation criteria for any nominations in the ARA, the area where agriculture is to be the preferred land use forever. They should be reviewed for any conflict with Right to Farm and negative effects on both current and future viability of the agricultural use of the landscape in question.***

**(b) Review and evaluation by Highlands SDAB:** in order to effectively evaluate scenic resource in the ARA, there must be some experts with knowledge about agriculture on the SDAB: agriculture's cropping and land use patterns, the appearance of Best Management Practices and other stewardship activities, OTHER THAN THEIR PURELY AESTHETIC, VISUAL ASPECTS. Or the SDAB must seek out consultants to help them evaluate proposed nominations from agricultural areas.

Most scenic resource evaluation systems suffer from a narrow level of experience and thus do harm to established land uses in the landscape regulated by the designation and subsequent Mgt Plan. Resources that "are considered representative, unique, irreplaceable, or distinctly characteristic of an area" will have special criteria in the ARA where agriculture is to be supported as the preferred land use.

There is no evaluation of how the nominating entity proposes to compensate the landowners for loss of land value and loss of land use.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: the review by the SDAB is the final check to ensure that there is reason and equity between nominating scenic agricultural resources and their effects on the landowner. The SDAB must have special expertise to do this.**

***Since the Highlands Act mandates special concern for the viability of the agricultural industry, special care must be used in any identification of historic or scenic resources in the ARA. The SDAB must be required to have some agricultural expertise for those nominations or be empowered and financed to call it in when needed.***

### **3.0 Scenic Resource Inventory**

How is the HLC going to avoid time-consuming discussions about the merits of some scenic resource or the effects of designation upon property values without clear general definitions of "scenic" and "of regional significance"?

There is nothing said about the HLC approving the Scenic Resource Analysis and Management Plan. While it should be a goal that the HLC need not reexamine every step of

the scenic resource nomination and protection process, the Management Plan should also be reviewed and analyzed by the HLC staff as part of their recommendations.

***This section must make it clear what is presented to the HLC for its consideration and acceptance, what will be analyzed by the staff, with what level of review or oversight.***

**(c). Municipal conformation and adoption of resolution.**

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: these procedures would lay out all the pertinent facts about the effects of the nomination and any potential incentives, compensation or other costs long after the nomination has made its way through the municipality/county, the SDAB, the HLC staff, and the HLC. The lines drawn in the nomination itself could devalue the farm and put in doubt what crops or practices the farmer can use.**

***The municipality must be required to review and endorse the Scenic Resource Management Plan as described above so that they can then move to adopt a resolution recognizing the designation and "putting in place the appropriate mechanisms applicable to those resources".***

**4.0 Definitions**

***ADD Agricultural landscape – or countryside - is a recognizable landscape type containing a predominance of agricultural patterns and activities and defined by both cultural interpretations and physical setting ( Schaumann 1998).***

***ADD: Negotiating Entity is a party granted standing as such by the HLC as qualified to undertake a Scenic Resource analysis, nomination, and development of a Scenic Resource Management and Protection Plan.***

**Cultural Landscape** should be expanded to include agricultural working landscape elements that are typically found in the Highlands.

**Regionally significant scenic resources** are "representative of the essential character of the Highlands environment" but this definition does not include a single feature that is typical of an active agricultural landscape. Only "meadows" comes close; all the rest are strictly "natural" features which may happen to be present on farms. The agricultural landscape can be described as "a landscape of natural materials, but a landscape designed by people." (Nassau 1979. P. 452). What are the man-made agricultural landscape patterns visible in the Highlands? They should be the basis of the scenic resource identification process in the ARA at least.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: the working agricultural landscape remains invisible; the farm operation is forced to be nonproductive thus reduced in viability and sustainability.**

***Designation of an ARA means the HLC must do more than merely identify aesthetic resources in a working landscape. It must help to educate the public about what they are seeing on a profitable, sustainable farm.***

**Scenic corridor** lists "farmland" that is visible, not "farms", again the over-emphasis on land alone. A road right of way's dimensions depend upon what type of road it is: state, county, or local, and its condition and topography.

**POTENTIAL HARM TO AGRICULTURAL VIABILITY: How wide is the corridor if it includes all that can be seen "from the right of way"? If the town regulates what farmers can do in that land area, where is the compensation for land value and land use opportunities lost?**



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October 28, 2008

To: John Weingart, Chairman, New Jersey Highlands Council

From: Richard Nieuwenhuis, President, New Jersey Farm Bureau

Re: Comments on the proposed procedures for the Highlands Scenic Resource Inventory.

Farm Bureau has reviewed the October 2008 version of the Highlands Scenic Resource Inventory procedures and would like to express our concerns. We request that the Highlands Council remove discussion of these procedures from its October 30<sup>th</sup> agenda due to serious shortcomings and omissions that, if unchanged, may do tangible economic harm to agricultural operations, which are supposed to be encouraged by the Highlands RMP. These procedures hinder the protection of scenic resources by opening the door to legal challenges, expense, and local controversy.

Farm Bureau welcomes the change to allow for the public to comment on the staff's recommendations before they go to the Scenic Design Advisory Board or the Highlands Council; however we still have major concerns, some of which are outlined below.

1. More clarity about the respective roles of the Scenic Design Advisory Board, the Highlands Council staff and the Highlands Council in the process is needed.
2. The definitions of the terms "scenic," "regionally significant resources," "noteworthy viewsheds," and "essential character of the Highlands environment," are inadequate and thus provide no consistent guidance to local municipalities.

The examples given in the procedures are especially weak when applied to working agricultural landscapes. They tend to favor existing or historic landscape qualities rather than allowing flexibility to incorporate adaptation to new conditions or uses that would be promoted and approved under the RMP.

A few especially egregious examples are in the nomination form (on page 15) where only "farmland" is considered worthy of notice, and the evaluation criteria (on page 16) where "vegetation" is given as an example with no indication that farm cropping patterns could be considered "scenic." If this form is to be used solely as an outline of required information, the procedures should so state and the Scenic Design Advisory Board or Highlands Council staff must come up with more detailed guidelines.

3. Farm Bureau is concerned about when a town or county must face this task. There is inconsistency between these procedures and the policies of the Scenic Resource program of the RMP about whether municipalities and counties MUST or MAY

undertake the scenic resource identification and nomination process as they undergo Plan Conformance.

The RMP policies mandate a Historic, Archaeological and Scenic Resource element in the master plan of a conforming town or county. Is this mandated to be a part of the initial Plan Conformance process? This must be postponed until there are standards for both nomination and protection, after the municipalities and counties that must conform by Dec. 31, 2009 achieve that status.

4. The procedures outlined and the attached nomination form are limited in process which may lead municipalities or counties to believe that they can nominate scenic resources without an adequate community visioning effort. In other states, this initial step has taken considerable time and serious public participation. If the Highlands Council's plan is to have the Scenic Design Advisory Board develop more detailed guidelines, it must be clear in these procedures.

The nomination form attached on pages 15 and 16 demonstrates how nominating entities may be encouraged to do only a superficial analysis of their community's scenic resources.

5. There is no recognition of the fact that scenic resource identification in the Agricultural Resource Area, or other perpetual working landscapes, will require a different set of standards and requirements than those for areas the Highlands Council considers "wilderness." These procedures show no knowledge of the use of visual assessment tools in working, agricultural landscapes, and therefore they may not be legally defensible for use in the Agricultural Resource Area.

The examples of existing scenic resource systems (Wild and Scenic Rivers, Scenic Byways, National Park Service, Historic Landscapes) offered in these procedures as models are inadequate to deal with a working agricultural landscape that must be encouraged to keep a sustainable and viable agricultural industry. The nomination form clearly demonstrates the inadequacy of these ranking systems in an area where agriculture is to be supported as a permanent land use. A system developed by the USDA-NRCS may come closest to what the Highlands Council should require towns and counties to use.

Studies show that the public tends to prefer the landscape view with the least signs of human use, design and control. This is an inappropriate vision when dealing with man-made landscapes in the Highlands Agricultural Resource Area, especially where agriculture is to be continued and encouraged as a viable and sustainable use of the land. The public must be educated to recognize a "sustainable farm" and a "viable farm," and the opinions of those farming the land must be incorporated into any ranking system.

The Highlands Region has exhibited the character of a "working landscape" for centuries. This must be allowed to continue in accordance with the Highlands Act. The Agricultural Resource Area must have its own scenic resource nomination standards and requirements to fulfill its mandate to enhance and promote the agricultural industry.

6. Separating the nomination of scenic resources from the development of the Scenic Resource Management Plan means that the Scenic Design Advisory Board, the Highlands Council staff, the Highlands Council, the municipalities, and the landowners affected have no real information about what is actually proposed for protection. How can the Highlands Council decide an area or view is "scenic" and worthy of spending tax dollars to protect if there are no dimensions or visual boundaries?
7. This procedure allows lines to be drawn around areas on farms long before management plans, including plans to compensate or provide financial incentives, are developed. The very act of nomination may be enough to drive the price of farmland as a working farm down even lower than what Highlands farms have already experienced as a result of being regulated under the Highlands Act. Farm Bureau is concerned that these plans and management techniques may not be required to meet the same standard of "fair compensation" as the provisions of the RMP. The Scenic Design Advisory Board can not analyze and approve a nomination if the details of its management and protection are unclear.

Simply listing compensatory mechanisms, like so many other scenic resource efforts, is not sufficient. The financial incentives sound good but may never be provided. If this is to be a mandatory protection system, compensation and incentives must be in place and funded before the nominations are approved and before regulations are enforced. There are examples of this kind of policy, including;

- The European Union pays farmers to maintain the countryside in certain configurations in member countries and they may make up the difference between their income without the scenic resource regulation and their income under the scenic resource regulation.
  - The National Park Service bought all of the land in the Delaware Water Gap National Recreation Area through eminent domain and can therefore design a historic agricultural landscape to reflect one historical time period. They provide financial incentives for farmers to do the management work according to the National Park Service design whether or not it is productive or profitable.
8. Will the Scenic Design Advisory Board be sensitive to the need for different visual quality standards for working landscapes such as farms versus wilderness or natural landscapes? The Scenic Design Advisory Board must include or have access to those with expertise in evaluating agricultural landscapes, not just natural scenery. With this expertise it can develop a nomination form that can be useful in working landscapes like the Agricultural Resource Area, replacing the one attached to these procedures.

There are Landscape Architects who specialize in this and expertise is available through the USDA-NRCS National Landscape Architects, Rutgers Cooperative Extension, and County Agricultural Development Boards.

9. We are concerned that there is no definition in the procedures of a "nominating entity." A person or group that wishes to take up the time of the Highlands Council and the Scenic Design Advisory Board must meet certain qualifications and requirements as they will have a major impact on local governments and landowners. "Interested group"

is defined as a nonprofit organization. Does this mean that these are the only groups allowed to be the "nominating entity?"

10. The full duties of the Scenic Design Advisory Board must be outlined by the Highlands Council. Will they flesh out the details of the process to ensure some consistency of review and approval, or merely deliberate over the products of processes created by each "nominating entity?" Will they only review the nomination applications or will they review the nominating process as well? Will the resultant Scenic Resource Management Plan be reviewed for adequacy and equity?

It appears that the Scenic Design Advisory Board will receive a finished product, despite possible inconsistencies with standards in other parts of the Highlands, and no matter how insensitive it may be to the special scenic quality of working landscapes such as agriculture.

The Scenic Design Advisory Board or the Highlands Council has a lot of work to do before it can receive the first nomination: definitions, standards, guidance on how to treat natural versus man-designed farm landscapes and appropriate requirements for what must be submitted for the nomination etc.

11. What real benefits can Highlands municipalities, counties, and landowners expect other than an increase in eco and agri-tourism? More than "pretty views" will be required to promote any economically meaningful level of tourism. What attracts tourists may not be an appropriate standard for the Agricultural Resource Area where agriculture is encouraged to be a viable and sustainable industry.

Farm Bureau is very concerned about the effects of more regulation and the resulting reduction in land values that the protection of scenic resources will have on the already depressed farm economy in the Highlands. We request that the Highlands Council make this a future requirement of Plan Conformance so that clear, distinctive definitions of what is a regional scenic resource can be developed. More time will allow farmers to be included in every community group that attempts to decide what is scenic, at least in the Agricultural Resource Area. Furthermore, a person knowledgeable about farming and its practices should be on or available to the Scenic Design Advisory Board, and the Highlands Council. Making resource protection a part of the post-conformance process will allow the Scenic Design Advisory Board, local municipalities and counties to deal with the political sensitivity and public expense of this requirement.

Farm Bureau will continue to provide you with input and more detailed comments on the Scenic Resource Inventory Procedures. If you have any questions, please contact Helen Heinrich.

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**FAIR SHARE HOUSING CENTER**  
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Cherry Hill, New Jersey 08002  
P: 856-665-5444  
F: 856-663-8182

Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.

October 30, 2008

**By fax: 908-879-4205 (2 pages)**

Eileen Swan,  
Executive Director  
New Jersey Highlands Council  
100 North Road (Route 513)  
Chester, New Jersey 07930

Dear Ms. Swan:

I am writing regarding the Memorandum of Understanding (MOU) that is being considered by the Highlands Council this afternoon. I do not believe the Council may legally adopt the MOU because EO114 is invalid and because the MOU and EO114 violate the Administrative Procedure Act's and state constitution's rulemaking requirements. EO114 and the draft MOU likewise violate the Mount Laurel doctrine.

Nevertheless, and without waiving our objections to the draft MOU, if the Council is going to adopt an MOU at today's meeting, we request that it include the attached language, which we first proposed at yesterday's meeting of the Council on Affordable Housing.

Finally, I request that this letter and attachment be the subject of a vote by the Highlands Council and that both documents be included in the record of today's proceedings.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin D. Walsh', written over a horizontal line.

Kevin D. Walsh  
Staff Attorney

c: Lucy Vandenberg, COAH

**Fair Share Housing Center's proposed amendment to the  
Highlands/COAH Memorandum of Understanding**

October 29, 2008

13. The Highlands Council shall prepare adjusted growth projections for the fair share period from 2004 to 2018 through the development of a build out analysis at a municipal scale for conforming municipalities consistent with the RMP. While a municipality may adopt revisions to its master plan, development regulations, or other regulations that are stricter, as determined by the Highlands Council, than the minimum necessary to obtain approval of conformance with the RMP, the adjusted growth projections shall be solely based upon consistency with the RMP and shall be independently verified by the Highlands Council. The Highlands Council shall consult with COAH in adjusting the local build-out consistent with the RMP for the fair share period from 2004 to 2018. **The Highlands Council shall make its best efforts to meet all of the need assigned to the 88 Highlands municipalities and shall issue a report by February 1, 2009 addressing how it plans to do so within the Highlands Region. In no event shall this MOU be interpreted to permit a dilution of COAH's Prior Round or Third Round fair share obligations. Any obligation that has been assigned to municipalities within the Highlands Region that will not be met in the Highlands Region shall be assigned by COAH to non-Highlands municipalities within the applicable housing region.**

**RESOLUTION 2008-41**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**HIGHLANDS AFFORDABLE HOUSING GUIDELINES**  
**TO ADDRESS P.L. 2008, c.46 AND EXECUTIVE ORDER 114**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act created the Highlands Council, a regional planning agency, to develop, adopt a Regional Master Plan (RMP) with a goal of protecting and enhancing the significant values of the resources of the Highlands Region (Sections 8 and 10 of the Highlands Act); and

**WHEREAS**, the Highlands Act, in Section 6k, authorizes the Highlands Council to solicit and consider public input and comment on the Council's activities, the regional master plan, and other issues and matters of importance in the Highlands Region by periodically holding public hearings or conferences and providing other opportunities for such input and comment by interested parties;

**WHEREAS**, the on August 4, 2005, the Highlands Council approved Resolution 2005-27 which created a \$600,000 grant program to encourage the 88 Highlands municipalities to submit a Petition for Substantive Certification to COAH and to date has awarded nearly \$400,000 to over 45 municipalities; and

**WHEREAS**, on July 17, 2008, the Highlands Council adopted Resolution 2008-27 thereby adopting the RMP; and

**WHEREAS**, the RMP includes goals, policies, and objectives relating to the constitutional obligation to provide affordable housing; specifically Policy 6O7 requires that conforming municipalities implement both the resource protection requirements of the RMP along with constitutional obligation to provide a realistic opportunity for affordable housing; and

**WHEREAS**, the RMP requires that municipalities, consistent with the Fair Housing Act, either petition COAH for a substantive certification or institute an action for declaratory judgment granting it repose in the Superior Court; and

**WHEREAS**, the RMP additionally includes goals, policies, and objectives relating to the priority consideration of affordable housing including: the highest priority given to available water supply in Objective 2B4a, Objective 2B4b, and Objective 2J4c; priority consideration for wastewater capacity in Objective 2K3e; and priority consideration for land-based Map Adjustments in Objective 6G2b; and

**WHEREAS**, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, c. 46, to create a responsibility for the Highlands Council to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment

opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments; and

**WHEREAS**, Section 18 of P.L.2008, c.46 calls on the Highlands Council to coordinate the provision of affordable housing in the Highlands Region; and

**WHEREAS**, on September 5, 2008, Governor Corzine signed Executive Order 114 to further protect the Highlands Region and the Highlands Regional Master Plan thereby became effective on September 8, 2008; and

**WHEREAS**, Executive Order 114 specifies that “[t]he Highlands Council shall work in cooperation with the Council on Affordable Housing (“COAH”), the Department of Environmental Protection (“DEP”), and the Department of Community Affairs to: (a) review COAH’s third round growth projections for consistency with the Highlands Plan and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the Highlands Plan, to be utilized by municipalities that conform to the Highlands Plan; (b) create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan; (c) ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while preserving critical environmental resources; (d) identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, c.46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation; (e) identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region’s affordable housing needs while preserving its critical resources; (f) coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines; (g) preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects; and (h) provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.”; and

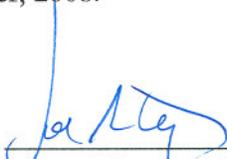
**WHEREAS**, in order to comply with the new requirements of P.L. 2008, c.46 and the direction set forth in Executive Order 114, the Highlands Council must develop additional guidelines for the provision of affordable housing in the Highlands Region;

**NOW, THEREFORE, BE IT RESOLVED** that the Highlands Council shall develop and, after public hearing and public comment, adopt affordable housing guidelines in

accordance with the requirements of P.L. 2008, c.46 and the direction set forth in Executive Order 114.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 30<sup>th</sup> day of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	_____	✓	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	✓	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL AND  
THE COUNCIL ON AFFORDABLE HOUSING**

This MEMORANDUM OF UNDERSTANDING, dated this 30<sup>th</sup> day of October 2008 is entered into by and between the New Jersey Highlands Water Protection and Planning Council ("Highlands Council") and the New Jersey Council on Affordable Housing ("COAH") to establish a cooperative planning process that will foster the constitutional and legislative mandates outlined in the Highlands Water Protection and Planning Act ("Highlands Act", N.J.S.A. 13:20-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

WHEREAS, the New Jersey Supreme Court determined, in its Mount Laurel decisions, that every New Jersey municipality in a growth area has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of the region's present and prospective needs for housing that is affordable to low and moderate income families; and

WHEREAS, the New Jersey Supreme Court, in its 1983 Mount Laurel decision, opined that: "The Constitution of the State of New Jersey does not require bad planning. ... There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently;" and

WHEREAS, the Supreme Court additionally opined that: "We emphasize here that our concern for protection of the environment is a strong one and that we intend nothing in this opinion to result in environmentally harmful consequences. ... We are, however, convinced that meeting housing needs is not necessarily incompatible with protecting the environment;" and

WHEREAS, in response to the Mount Laurel decisions, the New Jersey Legislature enacted the Fair Housing Act, on July 2, 1985, and created COAH as the administrative alternative to the court and granted COAH primary jurisdiction in determining municipal compliance with the Fair Housing Act in accordance with sound regional planning considerations; and

WHEREAS, the Fair Housing Act specifies that the interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation; and

WHEREAS, the Fair Housing Act recognizes that the Supreme Court, in its Mount Laurel decisions, demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there, and that, while provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low and moderate income housing; and

WHEREAS, the Legislature, recognizing that an adequate response to judicial mandates respecting housing for low and moderate-income persons requires sound planning to prevent sprawl and to promote suitable use of land, also enacted the State Planning Act (N.J.S.A. 52:18A-196 et seq.) as companion legislation to the Fair Housing Act to be effective on January 2, 1986; and

WHEREAS, the State Planning Act created a State Planning Commission (“SPC”) to develop, adopt, and periodically revise a State Development and Redevelopment Plan (“State Plan”) which shall provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, which shall identify areas for growth, agriculture, open space conservation and other appropriate designations, and which may be used as a tool for assessing suitable locations for infrastructure, housing, economic growth, and conservation; and

WHEREAS, the State Plan, in 2001, designated the New Jersey Highlands Region as a Special Resource Area in New Jersey based upon its unique characteristics and resources of statewide importance; and

WHEREAS, the Legislature, in 2004, enacted the Highlands Act recognizing that the Highlands Region is an essential source of drinking water, provides clean and plentiful drinking water for one-half of the State’s population, contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

WHEREAS, the Highlands Act creates two areas within the Highlands Region – the Preservation Area, an area of the New Jersey Highlands with exceptional natural resource value that should be subject to stringent water and natural resource protection standards, policies, planning and regulation and the Planning Area, the area outside of the Preservation Area that should be part of a comprehensive planning approach that serves to protect the water and other significant resources of the entire Highlands Region while also accommodating appropriate patterns of development, redevelopment and economic growth; and

WHEREAS, the Highlands Act creates the Highlands Council, a regional planning and protection entity, to develop, adopt and periodically revise a Regional Master Plan (“RMP”), after consulting with the SPC and other governmental entities, with a goal of protecting and enhancing the significant values of the resources of the Highlands Region; and

WHEREAS, the Highlands Act creates a bifurcated system for municipal and county conformance with the RMP (Plan Conformance), consisting of mandatory Plan Conformance for any portion of a municipality and county located wholly or partially in the Preservation Area and voluntary Plan Conformance for the municipalities and counties with lands wholly in the Planning Area or for any portion of a municipality and county lying within the Planning Area; and

WHEREAS, under Plan Conformance, the Highlands Act requires municipalities and counties located wholly or partially in the Preservation Area to submit to the Highlands Council, within nine to fifteen months after the adoption of the RMP, such revisions of the municipal master plan and development regulations or county master plan and associated regulations as may be necessary for those portions of the municipality and County within the Preservation Area in order to conform them with the goals, requirements, and provisions of the RMP; and

WHEREAS, under voluntary Plan Conformance, the Highlands Act provides that municipalities and counties with lands in the Planning Area have the option to petition, at their discretion, the Highlands Council to revise their master plans and associated regulations, as

applicable to the development and use of land in the Planning Area, to conform with the goals, requirements, and provisions of the RMP; and

WHEREAS, the Highlands Act establishes preservation goals for the RMP, for both the Preservation Area and Planning Area, to protect, restore, and enhance the quality and quantity of the waters of the Highlands, to preserve environmentally sensitive lands, to preserve lands needed for recreation and conservation, to promote brownfield remediation and redevelopment, to preserve farmland, historic sites and other historic resources, to preserve outdoor recreation opportunities, to promote water resource conservation, and to promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities (collectively “Highlands Resources”); and

WHEREAS, the Highlands Act establishes development goals, in the Preservation Area, to prohibit or limit, to the maximum extent possible, construction or development which is incompatible with the Preservation Area; and

WHEREAS, the Highlands Act establishes development goals, in the Planning Area, to encourage, consistent with the State Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and to discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from individual and cumulative adverse impacts; and

WHEREAS, the Highlands Act requires that the RMP include opportunities for development, redevelopment, and economic growth through the development of a smart growth component, based on the resource assessment; and

WHEREAS, the Highlands Act requires the Highlands Council to create a regional transfer of development rights (“TDR”) program for the Highlands Region which includes a program of benefits for voluntary receiving zones for any municipality within the seven Highlands Counties; and

WHEREAS, the Highlands Act requires the Highlands Council to set a goal of identifying areas within the Planning Area that may be appropriate for development as voluntary receiving zones for TDR that, combined together, constitute four percent of the land area of the Planning Area, to the extent that the goal is compatible with the amount and type of human development and activity that would not compromise the integrity of the ecosystem of the Planning Area; and

WHEREAS, the Highlands Act requires the Highlands Council to, within sixty days of adoption of the final RMP, submit the RMP to the SPC for plan endorsement exclusively for the Planning Area of the Highlands Region; and

WHEREAS, the State Planning Act and the Highlands Act mandate that the provisions of the State Planning Act not be construed to affect the plans and regulations of the Highlands Council for that portion of the Highlands Region lying within the Preservation Area; and

WHEREAS, the Fair Housing Act requires COAH to determine housing regions of the State, estimate the present and prospective need for low and moderate income housing at the State

and regional levels, and provide population and household projections for the State and housing regions; and

WHEREAS, the Fair Housing Act requires COAH to adopt criteria and guidelines for municipal determination of its present and prospective fair share of the housing need and for municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors; and

WHEREAS, the Fair Housing Act authorized COAH to give “appropriate weight to pertinent research studies, government reports, decisions of other branches of government, and implementation of the State Development and Redevelopment Plan;” and

WHEREAS, the Legislature declared in the Fair Housing Act that the statutory scheme is in the public interest in that it comprehends a low and moderate income housing planning and financing mechanism in accordance with regional considerations and sound planning concepts which satisfies the constitutional obligation enunciated by the Supreme Court, and further declared that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing; and

WHEREAS, the Fair Housing Act specifies that a municipality which has filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it repose in the Superior Court; and

WHEREAS, the Legislature, in enacting the Highlands Act, recognizes the need to coordinate the respective responsibilities of the Highlands Council and COAH and specifically required COAH to “take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the ‘Fair Housing Act,’ P.L.1985, c. 222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999;” and

WHEREAS, the Highlands Council and COAH acknowledge the requirement in the Highlands Act requiring COAH to take into consideration the RMP prior to making any determination applies to any of the eighty-eight municipalities in the Highlands Region under COAH's jurisdiction; and

WHEREAS, the Highlands Act additionally addresses the need to coordinate the impact of the Highlands Act upon municipalities by including the clause that “[n]othing in this act shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to the date of enactment of this act;” and

WHEREAS, COAH has adopted administrative rules (“Third Round rules”) which require the submission of a Housing Element and Fair Share Plan which projects affordable housing need based on historic residential and non-residential development activity, actual growth, and estimates of available vacant land by region; and

WHEREAS, under COAH's third round rules the requirement to construct affordable housing is based upon residential and non-residential development as measured by certificates of occupancy issued after January 1, 2004; and

WHEREAS, on July 17, 2008, the Highlands Council adopted the Highlands Regional Master Plan; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, Chapter 46, to create a responsibility for the Highlands Council to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments; and

WHEREAS, on September 5, 2008, Governor Corzine signed Executive Order 114 to further protect the Highlands Region and the Highlands Regional Master Plan thereby became effective on September 8, 2008; and

WHEREAS, Executive Order 114 specifies that "[t]he Highlands Council shall work in cooperation with the Council on Affordable Housing ("COAH"), the Department of Environmental Protection ("DEP"), and the Department of Community Affairs to: (a) review COAH's third round growth projections for consistency with the Highlands Plan and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the Highlands Plan, to be utilized by municipalities that conform to the Highlands Plan; (b) create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan; (c) ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while preserving critical environmental resources; (d) identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, c.46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation; (e) identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region's affordable housing needs while preserving its critical resources; (f) coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines; (g) preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects; and (h) provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act."; and

WHEREAS, Executive Order 114 further specifies that “[t]he Highlands Council and COAH shall enter into a joint Memorandum of Understanding (MOU) as soon as practicable but no later than 60 days from the effective date of this Order to implement the provisions of Paragraph One of this Order. In accordance with the Court’s recognition in the Mt. Laurel cases of the clear obligation to preserve open space and natural resources, in implementing Paragraph One of this Order the relevant State agencies shall give priority to the protection of the critical water resources in the Highlands Region that provide drinking water to over five million people in New Jersey. The Highlands Council and COAH, with appropriate input from DEP and the Department of Community Affairs, shall provide to the Governor quarterly written reports on the status of the coordinated efforts required pursuant to Paragraph One of this Order.”; and

WHEREAS, as directed by Executive Order 114, the Highlands Council and COAH enter into this Memorandum of Understanding to develop a cooperative planning process that will enable each agency to carry out their respective statutory responsibilities; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance coordinated and comprehensive planning in the State, will result in greater predictability and transparency in planning with respect to meeting the mandates of the Highlands Council and COAH and will benefit State agencies, counties, municipalities and the public.

NOW THEREFORE, in consideration of the principles, assurances and premises contained in this Memorandum of Understanding, the Highlands Council and COAH hereby agree to the following:

A. Coordination of Planning Process

1. A cooperative planning process will be established and maintained between the Highlands Council, COAH, and their respective staff to advance coordinated and comprehensive regional planning, and provide consistent planning policies on which municipalities may rely.
2. Both the Highlands Council and COAH will share all available information and data useful or necessary to achieve the objectives of this Memorandum of Understanding.
3. The Highlands Council shall provide COAH, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for COAH to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through Plan Conformance and the continued development of the RMP.
4. COAH shall provide the Highlands Council, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the Highlands Council to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through COAH’s filing and petition process.

B. Implementation of P.L. 2008, Chapter 46

5. The Highlands Council shall, in order to implement the new requirements of P.L. 2008, Chapter 46, create, identify and coordinate opportunities for affordable housing in the Highlands Region based on regional planning considerations.
6. The Highlands Council shall identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, Chapter 46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation.
7. The Highlands Council shall ensure that developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of the Council shall be required to reserve for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent this is economically feasible.
8. The Highlands Council shall identify and coordinate regional affordable housing opportunities in cooperation with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as the council may permit; provided, however, that such provision may not result in more than a 50 percent change in the fair share obligation of any municipality.
9. The Highlands Council shall coordinate with COAH and other regional planning entities to ensure a coordinated implementation of P.L. 2008, Chapter 46. The Highlands Council and COAH shall share the findings of any studies or analyses conducted to implement P.L.2008, Chapter 46, and shall consult with each other prior to taking final agency action to implement P.L. 2008, Chapter 46.
10. As set forth above, the Highlands Council shall take the steps necessary to ensure that P.L.2008, Chapter 46 is implemented in the Highlands Region.

C. Implementation of Executive Order 114

11. The Highlands Council shall, in cooperation with COAH, the Department of Environmental Protection, and the Department of Community Affairs, ensure that the provisions of Executive Order 114 are fully implemented.

*Adjusted Growth Projections*

12. The Highlands Council shall review COAH's third round growth projections for consistency with the Highlands RMP and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the RMP, to be utilized by municipalities that conform to the RMP.
13. The Highlands Council shall prepare adjusted growth projections for the fair share period from 2004 to 2018 through the development of a build out analysis at a municipal scale for

conforming municipalities consistent with the RMP. While a municipality may adopt revisions to its master plan, development regulations, or other regulations that are stricter, as determined by the Highlands Council, than the minimum necessary to obtain approval of conformance with the RMP, the adjusted growth projections shall be solely based upon consistency with the RMP and shall be independently verified by the Highlands Council. The Highlands Council shall consult with COAH in adjusting the local build-out consistent with the RMP for the fair share period from 2004 to 2018.

14. COAH shall ensure that any of the eighty-eight (88) municipalities in the Highlands Region under COAH's jurisdiction that choose to conform to the RMP utilize the adjusted growth projections prepared by the Highlands Council in the development of Housing Elements and Fair Share Plans.
15. COAH shall ensure that municipalities that choose not to conform to the RMP, for the Planning Area, may not utilize the adjusted growth projections prepared by the Highlands Council in the development of Housing Elements and Fair Share Plans.

Growth Share Obligations

16. The Highlands Council shall create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan.
17. COAH shall provide the Highlands Council with regularly updated information and data regarding actual residential and non-residential development between January 1, 2004, and December 31, 2018 and the actual obligation accrued to date for all 88 municipalities in the Highlands Region.
18. The Highlands Council shall create realistic opportunities for municipalities to address projected affordable housing need based upon the adjusted third round growth projections, consistent with the RMP, to be utilized by municipalities that conform to the RMP.
19. The Highlands Council shall ensure that municipalities, during Plan Conformance, address growth share obligations resulting from actual residential and non-residential development between January 1, 2004, and December 31, 2018 consistent with the RMP.

Provide Affordable Housing Opportunities and Protect Highlands Resources

20. The Highlands Council shall ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while preserving critical environmental resources.

21. The Highlands Council shall ensure that municipalities, during Plan Conformance, meet the policies of the RMP to both protect Highlands resources and provide affordable housing opportunities.
22. The Highlands Council shall identify additional sites, opportunities, and funding sources for affordable housing developments that could aid in addressing the Highlands Region's affordable housing needs while preserving its critical resources.
23. The Highlands Council shall, in the implementation of P.L.2008 c.46 as set forth above, and during Plan Conformance specifically identify sites, opportunities and funding sources for affordable housing developments.

100 Percent Affordable Developments

24. The Highlands Council shall identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region's affordable housing needs while preserving its critical resources.
25. The Highlands Council shall, in the implementation of P.L.2008 c.46 as set forth above, and during Plan Conformance specifically identify sites, opportunities and funding sources for 100 percent affordable housing developments.

Extension of Deadlines

26. The Highlands Council shall coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines.
27. The Highlands Council's Plan Conformance Guidelines specifies that a municipality may formally declare its intention to conform to the RMP through the adoption of a Notice of Intent resolution.
28. COAH shall grant a waiver from the December 31, 2008 deadline to December 8, 2009 for any municipality under COAH's jurisdiction that, before December 31, 2008: 1) submits a duly adopted Notice of Intent in accordance with the Highlands Council's Plan Conformance Guidelines; and 2) submits a duly adopted resolution notifying COAH of its intent to petition COAH no later than December 8, 2009.
29. For any municipality under the jurisdiction of the Superior Court, the Highlands Council shall support a municipal motion for an extended judgment of repose where the municipality submits a duly adopted Notice of Intent in accordance with the Highlands Council's Plan Conformance Guidelines.
30. For any municipality not under COAH's jurisdiction or the jurisdiction of the Superior Court, the municipality may submit at any time a filing pursuant to N.J.A.C. 5:96-2.1 which shall provide a municipality with two years to petition or a petition pursuant to N.J.A.C. 5:96-3.1; however, where such a municipality seeks to achieve conformance with the RMP, including utilization of adjusted growth projections in its petition pursuant to this MOU, it

must submit a duly adopted Notice of Intent in accordance with the Highlands Council's Plan Conformance Guidelines by February 1, 2009, and submit a petition to COAH, no later than December 8, 2009.

Scarce Resources and Priority Review

31. The Highlands Council shall preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects.
32. The Highlands Council shall, consistent with the RMP, ensure that municipalities that petition for Plan Conformance preserve scarce resources for the production of affordable housing. The goals, policies, and objectives of the RMP relating to protecting these scarce resources include: the highest priority given to available water supply in Objective 2B4a, Objective 2B4b, and Objective 2J4c; priority consideration for wastewater capacity in Objective 2K3e; and priority consideration for land-based Map Adjustments in Objective 6G2b.
33. In accordance with the goals, policies, and objectives of the RMP, the Highlands Council shall provide priority review for proposed affordable housing projects during Plan Conformance and Highlands Project Review.
34. COAH shall issue a scarce resource order for all municipalities in the Highlands Region under COAH's jurisdiction in order to preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing until such time as the municipality receives substantive certification from COAH or demonstrates that appropriate measures have been taken pursuant to the paragraph below. The scope of this scarce resource order shall not apply to any activity that is formally determined to be exempt from the Highlands Act or is formally granted a waiver under the Highlands Act or the RMP. Nor shall the order apply to any residential development that includes at least a 20 percent set-aside on-site for affordable housing.
35. Prior to taking final agency action to lift a scarce resource order imposed on a Highlands municipality, COAH shall consult with the Highlands Council to determine whether appropriate measures have been taken to preserve scarce land, water, and sewer resources.

Conforming Municipalities

36. The Highlands Council shall require that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.

D. Coordination during Plan Conformance

37. The Highlands Council shall provide COAH with copies of all documents requested for its review when a municipality submits a petition to the Highlands Council for Plan Conformance and shall consult with and consider any recommendation from COAH before approving, rejecting, or approving with conditions any revised plans and development regulations of conforming municipalities.

38. COAH shall provide the Highlands Council with copies of all documents concerning any petition for Substantive Certification received from any of the 88 municipalities in the Highlands Region and shall consult with and consider the RMP and any recommendation from the Highlands Council before approving, rejecting, or approving with conditions a Petition for Substantive Certification.
39. COAH and the Highlands Council shall coordinate the review of municipal submissions in assessing the suitability of sites that are zoned to produce affordable housing to ensure that the land use policies delineated in Highlands Act, the regulations promulgated under the Highlands Act, and the provisions of the RMP are adhered to.

E. Coordination of the Transfer of Development Rights

40. The Highlands Council and its staff shall provide notice to, and consult with, COAH when a municipality in the Highlands Region or in any of the Highlands counties expresses an interest in, or submits an application for, participation in establishing a Receiving Zone through the Highlands TDR program.
41. The Highlands Council and COAH shall work cooperatively to examine the affordable housing component of a potential TDR Receiving Zone.

BE IT FURTHER AGREED that COAH and the Highlands Council authorize this Memorandum of Understanding to be duly executed by their authorized representatives to be effective on the date first written above.

BE IT FURTHER AGREED that this Memorandum of Understanding shall remain in effect unless either party determines with 60 days written notice to the other party, to terminate the Memorandum of Understanding.

NEW JERSEY HIGHLANDS COUNCIL

By: 

Title: Executive Director

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

By: 

Title: Executive Director

## RESOLUTION 2008-42

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL AND THE COUNCIL ON AFFORDABLE HOUSING

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act created the Highlands Council, a regional planning agency, to develop, adopt a Regional Master Plan (RMP) with a goal of protecting and enhancing the significant values of the resources of the Highlands Region (Sections 8 and 10 of the Highlands Act); and

**WHEREAS**, pursuant to Section 6.g of the Highlands Act, the Highlands Council is empowered to “enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the council or to carry out any power, duty, or responsibility expressly given in” the Highlands Act; and

**WHEREAS**, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, c. 46, to create a responsibility for the Highlands Council to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments; and

**WHEREAS**, Section 18 of P.L.2008, c.46 calls on the Highlands Council to coordinate the provision of affordable housing in the Highlands Region; and

**WHEREAS**, on September 5, 2008, Governor Corzine signed Executive Order 114 to further protect the Highlands Region and the Highlands Regional Master Plan thereby became effective on September 8, 2008; and

**WHEREAS**, Executive Order 114 (Corzine, 2008) states that the Highlands Council shall work in cooperation with COAH and enter into a joint Memorandum of Understanding (MOU) with COAH, as soon as practicable, but no later than November 4, 2008 in order to implement the provisions in Paragraph One of Executive Order 114; and

**WHEREAS**, Paragraph One of Executive Order 114 specifies that “[t]he Highlands Council shall work in cooperation with the Council on Affordable Housing (“COAH”), the Department of Environmental Protection (“DEP”), and the Department of Community Affairs to: (a) review COAH’s third round growth projections for consistency with the Highlands Plan and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the Highlands Plan, to be utilized by municipalities that conform to the Highlands Plan; (b) create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan; (c) ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while

preserving critical environmental resources; (d) identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, c.46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation; (e) identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region's affordable housing needs while preserving its critical resources; (f) coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines; (g) preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects; and (h) provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.”;

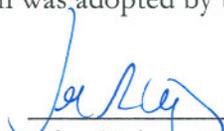
**WHEREAS**, in order to achieve the shared goals of the Highlands Council and COAH, it is mutually beneficial to enter into a MOU to develop a cooperative planning process that will enable each agency to efficiently and effectively carry out their respective statutory responsibilities; and

**WHEREAS**, the cooperative planning process developed pursuant to a MOU will advance coordinated and comprehensive planning in the Highlands Region, will result in greater predictability and transparency in planning with respect to meeting the mandates of the Highlands Council and COAH, and will benefit State agencies, counties, municipalities and the public;

**NOW THEREFORE BE IT RESOLVED**, that the Highlands Council hereby finds that the MOU properly effectuates the Highlands Act, the Fair Housing Act, and Executive Order 114 and furthermore hereby authorizes its Executive Director to make any necessary minor, non substantive amendments, with direction of the Highlands Council, to properly effectuate the intent of the Highlands Council and thereafter to execute the MOU on behalf of the Highlands Council.

#### **CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	_____	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	✓	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	✓	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	_____	✓	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**PROCEDURES FOR HIGHLANDS  
REDEVELOPMENT AREA DESIGNATIONS**

October 2008

**1.1 Purpose and scope**

The Highlands [Water Protection and Planning Act \(Highlands Act\)](#), [the Highlands Regional Master Plan](#), and New Jersey Department of Environmental Protection (NJDEP) Highlands Rules (N.J.A.C. 7:38) mandate the application of protection standards for Highlands resources in the Preservation Area. Any activities defined as major Highlands development but not exempted under the Act must meet these standards through a Highlands Preservation Area Approval (HPAA) from NJDEP. In certain instances, however, NJDEP can issue a HPAA with a waiver providing limited relief from specific standards.

One waiver provided by the Highlands Act allows certain brownfield sites and previously developed areas to be redeveloped, through NJDEP approval of an HPAA with Redevelopment Waiver. The Highlands Rules mandate that the Highlands Council must first designate an appropriate [Highlands Redevelopment Area](#). This document outlines the procedures by which the Highlands Council will designate [Highlands Redevelopment Areas](#). Following such a designation, an application may be submitted to NJDEP for the HPAA with Redevelopment Waiver.

(a) The following establishes the procedures for an applicant requesting a Highlands Redevelopment Area designation and the standards by which the Highlands Council determines that an area within the Preservation Area is appropriate for such a designation. It is intended to assist applicants with early identification of potential appropriate redevelopment areas.

Applications may come before the Council via different means: 1) when one or more individuals are proposing a Redevelopment Area on one or more contiguous properties that they control; 2) when a municipality is proposing multiple contiguous properties for a proposed Redevelopment Area; and 3) when a municipality is partnering with a landowner or group of landowners to identify a Redevelopment Area. The Council staff will consult with County officials as deemed appropriate.

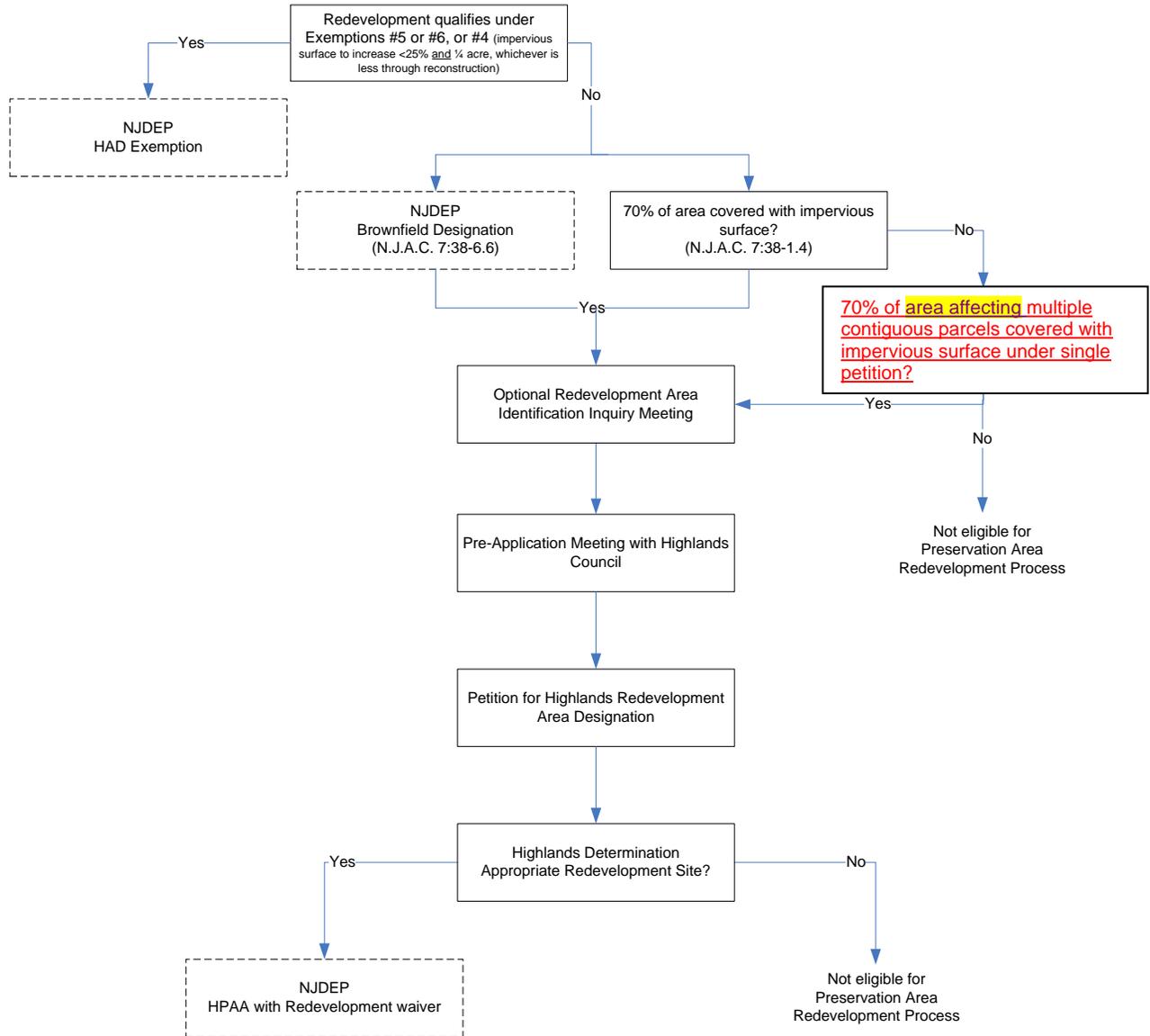
The flow chart on the following page identifies the process for an applicant requesting a Highlands Redevelopment Area designation in the Preservation Area. As depicted in the flow chart, if the proposed redevelopment does not meet the requirements of a Highlands Act Exemption, the next step is for an interested party to pursue a Redevelopment Area designation as per (b) below.

(b) The Highlands Council may identify an area as appropriate for redevelopment if the area satisfies the requirements presented herein and is either:

1. A Highlands brownfield site designated by the Department of Environmental Protection pursuant to N.J.A.C. 7:38-6.6;
2. A site at which at least 70% percent of the area is covered with impervious surface as that term is defined in N.J.A.C. 7:38-1.4.

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**New Jersey Highlands  
Preservation Area Redevelopment Process**



## 1.2 Definitions

**Highlands Brownfield** – 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 or contaminant that meets the designation of a brownfield site pursuant to N.J.A.C. 7:38-6.6. There are three tracks under which a site may serve as a Highlands Brownfield, provided that the contamination onsite is not the result of a current or previous agricultural use:

1. Track One addresses sanitary landfill sites;
2. Track Two addresses sites that may have already met the NJDEP remediation requirements and legally disturbed areas as of August 10, 2004; and
3. Track Three addresses sites with suspected or confirmed onsite contamination that have not yet received a No Further Action letter.

**Highlands Redevelopment** - A process to rebuild, restore or enhance a previously developed area that is appropriate for economic investment and community development in accordance with the ~~Smart Growth principles of the~~ Redevelopment Program presented in the Regional Master Plan. Redevelopment activities may include the removal and replacement of existing structures, adaptive reuse or infill of additional structures within areas which are substantially developed or surrounded by development, or conversion to recreational sites, parks, natural resources conservation, or other dedicated open space purposes.

**Highlands Regional Master Plan** – The Regional Master Plan (RMP) including all supporting technical documents, or any revisions thereof approved or adopted by the New Jersey Highlands Water Protection and Planning Council pursuant to N.J.S.A 13:20-8.

**Highlands ~~Area~~ Resource Areas** - Those features of the Highlands that merit special protection pursuant to N.J.S.A. 13:20-1 et seq. and the protection policies and objectives of the Regional Master Plan including, but not limited to: Highlands open waters and buffers; flood hazard areas; steep slopes; forested areas; rare, threatened or endangered species habitat; rare or threatened plant habitat; areas with historic or archaeological features; and unique or irreplaceable land types.

**Highlands Preservation Area Approval** – A Highlands Preservation Area Approval (HPAA) means a permit from the NJDEP to engage in a regulated activity in the Highlands Preservation Area issued pursuant to the Highlands Act.

**Highlands Preservation Area Approval with Redevelopment Waiver** – The Highlands Act features a provision that may allow for a waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Area. A redevelopment waiver applies when a site is a NJDEP brownfield-designated site (N.J.A.C. 7:38-6.6) or when the Highlands Council identifies a site at which at least 70 percent of the area thereof is covered with impervious surface (N.J.A.C. 7:38-6.7). A request for a waiver must be submitted along with an HPAA application, as set forth in N.J.A.C. 7:38-6.1. Thus, an applicant must obtain a *Highlands Preservation Area Approval with Redevelopment Waiver*.

**Highlands Redevelopment Area** – Means land areas designated as such by the Highlands Council that are brownfields, grayfields, and/or other previously developed areas within the Highlands

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~~Region. The portion of a parcel or parcels of land for which a Highlands Redevelopment Area designation is approved by the Highlands Council.~~

~~**Highlands Redevelopment Area Designation** – A Highlands Council designation that an area within the Preservation Area is appropriate for redevelopment under N.J.S.A. 13:20-9.b and 11.a(6)(h).~~

**Highlands Resource Area Determination (HRAD)** – A process to identify and/or verify the location of any Highlands resource area features that are subject to the protection requirements under N.J.A.C: 7:38. The HRAD is not a permit, but rather a process intended to confirm the presence, absence or location of a Highlands resource area on or adjacent to a site.

**Impervious Surface** – Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes, but is not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements. (Section 3 of the Highlands Act) To be considered an impervious surface, the structure, surface or improvement must have the effect of reducing or preventing stormwater absorption.

**Interested Party** – A person who owns or is under contract to purchase a property eligible for designation of a Highlands Redevelopment Area, or the municipality or county within which a proposed Redevelopment Area is located.

**Preservation Area** – That portion of the Highlands Region so designated by N.J.S.A 13:20-7b.

**Smart Growth** – A strategic approach that utilizes comprehensive planning to guide design, development, and revitalization of communities. Smart growth principles support sound land use decisions and serve as an advocate for informing future land management decisions that consider environmental protection needs in the context of efficient land development. In order to accommodate local and regional economic development of the Highlands Region, Goals 6J, 6K, 6L and 6N of the RMP encourage growth to occur in locations that have limited environmental constraints, represent existing developed areas that have access to infrastructure, encourage compatible redevelopment, allow the application of compact development concepts, and are in accordance with community character. The Highlands Act refers to the prohibition and limitation of construction and development within the Preservation Area and the revocation of previously approved water and sewer service areas that lack existing infrastructure, in support of this preservation goal. The Highlands Act recognizes the State Development and Redevelopment Plan goal to encourage development patterns that are consistent with existing infrastructure and land use development and discourages scattered piecemeal development patterns. Therefore, infrastructure investments in the Highlands serve to support public health and safety, environmental resource protection and efficient land development in support of local and regional conditions.

### **1.3 General Approach**

As shown in the flow chart above, the first step is to determine if the proposed redevelopment would meet the requirements of Exemption #4, #5 or #6 of the Highlands Act (Section 30).

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- Exemption #4 provides for: “The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agriculture or non-horticultural use.”
- Exemption #5 provides for: “Any improvement to a single family dwelling in existence on the date of enactment of this act, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system.”
- Exemption #6 provides for: “Any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of this act, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.”

Each of these three exemptions addresses redevelopment of or improvements to specific classes of existing development – single family dwellings, religious facilities, schools, hospitals and non-agricultural buildings in general. In each case, designation of a [Highlands](#) Redevelopment Area by the Highlands Council is not necessary and would be inappropriate because no waiver is required from the NJDEP Preservation Area regulations or the Regional Master Plan, based on the exemption. Applicants for such projects should directly apply for a Highlands Applicability Determination regarding the exemption (N.J.A.C. 7:38-2.4).

If the proposed redevelopment project is not exempt, then a petition for [Highlands](#) Redevelopment Area designation may be submitted to the Highlands Council regarding either NJDEP-designated brownfields or existing impervious surfaces greater than 70 percent. These procedures include an informal process by which petitioners may receive guidance from the Highlands Council on the viability of a Redevelopment Area designation and the information requirements for a formal petition. The formal process involves submittal of a petition, staff review by the Highlands Council staff, staff recommendation to the Highlands Council, and final determination by the Highlands Council with provision for public review and comment. Upon approval of a Redevelopment Area designation, an application for Highlands Preservation Area Approval with Redevelopment Waiver may be submitted to the NJDEP for consideration under N.J.A.C. 7:38-6.1.

There are several critical implications regarding Redevelopment Area designation:

1. The [“Highlands](#) Redevelopment Area<sup>2</sup>” may be part of a parcel, all of a parcel, part or all of multiple contiguous parcels in common ownership, or part or all of multiple parcels not in common ownership for which a combined Redevelopment Area petition has been submitted.
2. The Highlands Council anticipates that many Redevelopment Area designations will be defined as including less than entire parcels, with the remainder of the parcel restricted from further development due to environmental constraints. The NJDEP identification of a brownfields site and the extent of existing impervious surfaces both provide the basis for

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determining the maximum extent of a Redevelopment Area by the Highlands Council, but site constraints may result in designation of a smaller area.

3. The Highlands Council may determine that a proposed Redevelopment Area is inappropriate despite meeting the initial criteria, based on the likelihood that the designation will promote redevelopment incompatible with the goals of the Highlands Act and the Regional Master Plan.
4. Within a Redevelopment Area designated by the Highlands Council, NJDEP may grant a waiver from strict application of the Highlands Preservation Areas Rules under N.J.A.C. 7:38-6.6 and 6.7. However, those rules provide for brownfields that “The proposed redevelopment meets the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible, taking into consideration cost and existing technology” (Section 6.6), and for sites meeting the 70 percent impervious surface threshold that “The proposed redevelopment meets the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible while still addressing the identified redevelopment need” (Section 6.7). Therefore, the NJDEP waiver will protect environmental resources wherever feasible.
5. The Highlands Council and NJDEP also may restrict aspects of a project to avoid secondary impacts. Specifically, under N.J.A.C. 7:38-6.4(i), ~~which~~ provides: “In cases where the Department determines to approve a waiver in accordance with this chapter, the approval will include specific conditions to restrict any activities that might otherwise occur as a result of the waiver. These conditions include but are not limited to conservation restrictions, resolutions from a municipal utilities authority restricting sewage flows, physical limitations on sewer lines and/or pump stations and other mechanisms necessary to preclude secondary impacts that may otherwise result from the approved activities.” In general practice, the Highlands Council intends to require conservation restrictions on those undeveloped # portions of an affected property, including contiguous parcels in common ownership, that is not subject to redevelopment or remedy of contaminated areas.

#### **1.4 Redevelopment Area Designation Inquiry Meeting**

(a) For all parties seeking information about the potential for designation of an area as a Highlands Redevelopment Area, it is recommended that a *voluntary* informal redevelopment area inquiry meeting be convened with staff of the Highlands Council prior to proceeding with a more comprehensive pre-application meeting and petition for redevelopment. This meeting also serves as an opportunity to assist interested parties in the identification of Highlands Council and other data and technical resources that may be available in support of a petition application. An applicant requesting an inquiry meeting shall do so in writing and is encouraged to provide as much information regarding the proposed Highlands Redevelopment Area as possible, using Section 1.5 as a general guide.

#### **1.5 Request for Pre-application Meeting**

(a) For all applications requesting a Highlands Redevelopment Area Designation, a pre-application meeting with staff of the Highlands Council is required. (Please note that this pre-application meeting is not the same as required for an application to NJDEP for an HPAA with Redevelopment

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Waiver.) The Highlands Council may invite municipal and county planning representatives as appropriate. The applicant shall submit a request to the Highlands Council for a pre-application meeting and the following information in writing (with copies sent to the affected municipality and county) so that the Highlands Council staff may provide the greatest degree of guidance regarding the specific request for Redevelopment Area designation:

1. A description of the proposed Highlands Redevelopment Area including block and lot number designation of the properties, and street addresses where applicable;
2. A map showing the boundaries of the affected properties and the proposed Highlands Redevelopment Area;
3. Acreage of the proposed Highlands Redevelopment Area and of the affected properties;
4. Existing local zoning and land use of the properties;
5. A description of existing structures on the subject site, including historic structures;
6. A list of any encumbrances on the properties comprising the proposed Highlands Redevelopment Area, including but not limited to easements, deed restrictions, and covenants;
7. A description of the proposed redevelopment project to be located within the proposed Highlands Redevelopment Area;
8. A map from the Highlands Council's [Consistency Review Application or Property Search Tool](#) indicating the affected properties and any Highlands Resources on those properties, to the extent available from the ~~Property Search Tool~~ [Council's website](#); and
9. A description of how the subject site conforms to Section 1.1(b) above. For areas other than brownfields, (i.e., a site which includes at least 70% impervious surface), and application must include a delineation of the existing impervious surface supporting the minimum 70% calculation. For brownfield sites, an applicant must obtain and provide a brownfield designation from the NJDEP.

(b) After receipt of a request for a pre-application meeting and supporting information submitted in accordance with Section 1.5 above, the Highlands Council shall contact the applicant and the applicable constituent municipality (and county, as deemed appropriate) to schedule a pre-application meeting. As part of this meeting, the Highlands Council will identify any known Highlands Resources that may constrain the designation of a Redevelopment Area.

(c) Any statements or recommendations made by any representative of the Highlands Council in the context of a pre-application meeting shall be considered non-binding on the prospective applicant, the constituent municipality and county, and the Highlands Council, and shall confer no legal rights.

(d) A summary of the issues discussed during the pre-application meeting will be made available to the public via the staff recommendation report described in Section 1.7.

### **1.76 Petitions for Highlands Redevelopment Area Designation**

(a) Any interested party may petition the Highlands Council to approve designation of a Highlands Redevelopment Area, providing the site meets the requirements presented herein and having satisfied the requirements for a Pre-Application Meeting under Section 1.5, above.

(b) All petitions for a Highlands Redevelopment Area designation shall be submitted to the Highlands Council in writing, and signed by the Interested Party. Such petitions shall include the information required in Section 1.5 above and those items required by NJDEP as listed in NJDEP's Highlands Preservation Area Approval (HPAA) Pre-Application Checklist (NJDEP issues the HPAA with Redevelopment Waiver; but only after the Highlands Council issues the Redevelopment Area Designation). A copy of NJDEP's HPAA Pre-Application Checklist is located in Appendix A and can be downloaded from NJDEP's website at <http://www.nj.gov/dep/highlands/process.htm>.

### **1.87 Preliminary Determination**

(a) Highlands Council staff shall determine if the Petition for a Highlands Redevelopment Area Designation is administratively complete in accordance with Section 1.5 above and will report those findings to the Council, the NJDEP Divisions of Land Use Regulation and Watershed Management, any directly affected municipality and county, and the public.

(b) For any petition that is deemed administratively complete, the Highlands Council shall review the proposed area for redevelopment against the Highlands RMP Resource Protection and Smart Growth standards and policies for each relevant LUCM Zone. All GIS data layers utilized in Highlands Council reviews are available at the Highlands Council website:  
[http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis\\_data.html](http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html).

There are RMP goals, policies, and objectives related specifically to the issue of future land use within each LUCM Zone, that will further guide the Council's review of proposed redevelopment areas. It is the policy of the Council to promote compatible development and redevelopment within the Existing Community Zone and to promote the restoration and redevelopment of brownfields, particularly those located in or adjacent to transportation corridors or transit stations. In the Conservation Zone, it is the policy of the Council to limit the use and development of lands to agricultural use and development, redevelopment of existing developed areas, and environmentally-compatible low density land uses. It is the policy of the Council to limit new human development in the Protection Zone to redevelopment, exempt activities, and environmentally-compatible low density new land uses and to ensure that any future development or redevelopment is subject to standards and criteria which protect the land and water resources of the zone from any potential adverse impact.

(c) The Highlands Council staff shall ~~present~~prepare a draft report, including a preliminary consistency determination of the proposed area for redevelopment with the goals, policies, and

FINAL DRAFT – FOR CONSIDERATION AT THE OCTOBER 30, 2008 MEETING  
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objectives of the RMP, with recommendations ~~to the Highlands Council~~ to approve, deny, or approve with conditions the proposed Redevelopment Area, based on the criteria set forth below:

1. At least 70% percent of the proposed Redevelopment Area is impervious surface, or the site is a brownfield designated by NJDEP
2. The proposed Highlands Redevelopment Area will not result or contribute to impairment of any Highlands resource located on or adjacent to the Highlands Redevelopment Area, either through exclusion of such areas or through conditions on the designation that ensures their protection, or will minimize through similar means the disturbance of those resources to which the waiver would specifically apply.
3. The proposed Highlands Redevelopment Area is found to be substantially consistent with the resource protection and smart growth standards of the Regional Master Plan in accordance with and will advance the intent and purpose of the Highlands Act with regard to designated Redevelopment Areas. The Act allows a waiver of any provision of a Highlands permitting review on a case-by-case basis for a redevelopment proposal, conditioned upon the finding that it meets the requirements of the narrative criteria described in Section 36 of the Act (N.J.S.A 13:20-34). These criteria include the following: 1) would have a de minimis impact on water resources and would not cause or contribute to a significant degradation of surface or ground waters; 2) would cause minimal feasible interference with the natural functioning of animal, plant and other natural resources; 3) will result in minimum feasible alteration or impairment of the aquatic ecosystem; 4) will not jeopardize the continued existence of endangered animal or plant species; 5) is located or constructed as to neither endanger human life or property nor otherwise impair public health, safety and welfare; 6) would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes; and 7) meets all other applicable NJDEP standards, rules, and regulations and State laws.
4. There is sufficient water supply and wastewater capacity to serve the proposed Highlands Redevelopment Area, from on-site systems, from adjacent areas already served by public water and wastewater systems, or through a limited extension of public water or wastewater systems that will not cause or contribute to secondary growth effects in the intervening area. As per the Highlands Preservation Area rules at N.J.A.C. 7:38-2.5, the extension of any existing public water system to serve development in the Preservation Area is prohibited except where a proposed project receives a HPAA pursuant to N.J.A.C. 7:38-6 (with sections 6.6 and 6.7 specifically applying to Redevelopment Areas).
5. Such other unique or mitigating criteria as the Highlands Council staff deems appropriate based on policies and objectives of the RMP.
6. The proposed Redevelopment Area is compatible with existing municipal zoning or the Redevelopment Area designation is conditioned upon municipal rezoning.

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OF THE HIGHLANDS COUNCIL

(d) The Highlands Council staff may consult with the NJDEP Divisions of Land Use Regulation and Watershed Management regarding the draft recommendations.

(e) The Highlands Council staff ~~shall provide to the public and may share with~~ the applicant the draft report and recommendations prior to presenting the recommendations to the Council, and shall solicit comments for a period of not less than 10 business days. This will afford the public and the applicant an opportunity to provide additional data and information to the staff prior to a final Council determination.

(f) The Highlands Council staff shall present a final report with recommendations to the Highlands Council to approve, deny, or approve with conditions, with public notice on the Council's Web site at [www.highlands.state.nj.us](http://www.highlands.state.nj.us) at least 10 business days before the Council meeting at which the recommendation will be considered. The petitioner shall give public notice by publication of a legal notice in the newspaper of record for the municipality where the project is located, at the petitioner's expense, at least 10 business days before the Council meeting.

**1.98 Final Determination**

(a) The Highlands Council shall approve, approve with conditions, or deny an application requesting a Highlands Redevelopment Area identification within 90 days of deeming the requirements of Section 1.7 above complete, or for good cause, within such additional period of time as the Highlands Council shall notify the applicant in writing is required to complete its review. The Highlands Council's final determination shall be based upon all information submitted to the Highlands Council, any site visit conducted, the criteria set forth in Section 1.7 above, and public comments received prior to or at the Highlands Council meeting at which the recommendation will be considered. The Highlands Council's final determination shall include written findings of fact and conclusions based thereon, and shall be considered effective 10 business days after delivery of the meeting minutes to the Governor, unless vetoed by the Governor pursuant to N.J.S.A. 13:20-5.j.

(b) In cases where the Highlands Council determines that a proposed Highlands Redevelopment Area is appropriate for redevelopment, the final determination may include specific conditions to restrict any activities that might otherwise occur as a result of the final determination. These conditions may include, but are not limited to, deed restrictions, resolutions from a municipal utilities authority restricting sewage flows, physical limitations on sewer lines and/or pump stations and other mechanisms necessary to preclude secondary impacts that may otherwise result from the identification of the Highlands Redevelopment Area.

(c) After receiving an approved Highlands Redevelopment Area identification from the Highlands Council, the applicant may submit an application for an HPAA with Redevelopment Waiver to the Department of Environmental Protection in accordance with N.J.A.C. 7:38-6.6 or N.J.A.C. 7:38-6.7.

**APPENDIX A**  
**NJDEP'S HPAA PRE-APPLICATION CHECKLIST**

(Available at: <http://www.nj.gov/dep/highlands/docs/hpaachk.pdf>)

**Draft Redevelopment Site Designation Procedures  
Summary of Public Comments and Responses – October 2008**

**COMMENT:** Numerous comments stated strong objection to the term “substantially consistent” in terms of a proposed project’s compliance with Regional Master Plan (RMP) standards regarding resource protection and smart growth. A proposed project should be “consistent” with all standards required under the Highlands Act and RMP. To use the term “substantially consistent” allows for broad interpretation and a possible relaxation of standards, which would not be appropriate.

**RESPONSE:** The original purpose of the term was to recognize that the purpose of a redevelopment waiver is to allow redevelopment that does not fully comply with the normal provisions of the Preservation Area Rules at N.J.A.C. 7:38 and with the RMP. However, the Highlands Council recognizes that the term “substantially consistent” did not provide sufficient clarity. The word “substantially” was removed and the sentence in the procedures (item #3 in Section 1.7 regarding review criteria) was rewritten to say: “The proposed Highlands Redevelopment Area is found to be consistent with the resource protection and smart growth standards of the Regional Master Plan in accordance with the intent and purpose of the Highlands Act with regard to designated Redevelopment Areas.” New text was included that states that the Highlands Act allows a waiver of any provision of a Highlands permitting review on a case-by-case basis for a redevelopment proposal, conditioned upon the finding that it meets the requirements of the narrative criteria described in Section 36 of the Act (N.J.S.A 13:20-34). A summary of those narrative criteria was included in the text.

**COMMENT:** Numerous comments stated strong objection to any proposed expansion of public water and wastewater systems for redevelopment projects in the Preservation Area.

**RESPONSE:** The Redevelopment Area Designation procedures are aimed at identifying a suitable Redevelopment Area so that an applicant may apply for a Highlands Preservation Area Approval (HPAA) with Redevelopment Waiver. The Highlands Act at N.J.S.A. 13:20-33 allows for waivers related to redevelopment projects in the Preservation Area, including the extension of public water and wastewater systems, where the Redevelopment Area is designated by the Highlands Council. As per the Highlands Preservation Area rules at N.J.A.C. 7:38-2.5, the extension of any existing public water system to serve development in the Preservation Area is prohibited except where a proposed project receives a HPAA pursuant to N.J.A.C. 7:38-6 (Sections 6.6 and 6.7 specifically apply to Redevelopment Areas). Reference to these Preservation Area rules was included in the procedures (item #4 in Section 1.7 regarding review criteria).

**COMMENT:** One comment expressed disappointment that such an important policy as Redevelopment Area Designation Procedures, which will be the cornerstone of much of the development allowed in the Preservation Area going forward, was released just a month prior to the adoption of the RMP.

**RESPONSE:** The Council acknowledges the comment. It should be noted that a previous draft of the document was made available to the public in May 2007. The June 2008 draft procedures document was revised based on public comment and was released for public comment well after the close of the RMP public comment period.

**COMMENT:** One comment expressed concurrence with the major changes from the May 2007 draft regarding site eligibility and approves of the Council's decision to remove projects eligible for redevelopment under Exemptions 4, 5, and 6 in the Highlands Act. Removing these smaller projects puts them in proper context on a site specific basis, and alleviates concerns that smaller residential sites would be grouped together and targeted by developers or municipalities as redevelopment sites. However, there was another separate comment that stated that including the various exemptions into the redevelopment area designations is not necessary because they do not directly relate to areas that will qualify as eligible for redevelopment, i.e., areas with 70% existing impervious cover.

**RESPONSE:** The Council acknowledges both opinions. It is the belief of Council staff that it is appropriate to remove projects eligible for redevelopment under Exemptions 4, 5, and 6 in the Redevelopment Area Designation procedures. Some small project areas will be able to meet the 70% impervious cover requirement but can more directly be addressed by exemptions from the Highlands Act. The purpose of a Redevelopment Area designation is to allow NJDEP to determine whether an HPAA with redevelopment waiver can be granted. Exempt developments do not need an HPAA at all, making the Redevelopment Area designation unnecessary.

**COMMENT:** One comment stated that prohibiting designation of brownfield sites without land disturbance for redevelopment is a positive step in the June 2008 procedures, as there are many small sites which may have ground water contamination, but are otherwise undisturbed.

**RESPONSE:** The Council acknowledges the comment.

**COMMENT:** One comment questioned why the Council would want to give a second staff-intensive review to a site that has already been designated as a "brownfield" by NJDEP. After that exhaustive review, the process is still not complete because Item (c) on page 10 indicates that the applicant now "may submit an application for an HPAA with Redevelopment Waiver to the Department of Environmental Protection..."

**RESPONSE:** The Highlands Council is legislatively mandated to identify appropriate Redevelopment Areas while the NJDEP has been granted the legislative authority to issue HPAA permits. As per N.J.A.C 7:38-6.7, (a) "In accordance with N.J.S.A 13:20-33b(2), the Department may, on a case by case basis, waive any of the provisions for an HPAA if such waiver is necessary for redevelopment of certain previously developed areas in the Preservation area identified by the Council pursuant to N.J.S.A 13:20-9b and N.J.S.A 13:20-11a(6)(h). A waiver under this section shall apply only to Department-designated Highlands brownfield sites designated pursuant to (b) below, and identified as an area appropriate for redevelopment by the Council." NJDEP designation of a brownfield is an acknowledgement of the existing contamination. The Highlands Council then

determines whether the site is appropriate for redevelopment under the RMP; this is not a duplication of the brownfield designation because it focuses on whether redevelopment will address resource protection and smart growth provisions of the RMP. NJDEP's review is then to determine the extent of the specific waivers and the application of all other regulatory requirements for the specific project proposal. The Highlands Council designation process does not involve site plan and remedial action reviews, which are appropriately addressed through the NJDEP permit review. The Highlands Council and NJDEP will coordinate on this three-step process established by the Highlands Act to minimize redundancy of submittals and reviews.

**COMMENT:** Several comments applauded the Council's decision to rescind the concept of defining grass as impervious cover. One comment expressed concern, however, that the switch to "barren land" might open other parcels to redevelopment without proper definition of that term.

**RESPONSE:** The Council acknowledges the comment. The current Redevelopment Area Designation procedures do not use the term "barren land," but instead utilizes the definition of impervious surfaces that is presented in the Highlands Act which is "any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements."

**COMMENT:** One comment expressed concern about the portion of the flow chart on page 2 that indicates that when it is determined that a project is not qualified under Exemption 4, 5, or 6 and the area is not covered with at least 70% impervious surface, it appears that the landowner can apply for redevelopment through a municipal redevelopment process. This process must be further clarified, as it implies that such redevelopment would be allowed at less than 70% impervious, in violation of the Act. The commenter also expressed concern that the procedures do not limit the footprint of the redevelopment site to any particular size, nor do they limit its expansion to contiguous parcels. In other sections of the Act, such as Exemption #4, such expansion is limited to 125% of the existing developed footprint, not to exceed ¼ acre of impervious cover. The commenter noted that another question that arises from this policy is whether municipalities or counties presenting a petition for redevelopment of contiguous parcels not in common ownership are required to show proof that they have willing sellers for those properties.

**RESPONSE:** The Highlands Act only provides for Highlands Council designation of Redevelopment Areas for sites that have 70% or more impervious cover or are designated as brownfields by NJDEP. A site that does not meet one of the two thresholds and does not qualify for an exemption will be required to obtain an HPAA from NJDEP without a redevelopment waiver. The procedures aim to identify appropriate "redevelopment areas," not development footprints. As per the Highlands Preservation Area rules at N.J.A.C. 7.38-6.7 a "waiver under this section shall apply only to *an area* if and when the Highlands Council identifies a site at which at least 70 percent of the *area thereof* is covered with impervious surface." [emphasis added] As described on Page 1 of the Redevelopment Area Designations procedures, the Council defines this "area" to be: 1) when one or more individuals are proposing a Redevelopment Area on one or more contiguous

properties that they control; 2) when a municipality is proposing multiple contiguous properties for a proposed Redevelopment Area; and 3) when a municipality is partnering with a landowner or group of landowners to identify a Redevelopment Area. The Highlands Act does not specifically limit the increase of impervious cover, but does provide for narrative standards that NJDEP must address prior to approving an HPAA with redevelopment waiver. Therefore, the Highlands Council will focus its review on the appropriate size of the designated Redevelopment Area and on identifying any resource protection and smart growth provisions of the RMP that should be addressed.

**COMMENT:** One comment noted that with respect to Section 1.4 (Inquiry Meeting) and Section 1.5 (Pre-application Meeting), these meetings are exploratory in nature; however, there is no mechanism for informing the public of these meetings. Since these meetings are basically “conceptual” meetings, the public should be included and allowed input; public access needs to be provided. The same commenter noted that in regard to the section - Petition for Redevelopment Area Designation - petitions should require legal notice to the public. It is suggested that petitioners must be required to publish a legal notice at least 10 days prior to any hearing in the newspaper of record for the municipality where the project is located.

**RESPONSE:** The Inquiry Meeting is an opportunity for all parties seeking information about the *potential* for designation of an area as a Highlands Redevelopment Area to convene with Council staff. It is a voluntary informal meeting that offers the opportunity for directly involved parties to be provided with data and technical resources that may be available in support of a petition application. Based upon the meeting, these parties may determine that the potential redevelopment designation is not practical or feasible or they may choose to proceed in the process to the more comprehensive pre-application meeting and petition for redevelopment. Proprietary information may be discussed. Public access and input would not be appropriate at such an early stage of the process. With respect to the Pre-application meeting, text was added to the procedures that states that a summary of the issues discussed during the pre-application meeting will be made available to the public via the staff recommendation report described in Section 1.7. In regard to the Petition for Redevelopment Area Designation, text was added to the procedures (in current Section 1.7) that states that the petitioner shall give public notice by publication of a legal notice in the newspaper of record for the municipality where the project is located, at the petitioner’s expense, at least 10 business days before the Council meeting at which the staff recommendation will be considered.

**COMMENT:** One comment noted that Section 1.6 was skipped; thus, the following sections should be renumbered.

**RESPONSE:** The Council acknowledges the comment; the subsequent sections were appropriately renumbered.

**COMMENT:** One comment stated that the definition of “Highlands Redevelopment” as listed in Section 1.2 (Definitions) should not include the phrase “conversion to recreational sites, parks,

natural resources conservation, or other dedicated open space purposes.” This language sends the wrong message about redevelopment and its purpose.

**RESPONSE:** The Council staff feels that it is appropriate to keep the phrase in as written. However, to address the commenter’s concern that this language may send the wrong message about redevelopment and its purpose, new language was added into the definition that states that the purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community.

**COMMENT:** One comment stated that the purpose of redevelopment should be more clearly stated in the procedures. The purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community. The commenter noted that if the redevelopment goal in the Highlands is to encourage reuse of unproductive areas and get them back on the tax rolls, then the entire Redevelopment Area Designation process should be simplified. As this June 2008 draft is written, it will discourage redevelopment. Instead, the draft as written accommodates the conversion of all previously disturbed areas covered by impervious surfaces into parks and dedicated open spaces. It was suggested that the designation procedures clarify the purpose of redevelopment, and highlight the fact that its primary purpose is to create opportunities to offset losses incurred by RMP restrictions.

**RESPONSE:** The Council acknowledges the commenter’s opinion. The goal of the procedures is to establish the mechanism by which an applicant may request a Highlands Redevelopment Area designation and the standards by which the Highlands Council determines that an area within the Preservation Area is appropriate for such a designation. It is intended to assist applicants with early identification of potential appropriate redevelopment areas. As stated in the previous response, new language was added into the definition of “Highlands Redevelopment” that states that the purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community. Doing so will not always put property back onto the tax rolls, but if not for private sector use the land should in some way provide a significant benefit to the community (e.g., active recreational facilities, community service facilities).

**COMMENT:** One comment suggested that the Redevelopment Area Designations review process should include review by only one agency. Review by both the Council, Council staff, and NJDEP is redundant, duplicative, time consuming and not cost-effective.

**RESPONSE:** As indicated in a previous response, the Highlands Council is legislatively mandated to identify appropriate Redevelopment Areas while the NJDEP has been granted the legislative authority to issue HPAA permits. As per N.J.A.C 7:38-6.7, (a) “In accordance with N.J.S.A 13:20-33b(2), the Department may, on a case by case basis, waive any of the provisions for an HPAA if such waiver is necessary for redevelopment of certain previously developed areas in the Preservation area identified by the Council pursuant to N.J.S.A 13:20-9b and N.J.S.A 13:20-11a(6)(h).”

**COMMENT:** One comment stated that although this latest draft of the procedures has attempted to simplify the process, it has not succeeded. The Highlands Council should be looking for ways to simplify the process, not enlarge it.

**RESPONSE:** The Council acknowledges the opinion but disagrees. The draft final procedures have a more condensed set of information requirements yet these simplified requirements will still allow staff to conduct comprehensive reviews of proposed redevelopment area designations against the goals, policies, and objectives of the Regional Master Plan.

**COMMENT:** One comment submitted on behalf of several interested parties concluded that the current document is inadequate to meet the requirements of the Act, the RMP and the NJDEP waiver process. The comment points out that the narrative explanation of the revised procedures includes the following statement, “Public comments indicate that the requirements were onerous for a procedure that has, as its endpoint, the designation of redevelopment area.” While the “endpoint” for the Council may be the designation of a redevelopment area, it is clear that such designations must be in conformance with the RMP. It is imperative that the Council request sufficient information to support its own analysis of site suitability under the RMP. The commenter does not feel that the information requirements in the May 2007 draft were onerous.

**COMMENT:** One comment submitted on behalf of several interested parties suggested that substituting the DEP procedures for granting development waivers is not acceptable and does not absolve the Council of its responsibility to adhere to the Goals, Policies and Objectives of the Regional Master Plan. On the contrary, such a substitution is an abdication of the Council’s statutory responsibility to designate redevelopment areas as suitable under the RMP.

**RESPONSE:** The Council is strongly committed and legislatively mandated to ensure that the implementation of any redevelopment project will provide protection of natural resources, environmentally sensitive areas, open space, and agricultural lands, and will enhance and reflect community character. The Council is requiring sufficient information, in a step-wise manner (from initial Inquiry Meeting to Pre-application Meeting to Petition for Highlands Redevelopment Area Designations) to ultimately ensure that a proposed Highlands Redevelopment Area will not result or contribute to impairment of any Highlands resource located on or adjacent to the Highlands Redevelopment Area. As described in the procedures, the Council shall review a proposed area for redevelopment against all of the RMP resource protection and smart growth standards and policies. The applicant submittal requirements contained in the June 2008 draft review procedures are sufficient to enable the Council staff to conduct thorough and effective reviews of a proposed redevelopment area against the Goals, Policies and Objectives of the RMP.

Subsequent to the Council staff’s review of the required pre-application meeting materials and the conduct of the meeting itself, the interested party may petition the Council to approve designation of a Highlands Redevelopment Area. As per the Highlands Redevelopment Area Designation procedures, such petitions must include all the submittal requirements for the pre-application meeting and those items required by NJDEP as listed in NJDEP’s HPAA Pre-Application Checklist (these same materials will be required to be submitted in the next step of the process – when the

NJDEP will be reviewing the proposed HPAA with Redevelopment Waiver). This was done to ensure that the Council staff has adequate information to conduct the Highlands Council review and to avoid redundancy with HPAA submittal requirements. This does not constitute “Substituting the DEP procedures for granting development” nor does it “absolve the Council of its responsibility to adhere to the Goals, Policies, and Objectives” of the Regional Master Plan.” The Council staff will be conducting an independent comprehensive review of the proposed redevelopment area against the Goals, Policies and Objectives of the RMP using all the material submitted by the petitioner.

**COMMENT:** One comment submitted on behalf of several interested parties stated that the May 2007 draft included provisions that applications require evidence of municipal participation and public notice as well as statements by reputable governmental agencies identifying the presence of any natural or historical resources. In addition, the applications require the identification of several Highlands resources that may be present. These application requirements are important for three compelling reasons: 1) they inform the applicant upfront of the criteria the Highlands Council will consider in order for approval of a Highlands Redevelopment Area; 2) they require a degree of procedural transparency and public and municipal participation; and 3) they are consistent with the Goals, Policies and Objectives of the Regional Master Plan.

**RESPONSE:** With respect to procedural transparency and public and municipal participation, in the section titled “Request for Pre-Application Meeting” in the redevelopment procedures, it is indicated that the Council may invite municipal and county planning representatives as appropriate. Further, the Council meeting at which the Petition for Highlands Redevelopment Area Designation will be discussed is a public meeting at which municipal officials and members of the public may provide input. Further, new text was added to the procedures that states that the petitioner shall give public notice by publication of a legal notice in the newspaper of record for the municipality where the project is located at least 10 business days before the Council meeting.

**COMMENT:** One comment submitted on behalf of several interested parties urged the Council to return to the May 4, 2007 Draft Procedures for Highlands Redevelopment Site Approval, and provided suggestions regarding the May 4, 2007 Draft Procedures, as the June, 2008 draft was felt to be, in comparison, an abandonment of necessary standards and procedures. Various text changes were proposed to the May 4, 2007 draft (these addenda deal largely with public hearing issues, notifying municipal clerks, newspaper public notices, etc.).

**RESPONSE:** The Council believes that the June 2008 Procedures for Highlands Redevelopment Area Designations will effectively implement the intent of the Highlands Act and does not agree with the comment to return to the May 2007 Procedures. The suggested text changes to the May 2007 do not appear in the text of June 2008 version of the procedures.

**RESOLUTION 2008-43**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**ADOPTION PROCEDURES FOR HIGHLANDS REDEVELOPMENT**  
**AREA DESIGNATIONS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council);

**WHEREAS**, the New Jersey Department of Environmental Protection (NJDEP) had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

**WHEREAS**, the Highlands Rules, at N.J.A.C. 7:38-6.4, specifies that as provided for in Highlands Act, the NJDEP may waive any provision of the rules for redevelopment in certain previously developed areas in the Preservation Area identified by the Highlands Council pursuant to the Highlands Act; and

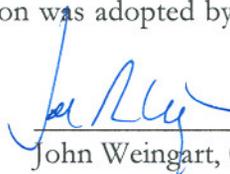
**WHEREAS**, the Highlands Council has prepared procedures by which the Highlands Council will designate Highlands Redevelopment Areas which were released for public comment which was posted on the Highlands Council website; and

**WHEREAS**, the Highlands Council duly considered the proposed procedures and all public comments; and

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council hereby adopts the Highlands Redevelopment Area procedures and authorizes the Executive Director finalize these procedures consistent with Council direction and update these procedures as necessary on behalf of the Highlands Council.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Alstede			✓			
Councilmember Calabrese	✓		✓			
Councilmember Carluccio						✓
Councilmember Cogger			✓			
Councilmember Dillingham						✓

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	_____	✓	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-44**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

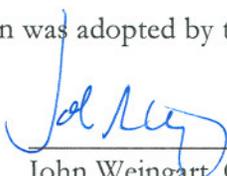
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Bernards Township for an Initial Assessment Grant in an amount of \$5,000 and, upon satisfactory demonstration to the Executive Director, in an additional amount with the total not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.



\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-45**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

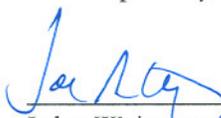
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with the Boonton Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-46**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

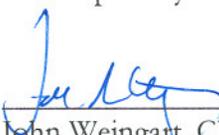
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Califon Borough for an Initial Assessment Grant in an amount not to exceed \$20,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-47**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Clinton Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Calabrese		✓	✓			
Councilmember Carluccio						✓
Councilmember Cogger			✓			
Councilmember Dillingham						✓
Councilmember Kovach			✓			
Councilmember Letts	✓		✓			
Councilmember Pasquarelli			✓			
Councilmember Peterson			✓			
Councilmember Schrier			✓			

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-48**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

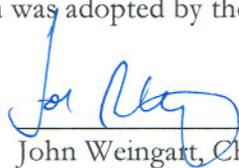
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Denville Township for an Initial Assessment Grant in an amount of \$5,000 and, upon satisfactory demonstration to the Executive Director, in an additional amount with the total not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-49**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

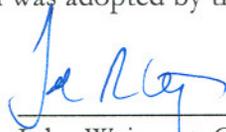
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Glen Gardner Borough for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.



\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-50**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

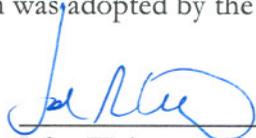
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Mahwah Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Peterson	_____	_____✓	_____	_____	_____
Councilmember Schrier	_____	_____✓	_____	_____	_____
Councilmember Vetrano	_____	_____✓	_____	_____	_____
Councilmember Way	_____	_____✓	_____	_____	_____
Councilmember Whitenack	_____	_____✓	_____	_____	_____
Councilmember Weingart	_____	_____✓	_____	_____	_____

**RESOLUTION 2008-51**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

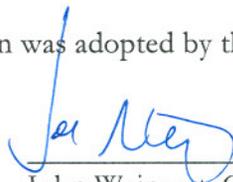
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Randolph Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.



\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Peterson	_____	_____✓	_____	_____	_____
Councilmember Schrier	_____	_____✓	_____	_____	_____
Councilmember Vetrano	_____	_____✓	_____	_____	_____
Councilmember Way	_____	_____✓	_____	_____	_____
Councilmember Whitenack	_____	_____✓	_____	_____	_____
Councilmember Weingart	_____	_____✓	_____	_____	_____

**RESOLUTION 2008-52**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

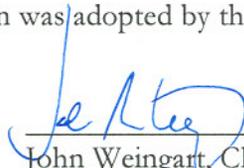
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Sparta Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-53**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

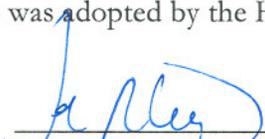
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Tewksbury Township for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-54**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

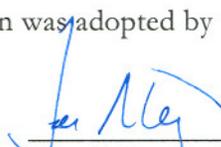
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Washington Borough for an Initial Assessment Grant in an amount of \$5,000 and, upon satisfactory demonstration to the Executive Director, in an additional amount with the total not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-55**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF TDR RECEIVING ZONE FEASIBILITY GRANT**

**WHEREAS**, the Highlands Water Protection and Planning Act (“Highlands Act”) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (“Highlands Council”); and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties for implementation of a transfer of development rights (“TDR”) program; and

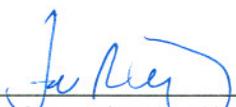
**WHEREAS**, on March 22, 2007, the Highlands Council by Resolution 2007-9 authorized the TDR Committee to develop and implement a process for the solicitation and distribution of grants and other support to municipalities within the seven Highlands counties in furtherance of the development of the Highlands TDR Program, in an annual amount not to exceed \$1,000,000; and

**WHEREAS**, the Highlands Council staff has reviewed the grant application submitted by the Borough of Washington, Warren County and recommends approval by the Highlands Council.

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with Washington Borough for a TDR Receiving Zone Feasibility Grant in the amount of \$25,000 and, upon satisfactory demonstration to the Executive Director, in an additional amount with the total not to exceed \$35,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 30<sup>th</sup> of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	✓	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**RESOLUTION 2008-56**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

**WHEREAS**, Section 18 of the Highlands Act authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties in furtherance of the Regional Master Plan; and

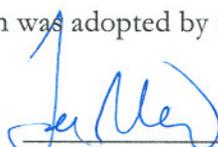
**WHEREAS**, on February 28, 2008 the Highlands Council by Resolution 2008-4 authorized the initiation of a grant application process for Initial Assessment grants to municipalities within the seven Highlands counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000; and

**WHEREAS**, the Highlands Council staff has reviewed the following grant application and recommends approval by the Highlands Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director, or her designee, is hereby authorized to enter into a grant agreement with the Town of Clinton for an Initial Assessment Grant in an amount not to exceed \$15,000.00.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
 \_\_\_\_\_  
 John Weingart, Chairman

**Vote on the Approval of this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Calabrese	✓		✓			
Councilmember Carluccio						✓
Councilmember Cogger			✓			
Councilmember Dillingham						✓
Councilmember Kovach					✓	
Councilmember Letts		✓	✓			
Councilmember Pasquarelli			✓			
Councilmember Peterson			✓			

**Vote on the Approval of  
this Resolution**

	<b><u>Motion</u></b>	<b><u>Second</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

## RESOLUTION 2008-57

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL ADOPTION PROCEDURES FOR PROCEDURE FOR NOMINATION, EVALUATION AND INVENTORY OF HIGHLANDS REGIONALLY SIGNIFICANT SCENIC RESOURCES

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council);

**WHEREAS**, the Highlands Regional Master Plan is designed to protect the natural, scenic, and other resources of the Highlands Region based upon designation of scenic resources; and

**WHEREAS**, the New Jersey Department of Environmental Protection has established standards in the Preservation Area for unique or irreplaceable land types and existing scenic attributes at N.J.A.C. 7:38-3.12; and

**WHEREAS**, in order to assess the scenic resources of the Highlands Region it is necessary to establish a protocol by which these resources are nominated and evaluated for inclusion in the Highlands Scenic Resource Inventory; and

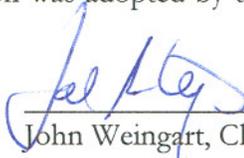
**WHEREAS**, the Highlands Council has prepared procedures by which the Highlands Council will designate scenic resources for inclusion in the Highlands Scenic Resource Inventory which were released for public comment which was posted on the Highlands Council website; and

**WHEREAS**, the Highlands Council duly considered the proposed procedures and all public comments; and

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council hereby adopts the Highlands Scenic Resource Inventory procedures and authorizes the Executive Director finalize these procedures consistent with Council direction and update these procedures as necessary on behalf of the Highlands Council.

#### CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 30<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
John Weingart, Chairman

#### Vote on the Approval of this Resolution

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede	_____	_____	_____	✓	_____	_____
Councilmember Calabrese	_____	✓	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	_____	_____	✓

**Vote on the Approval of  
this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Dillingham	_____	_____	_____	_____	_____	✓
Councilmember Kovach	✓	_____	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	_____	_____	_____	✓
Councilmember Vetrano	_____	_____	✓	_____	_____	_____
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

**PROCEDURE FOR NOMINATION, EVALUATION AND INVENTORY OF  
HIGHLANDS REGIONALLY SIGNIFICANT SCENIC RESOURCES  
OCTOBER 2008**

### **1.0 Introduction**

The goal associated with protecting regionally significant scenic resources is to maintain the visual integrity and scenic beauty of noteworthy viewsheds and natural and cultural features of regional significance in the Highlands Region. The scenic beauty of the Highlands is a resource whose quality is valued by both residents and visitors. The Highlands were recognized as a “landscape of national significance” in the 1992 New York-New Jersey Highlands Regional Study by the United States Forest Service. The beauty of the Region and its sense of place contribute to residents’ quality of life and draw many to the Region. The growing eco-tourism, agri-tourism and heritage tourism industries rely on the scenic values to support them.

In order to assess the scenic resources of the Highlands Region it is necessary to establish a protocol by which these resources are nominated and evaluated. Such scenic resources may be natural, historic, cultural, archaeological, etc., but all must have a strong visual component that is regionally significant. The following procedures offer an approach for soliciting nominations to the Highlands Scenic Resource Inventory and are an initial step in the development of the Council’s scenic resources program. The Highlands Council will also develop guidelines and ordinances, as appropriate, to assist municipal and county officials, public agencies and private entities in the fulfillment of these procedures. The Highlands Council may also designate and institute region-wide protection standards for broad categories of regional scenic resources within the [Highlands](#) Region that warrant protection.

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### **1.1 Purpose and scope**

- To establish procedures for the nomination, evaluation and designation of scenic resources within the Highlands Region
- To establish protection measures to ensure continued protection of the Highlands regionally significant scenic resources
- To establish a process to maintain and update a Highlands regionally significant scenic resource inventory and support locally significant scenic resource recognition and protection

### **1.2 Criteria for Designation of a Regionally Significant Scenic Resource**

**(a) Nominating Entity** – Highlands Region municipalities and counties or interested third parties may nominate scenic resources. The nominating entity is responsible for providing sufficient justification to support the nomination and evaluation, specifically to demonstrate that the proposed scenic resource meets the regionally significant criteria and evaluation.

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The nominating entity is also responsible for preparing a Scenic Resource Analysis and Management Plan which outlines how the scenic resource(s) will be protected. (See Section 2.12, Scenic [Resource](#) Nomination Process)

**(b) Types of Regionally Significant Scenic Resources** – Any of five types of regionally significant scenic resources may be identified through the nomination and identification process.

**1. Scenic byway/corridor** – Scenic byways highlight transportation corridors that have outstanding scenic, natural, recreational, cultural, historic or archaeological significance. They represent the uniqueness and diversity of the Highlands Region and together the byways tell stories about New Jersey’s history, heritage, recreational opportunities and beauty.

Scenic corridors include trails, such as rail-trails, foot trails and bikeways, as well as waterways. Regionally significant trails in the Highlands include the Appalachian National Scenic Trail and the Highlands Millennium Trail.

According to State and National byways guidelines, byways and corridors may contain any of six areas of significance:

***Archaeological:*** Archaeological resources are visual evidence of the unique customs, traditions, folklores, or rituals of a no longer existing human group. Physical evidence of extinct plant and animal species is also included in this resource.

***Recreational:*** Recreational resources can include the Scenic Byway itself if it is used for activities such as biking, jogging or roadside picnics, or if it provides access to recreational sites like campgrounds, lakes, parks, recreational trails, etc.

***Historic:*** Historic resources are landscapes, buildings, structures or other visual evidence of the past. It must be something that can still be seen, not just the site of something that existed in the past.

***Cultural:*** Cultural resources are visual evidence of the unique customs, traditions, folklife or rituals of a currently existing human group.

***Natural:*** Natural resources represent opportunities to experience ecological features in the Byway region that are defined by minimal human disturbance.

***Scenic:*** Scenic resources include both natural and man-made features that constitute the view from the road, trail, bikeway or waterway. Scenic resources include both the ordinary as well as the spectacular. The composition of the resources provides pleasure or inspires awe.

**2. Panorama and valley** – The Highlands is characterized by its steeply sloping ridges and lower elevation valleys. These features lend to the beauty of the Highlands Region and contribute to the scenic qualities worthy of protection. Scenic panoramas and valleys are

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regionally significant lands within the Highlands Region that may encompass a combination of scenic resource components within a viewshed.

**3. Ridgeline, mountainside, and geological feature** – A ridgeline is the line which occurs at the highest elevation of a connected series of hills and mountains, where the ground meets the sky. A mountainside is the sloping side of a mountain. Geological features may include major rock outcrops or other landforms created by geologic activity.

Because of their prominent elevation and size, ridgeline scenic resources are particularly damaged aesthetically by inappropriate development. The intent of ridgeline protection is to ensure that development near ridges does not rise to the height of the ridge top and does not stand in contrast to the surrounding area. Any development near ridgelines designated as Highlands Scenic Resources shall be made to blend with the natural contours of the land forms. Similarly, inappropriate development may detract from the scenic qualities of adjacent mountainsides and geological features; therefore, any structures should be designed to be sensitive to those landscape features.

**4. Natural feature, including vegetation and water features** –Natural features include water and vegetation features that meet the designation or criteria of the National Wild and Scenic Rivers Act and or Regional Master Plan Critical Habitat features. In order to be considered “outstandingly remarkable” according to the Wild and Scenic standards, “a river-related value must be a unique, rare or exemplary feature that is significant at a regional or national scale.” (Musconetcong River Management Plan).

The National Wild and Scenic Rivers Act (Public Law 90-542, as amended) was enacted in 1968 and set forth five major goals to maintain and improve natural, cultural and recreational resources. The Highlands Council accepts the five goals in support of the Highlands Region Scenic Resources.

- Encourage recreational use that is compatible with the preservation of natural and cultural qualities of the river corridor while respecting private property.
- Preserve and protect the character of archaeological sites and historic structures, districts, sites and landscapes in the river corridor.
- Preserve farmland and open space within the river corridor and the watershed.
- Preserve, protect, restore and enhance the outstanding natural resources in the river corridor and the watershed, including rare and endangered species, forests, steep slopes, floodplains, headwaters and wetlands.
- Maintain and protect existing water quality and improve where possible.

**5. Cultural landscape, including community gateways, landmarks, and historic or archaeological features** – The U.S. Department of the Interior (DOI) recognizes four types of cultural landscapes: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

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- Historic site: A landscape significant for its association with a historic event, activity, or person, such as a battlefield or an influential individual’s homestead.
- Historic designed landscape: A landscape that was planned or designed by a prominent individual according to design principles or in a recognized style or tradition. Notable parks, campuses, and estates would fall into this category.
- Historic vernacular landscape: A landscape that evolved around the activities and lifestyle of its people or communities. Function is important in defining vernacular landscapes which may include rural villages, industrial complexes, and agricultural landscapes.
- Ethnographic landscape: A landscape containing heritage resources that relates to associated people, such as settlements or sacred sites.

**2.1 Highlands Regionally Significant Scenic Resource nomination process**

**(a) Timeframe** – For those municipalities and counties participating in plan conformance, the initial scenic resource nomination process may be conducted as part of the conformance process. A municipality or county that enters into the plan conformance process may pursue the scenic resource nomination process concurrently. In the interest of efficiency and comprehensiveness, the scenic resource nomination process for the entire municipality, both Preservation and Planning Areas, will be conducted at the same time. For a county, due to the larger scale, the process will be conducted for the entire portion in the Highlands Region if feasible, but may be addressed in phases.

All municipalities or counties, whether or not they participate in plan conformance, may conduct initial or future scenic resource nominations at any time and will be subject to the same prescribed nomination process. A municipality or county may submit materials to the Highlands Council in support of the scenic resource nomination process separate from plan conformance. Nominations received from municipalities and counties not participating in plan conformance will be given the same consideration as those participating municipalities and counties, although plan conformance deadlines will receive priority.

Subsequent nominations from both conforming or non-conforming municipalities and counties may be submitted at any time in the future and will be subject to the prescribed nomination process.

**(b) Materials** – The Highlands Council will provide the appropriate scenic resource nomination, evaluation and inventory materials to the nominating entity at the commencement of the plan conformance process. Materials will also be available at the Council’s website. The Highlands Council will supply the nomination and evaluation formats and associated materials in hardcopy, electronically, or both, as appropriate.

**(c) Basis for nominations** – The nominating entity is responsible for filling out the nomination and evaluation forms and documenting that the proposed resource is regionally significant and meets the criteria for inclusion on the Highlands Scenic Resource Inventory. Locally significant scenic resources may be identified as part of RMP Plan Conformance;

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however, the Highlands Scenic Inventory is specific to “regionally significant” scenic resources.

Highlands Scenic Resources are valued because they contribute to the physical beauty and aesthetic value of the Highlands Region, as well as to the character and sense of place that defines the Highlands. Although beauty and scenic value may be largely subjective, scenic resources may be identified through community consensus and identified for protection.

Community consensus shall be sought through the ~~communication~~-public outreach program outlined in 2(d)e below and shall include at least one public meeting and a mechanism for reaching out into the local community for input and involvement.

Nominations to the Highlands Scenic Resource Inventory will, at a minimum, be based on information contained in the Scenic Resource Nomination Form and the Scenic Resource Evaluation Criteria (see appendix). Additionally the following information shall be submitted for each type of regionally significant scenic resource.

1. A nomination for a scenic byway/corridor shall include: the name of the byway/corridor; explanation of the type of byway/corridor; location of the resource; approximate length of the byway/corridor; and the regulatory and planning agencies with jurisdiction along the byway/corridor.

2. A nomination for a scenic panorama and/or valley shall include a viewshed analysis as part of the explanation and justification for panoramic scenic views and views across a valley. Guidelines for drawing a viewshed are attached in the appendix.

3. A nomination for scenic ridgelines, mountainsides, and geologic features shall be depicted on a topographic map with 20 foot contour intervals or less. LiDAR-based topography developed by the Highlands Council shall be used when available, unless a more detailed local topographic map is available. A profile of the ridgeline, associated ridges, mountainsides, or geological features shall be submitted illustrating a minimum top of ridge elevation of 500 feet above mean sea level or less than 500 feet if locally prominent and a change in elevation from the base of at least 100 feet (see appendix). Ridgelines should be continuous for at least one mile as measured along the ridge.

4. A nomination for a scenic natural feature shall include a description, visual assessment, and photographic log of the natural feature, along with an explanation of the feature’s regional significance.

5. A nomination for a scenic cultural landscape shall include a description, visual assessment and photographic log of the cultural landscape feature, along with an explanation of the Cultural Landscape’s regional significance.

The attributes of the scenic resource, as well as the public vantage points, extent of view, and protection issues are to be described in the nomination form. The scenic quality of the components, the intrinsic quality of the elements, the local and regional significance, and other considerations related to the scenic resource must be quantified and will be considered by the Highlands Scenic Design Advisory Board and the Council as evaluation criteria.

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The nominating entity must demonstrate the following in support of the nomination:

- The resource meets the criteria for a Highlands regionally significant scenic resource;
- A mapped location of the resource and the extent of the scenic resource as delineated based on the minimum criteria for delineating viewsheds; and
- Photographic representation; and
- ~~A management plan, as described in 2.1(d) below, which outlines the protection measures believed necessary to protect the scenic resource(s).~~

Upon receipt of a complete scenic resource nomination, the Highlands Council staff will review the details of the nomination submission and seek a recommendation from the Scenic Design Advisory Board (Advisory Board) regarding its appropriateness for inclusion on the Highlands Scenic Resource Inventory. The Advisory Board will make a preliminary recommendation about whether or not the resource is eligible for inclusion in the Inventory.

~~**(d) Scenic Resource Analysis and Management Plan**— Each scenic resource nomination must be accompanied by a Scenic Resource Analysis and Management Plan which supports the nomination and evaluation and provides a detailed plan for maintaining the integrity of the scenic resource. The management component of the plan may be shared by a multiplicity of scenic resources and may be prepared jointly by a group of municipalities or for an entire county.~~

~~The nominating entity shall submit a Scenic Resource Analysis and Management Plan which shall:~~

- ~~1) Identify the critical attributes of the scenic resource that must be preserved in order to protect its regional significance;~~
- ~~2) Identify the major threats to those critical attributes;~~
- ~~3) Establish a specific course of action to ensure protection of the resource, such as ordinances or design guidelines and standards to guide public and private actions;~~
- ~~4) Document the intent of the municipality to enforce those aspects of the management plan for which the municipality has responsibility;~~
- ~~5) Identify what actions, public or private, that will trigger the protection mechanism; and~~
- ~~6) Establish a monitoring program to gauge the efficacy of the management plan.~~

~~A Scenic Byway/Corridor Management Plan must include a scenic inventory, long term management and maintenance recommendations, and viewshed management (including land use). A Highlands scenic byway designation may lead to designation as a scenic roadway subject to the Roadside Sign Control and Outdoor Advertising Rules (N.J.A.C. 16:41C). These rules designate the Highlands as one of four “scenic geographical areas of Statewide significance” where scenic roadways should be “billboard-free.” These rules currently designate nearly 77 miles of scenic corridors in the Highlands Region which shall be “billboard-free.”~~

~~**(ed) Public Outreach** – The general community shall be provided a meaningful opportunity to be involved in the identification and evaluation of scenic resource~~

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nominations. The nominating entity may choose among a range of techniques for reaching out to their citizenry, including website notices, direct mailings, public meetings, surveys and other outreach tools. Public notice of the scenic resource nominations shall be advertised in the official local newspaper(s). After the nominations have been assembled, the public ~~should~~ shall be given an opportunity to express their opinions on the proposed scenic resources. The nominating entity should recognize the importance of perception and that all lands have scenic value. Local consensus will be recognized as one criterion for evaluation. The nominating entity shall conduct at least one advertised public meeting regarding the scenic resource nominations prior to submittal to the Highlands Council. A summary of the meeting shall be submitted to the Highlands Council as part of the scenic resource nomination package. In addition to the public meeting, the nominating entity must demonstrate that the local community was given adequate opportunity to participate in the nomination process.

**(fe) Submittals** – For those municipalities and counties that are participating in the plan conformance process, initial submittals of scenic resource nominations may coincide with submittals that are part of plan conformance. After plan conformance, nominations may be submitted independently.

For those nominating entities not participating in the plan conformance process, submittals of scenic resource nominations may be made at any time, but shall be reviewed at the discretion of the Highlands Council with priority given to plan conformance activities.

**(gf) Role of the County in the nomination process** – Every municipal entity shall notify the appropriate County government of the intent to pursue scenic resource designation. The County shall be invited to participate in the nomination process.

**(hg) Role of interested third parties in the nomination process** – An interested third party may approach a municipality or county to encourage their participation in the scenic resource nomination, evaluation, and inventory process. If the municipal or county entity cannot or does not wish to participate in the process, the interested third party may, with the endorsement of the municipality (and county, where applicable), complete the process on their behalf. The municipality (and county, where applicable) must adopt a resolution formalizing their permission for the third party to proceed.

**(h) Scenic Resource Analysis and Management Plan** – After the nomination has received preliminary recommendation as eligible for inclusion in the Highlands Scenic Resource Inventory, the nominating entity shall submit a Scenic Resource Analysis and Management Plan which outlines the protection measures believed necessary to protect the scenic resource(s). The Scenic Resource Analysis and Management Plan shall support the nomination and include a detailed plan for maintaining the integrity of the scenic resource(s). The management component of the plan may be shared by a multiplicity of scenic resources and may be prepared jointly by a group of municipalities or for an entire county.

The Scenic Resource Analysis and Management Plan shall:

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- 1) Identify the critical attributes of the scenic resource that must be preserved in order to protect its regional significance;
- 2) Identify the major threats to those critical attributes;
- 3) Establish a specific course of action to ensure protection of the resource, such as ordinances or design guidelines and standards to guide public and private actions;
- 4) Identify the extent of land area to be governed by the specific protection mechanisms;
- 5) Document the intent of the municipality to enforce those aspects of the management plan for which the municipality has responsibility;
- 6) Identify what actions, public or private, that will trigger the protection mechanism; and
- 7) Establish a monitoring program to gauge the efficacy of the management plan.

A Scenic Byway/Corridor Management Plan must include a scenic inventory, long term management and maintenance recommendations, and viewshed management (including land use). A Highlands scenic byway designation may lead to designation as a scenic roadway subject to the Roadside Sign Control and Outdoor Advertising Rules (N.J.A.C. 16:41C). These rules designate the Highlands as one of four “scenic geographical areas of Statewide significance” where scenic roadways should be “billboard-free.” These rules currently designate nearly 77 miles of scenic corridors in the Highlands Region which shall be “billboard-free.”

The Highlands Council staff will review the proposed Scenic Resource Analysis and Management Plan and seek a recommendation from the Scenic Design Advisory Board, which will review the Scenic Resource Analysis and Management Plan to determine if it will adequately protect the scenic resource. The Advisory Board will make a formal recommendation to the Highlands Council staff regarding whether the scenic resource should be designated for inclusion in the Highlands Scenic Resource Inventory in keeping with the policies and objectives of the Regional Master Plan and these procedures.

## 2.2 Scenic resource evaluation process

**(a) Basis for evaluation** – Each individual nominated scenic resource will be evaluated based on intrinsic scenic quality, regional significance, and identification of an adequate protection mechanism as presented in the management plan. An evaluation form developed by the Highlands Council has been included as an appendix to these procedures.

**(b) Review and evaluation by Highlands Scenic Design Advisory Board** – A Highlands Scenic Design Advisory Board (Advisory Board) shall be established for the purpose of reviewing and evaluating scenic resource nominations. The Advisory Board shall conduct its meetings in public and be comprised of 7 members of the public or public agencies, other than the Highlands Council, who have expertise in the fields of planning and design as follows. One or more members of the Advisory Board shall have an environmental design background, i.e., landscape architect or similar profession. Additional expertise may include architecture, historic preservation, ecology, forestry and land stewardship. All members shall have an understanding of the nomination and evaluation

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process. ~~Highlands Council staff will prepare evaluations and recommendations based upon the above evaluation criteria and present these to the Advisory Board for consideration.~~

**(c) Staff review and posting of recommendations** – Highlands Council staff shall prepare evaluations and recommendations based upon the above evaluation criteria. The staff evaluations recommendations will be forwarded to the nominating entity and posted on the Highlands Council's website. Public comments will be accepted for not less than 10 business days. Upon close of the public comment, the Highlands Council staff will consider comments received, revise the evaluations and recommendations to the extent necessary, and provide the evaluations and recommendations to the Advisory Board for their consideration.

**(ed) Advisory Board recommendations** – The Advisory Board will consider in a public meeting the evaluations and recommendations made by staff and make findings and recommendations, which will be incorporated into a proposed scenic resource inventory decision docket for consideration by the Highlands Council. The Advisory Board recommendations do not constitute an action of the Highlands Council. A nominating entity may elect to revise and resubmit its nomination with modifications to address the Advisory Board recommendations, prior to Highlands Council consideration.

### 3.0 Scenic Resource Inventory

**(a) Presentation to Highlands Council** – The proposed scenic resource inventory designations, with findings and recommendations of the Advisory Board, will be presented for consideration at a public meeting of the Highlands Council.

**(b) Acceptance of inventory designations** – The Highlands Council may accept each of the inventory proposals which are found to adequately meet the evaluation criteria. Those scenic resource nominations that the Council determines do not meet the evaluation criteria will be returned to the nominating entity with an explanation of why they were not accepted. The nominating entity may choose to re-submit with additional information if appropriate, or incorporate the resource as locally significant through the plan conformance process.

**(c) Notification to nominating entity of Council action** – The decision of the Highlands Council with regard to municipal and/or county nominations of scenic resources shall be forwarded to the appropriate entity by the Executive Director.

**(d) Municipal confirmation and adoption of resolution** – Upon notification by the Highlands Council of the approval and designation of the nominated scenic resources, the municipality and/or county shall adopt a formal resolution recognizing the status of the scenic resources and putting in place the appropriate protection mechanisms applicable to those resources.

**(e) Maintenance of inventory** – The Highlands Council will be responsible for maintaining the Scenic Resource Inventory. The Scenic Resource Inventory will be available on the Highlands Council website.

#### 4.0 Definitions

**Angle of view** – The angle, both vertical and horizontal, between a viewer’s line of sight and the landscape being viewed.

**Control points** – The two end points of a line of sight. One end is always the elevation of an observer’s eyes at a place of interest and the other end is always an elevation of a project component of interest. (NYSDEC, DEP-00-02 Article 8, 49 7/31/00)

**Cultural landscape** –According to the U.S Department of the Interior there are four types of cultural landscapes: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

**Evaluation** – A review and consideration, conducted according to standard criteria, associated with the nomination to the Highlands Scenic Resource Inventory.

**“Existing public scenic attributes”** – Defined in the Department of Environmental Protection Highlands Rules as “any Federal, State, county or municipal parks, forests, wildlife management areas and natural areas, any areas acquired for recreation and conservation purposes with Green Acres funding program or a non-profit conservation organization, and lands preserved as open space by a non-profit conservation organization and other areas as identified by the Highlands Council.” (N.J.A.C. 7:38-3.12 (c))

**Extent of view** – The distance or extent a viewer is able to see from a vantage point.

**Highlands Scenic Design Advisory Board** – An advisory body organized for the purpose of evaluating scenic resource nominations. The board shall be comprised of 7 members of the public who have expertise in the fields of planning and design as follows. One or more members of the Board should have an environmental design background, i.e., landscape architect or similar profession. Additional expertise may include architecture, historic preservation, ecology, and land stewardship. All members should have an understanding of the nomination and evaluation process and be familiar with the areas to be evaluated.

**Highlands Scenic Resource Inventory** – The inventory of regionally significant lands within the Highlands Region that encompasses elements of high scenic quality worthy of protection, developed in coordination with local governments, and maintained by the Highlands Council. The Highlands Council may act as an interested party on behalf of scenic resources that are within either conforming or non-conforming local entities or that extend beyond the New Jersey Highlands Region.

**Interested third party** – A non-governmental organization that has an interest ~~or stake~~ in the designation and protection of scenic resources within a community, or the Highlands Region in general, who may participate in the scenic resource nomination and evaluation process.

**Intrinsic scenic quality** – Distinct attributes that are inherent to the scenery, e.g. landform, vegetation, water, cultural elements. The National Scenic Byways Program defines intrinsic

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qualities as the “features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.”

**Line of sight profile** – A schematic that is a graphic depiction of the depression and elevations one would encounter walking along a straight path between two selected locations. A straight line depicting the path of light received by the eye of an imaginary viewer standing on the path and looking towards a predetermined location along the path constitutes a line of sight. The locations along the path where the viewer stands and looks are the control points of the line of sight profile. (NYSDEC, DEP-00-02 Article 8, 49 7/31/00)

**Local community consensus** – The degree to which the local community supports the proposed scenic resource nomination.

**Local community significance** – Explains why the scenic resource is important to the character and/or identity of the local community.

**Local government entity** – An official instrumentality of a county or municipality in the Highlands Region.

**Locally significant scenic resources** – Locally significant scenic resources are those sites or places that are important to the character and/or identity of the local community.

**Natural features** – Natural features include water and vegetation features that meet the designation or criteria of the National Wild and National Scenic designation in accordance with the National Wild and Scenic Rivers Act (Public Law 90-542, as amended), and Regional Master Plan Critical Habitat features.

**Nomination** – A proposal by a local government entity or interested third party to consider inclusion of a specific scenic resource in the Highlands Scenic Resource Inventory.

**Panoramic-Panorama and valley** – Scenic resources that represent regionally significant lands within the Highlands Region that encompass elements of high scenic quality that are worthy of protection, and may encompass a combination of scenic resource components within a viewshed.

**Public vantage point(s)** – The publicly accessible point or points from which a scenic resource can be viewed.

**Regionally significant scenic resources** – Regionally significant scenic resources are defined as those scenic resources that are representative of the “essential character of the Highlands environment” and that play a significant role in defining the public perception of the Highlands Region from public vantage points. They include but are not limited to large-scale steep slopes, forests and woodlands, ridgelines, pristine water sheds, wetlands, meadows, stream corridors, potable water reservoirs, lakes/ponds, rivers, critical habitat, unique geologic formations, rare vegetative communities, significant natural areas and

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historic, cultural and archaeological resources that can be viewed from a public vantage point.

**Ridgeline, mountainside or geologic feature** – Ridgelines, mountainsides and geologic features generally occur at elevations 500 feet or greater. Ridgelines are continuous for at least one mile measured along the ridge, are located at the highest elevation of a series of hills or mountains, and have a change in elevation of 100 feet or greater above the base.

**River corridor** – A river corridor for purposes of nomination and evaluation for inclusion in the Highlands Scenic Resource Inventory may be any segment of a river, stream, or flowing water body and bordering lands that materially affect views of and from the river. The length of the segment should be sufficient such that it characterizes the regional significance of the corridor. The description of the resource shall be prepared according to the guidelines for wild and scenic rivers, as per the National Wild and Scenic Rivers Act.

**Scenic** – Any view or viewshed of a regionally or locally significant scenic resource that is important to the positive image of the region or the community.

**Scenic byway** – A scenic byway is a transportation corridor of regionally outstanding scenic, natural, recreational, cultural, historic or archaeological significance (New Jersey Department of Transportation).

**Scenic corridor** – A publicly accessible right-of-way, as well as the views of water, farmland, woodlands, hillsides or other scenic vistas that can be seen from the right-of-way as determined by a visual assessment.

**Scenic features/attributes** – Those features and characteristics of the landscape, both natural and built, which contribute to the aesthetic appeal of a site or area.

**Scenic management plan** – A plan devised to protect the proposed scenic resource(s) and submitted as part of the nomination petition.

**Skyline** – A skyline is defined as the apparent line where the earth meets the sky. It is the pattern of shapes formed by the various features of the landscape, including buildings, vegetation and topography, set against the sky.

**Viewshed** – A viewshed is an area of land, water and other physical features that is visible from a fixed vantage point.

**Visual assessment** – The analytical techniques that employ viewsheds, scenic corridors and/or line of sight profiles, and descriptions of scenic resources, to determine the impact of development upon scenic resources; and potential mitigation strategies to avoid, eliminate or reduce impacts on those resources. (NYSDEC DEP-00-02 Article 8, 49 7/31/00)

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**4.1 References**

Alabama Scenic Byway Program,

<http://www.alabamabyways.org/manual/programmanual.pdf>

Bedminster Township, Somerset County, “Scenic Resources Management Plan,” July 2004

Guilford, Connecticut, “Natural Resource Inventory and Assessment,” January 2005

Lake Tahoe, Utah, “Scenic Resources and Community Design”

“Musconetcong River Management Plan, National Wild and Scenic Rivers Study,” Prepared by Musconetcong Advisory Committee, Musconetcong Watershed Association, Heritage Conservancy, National Park Service, April 2003

National Wild and Scenic Rivers Act, 1968 (Public Law 90-542, as amended)

New Jersey Department of Transportation, Scenic Byways Program,

<http://www.state.nj.us/transportation/community/scenic>

New York State Department of Environmental Conservation (NYSDEC), Assessing and Mitigating Visual Impacts, DEP-00-02 Article 8, 49 7/31/00

Town of Southampton, New York, “Scenic Resources: A Vision for Scenic Resources”

Tompkins County, New York, “Scenic Resources Inventory”

U.S. Department of the Interior, Bureau of Land Management, Visual Resource Management Manual

U.S. Department of the Interior, National Park Service, Preservation Brief 36: “Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes”

<http://www.cr.nps.gov/hps/tps/briefs/brief36.htm>

## **APPENDIX**

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**HIGHLANDS SCENIC RESOURCE NOMINATION FORM**

<b>Municipality:</b> _____	<b>County:</b> _____
----------------------------	----------------------

**Scenic Resource:** \_\_\_\_\_

**Location/Address:** \_\_\_\_\_

**Description:** (Attach photographs/digital images) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Scenic Features/Attributes:**

- |                                       |  |
|---------------------------------------|--|
| <input type="checkbox"/> scenic byway | <input type="checkbox"/> community gateway/landmark      |
| <input type="checkbox"/> panorama     | <input type="checkbox"/> historic/archaeological element |
| <input type="checkbox"/> valley       | <input type="checkbox"/> vegetative feature              |
| <input type="checkbox"/> ridgeline    | <input type="checkbox"/> water feature                   |
| <input type="checkbox"/> mountainside | <input type="checkbox"/> geological feature              |
| <input type="checkbox"/> farmland     | <input type="checkbox"/> other: _____                    |

**Public Vantage Point(s):** \_\_\_\_\_

**Angle/Extent of View:** \_\_\_\_\_

**Protection Issues:** \_\_\_\_\_

**Contact Information**

<b>Individual Preparing Nomination:</b> _____
<b>Organization (if applicable):</b> _____
<b>Address:</b> _____
<b>Phone:</b> _____ <b>FAX:</b> _____
<b>Email:</b> _____

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**HIGHLANDS SCENIC RESOURCE EVALUATION CRITERIA**

**Scenic Quality of Components (Natural and Built):** (Rank from 1 to 3, 3 = the highest quality, 2 = moderate quality, 1 = lowest quality.)

**Unity**   
Harmonious,  
combined the elements  
present a single picture

**Vividness**   
Distinct or unique,  
presents a clear, vibrant  
picture

**Variety**   
Diverse, a mix of  
elements constituted  
together

**Intactness**   
Presents a complete  
scene, appears whole

**Intrinsic Quality of Elements:** (Rate from 1 to 3, 3 = the greatest impact of the element, 2 = medium impact of the element, 1 = little or no impact from the element)

**Landform**

**Vegetation**

**Water**

**Color**

**Adjacent Scenery**

**Uniqueness**

**Cultural Elements**

Landform – Vertical relief, topography, such as, rock outcrops, mountainsides, ridges, etc.  
Vegetation – Natural plant life or unique specimens. Consider seasonal vegetative displays.  
Water – Any water body, still or moving. The degree to which water dominates the scene is integral to the rating score.  
Color – Consider the color(s) of the elements and the degree of variety, contrast, and harmony.  
Adjacent Scenery – Consider the foreground and background relative to the scenic resource. Do these conditions add to or detract from the resource?  
Uniqueness – Importance is attached to the rarity of a scenic resource. Is it one of a kind, or is it an element that is generally in danger of being lost wherever it occurs?  
Cultural Elements – Structures in the landscape may add to or detract from a landscape. Cultural features may also be the primary scenic attraction.

**Local Community Significance:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Local Community Consensus:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Regional Significance:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

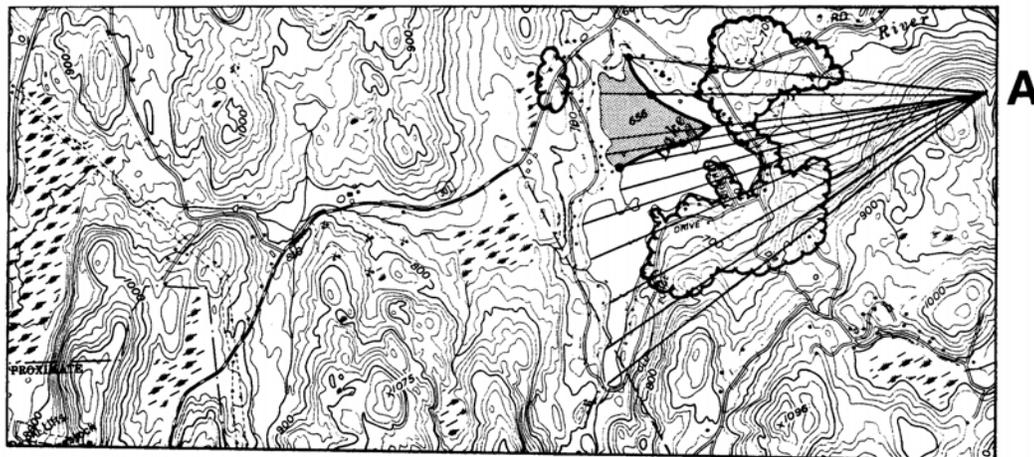
**Other Considerations:** \_\_\_\_\_  
\_\_\_\_\_

## VIEWSHEDS

For illustrative purposes only, a "partial" viewshed has been constructed below. A partial viewshed is distinguished from a full viewshed in that it only shows a selected area from which an object may be seen. A full viewshed shows all such areas.

The shaded area in the northwest corner of the lake is the only area within the lake that a hypothetical object 100 feet in height and situated at A (where the profile radii converge) may be seen.

The defined viewing area has been constructed by connecting each point along each profile where a viewer just begins to see the hypothetical object. To add realism to the viewshed, 40' vegetation has been factored into the lines of sight. The vegetation alters the viewing angle and hence the initial viewpoint indicated by the large black dots at the intersection of the shaded area with each profile radii.



### LEGEND



### VIEWSHED

(Area within lake from which a hypothetical  
100 foot object located at "A" may be seen)

↑  
**N**  
SCALE 1" = 2,000'

Source: New York State Department of Environmental Conservation, Assessing and Mitigating Visual Impacts, article 8, 49

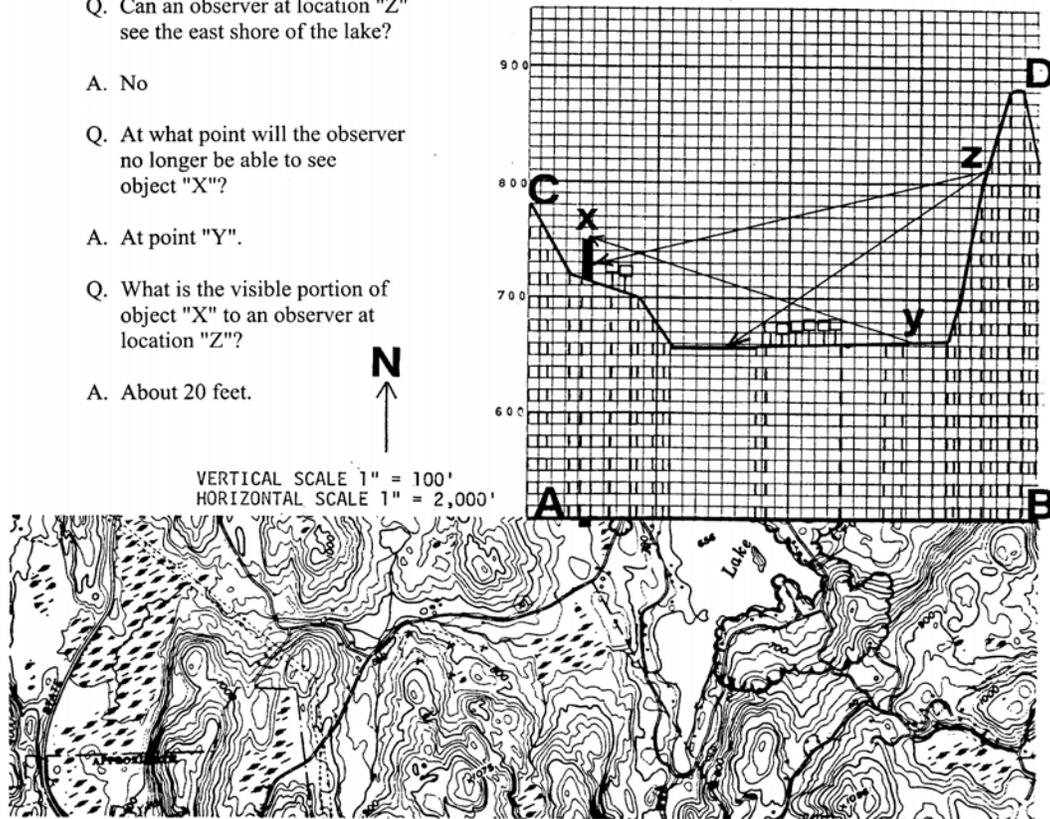
## PROFILES

To construct a profile, first position the graph paper parallel and contiguous to the horizontal alignment of the desired profile (indicated by line A-B). Proceed by extending vertical lines (indicated by dashed lines) to the correct height according to any selected convenient vertical scale (in this case 1" = 100'). This must be done from each spot where the horizontal alignment crosses a contour line. It is the elevation of the intersected contour that determines the height of each vertical line. Then, simply connect the top of each vertical line to form the profile (indicated by line C-D). The profile C-D depicts the depressions and elevations one would encounter walking a straight path from Point A to B on the plan map. To add realism add vegetation at the proper locations at the proper height (in this case 40').

### Sample Questions and Answers

According to the profile:

- Q. Can an observer at location "Z" see the east shore of the lake?
- A. No
- Q. At what point will the observer no longer be able to see object "X"?
- A. At point "Y".
- Q. What is the visible portion of object "X" to an observer at location "Z"?
- A. About 20 feet.



Source: New York State Department of Environmental Conservation, Assessing and Mitigating Visual Impacts, article 8, 49

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**COMMENTS-RESPONSES REGARDING THE DRAFT  
PROCEDURE FOR NOMINATION, EVALUATION AND INVENTORY OF  
HIGHLANDS REGIONALLY SIGNIFICANT SCENIC RESOURCES**

**Introduction**

COMMENT: One comment submitted on behalf of multiple groups stated that the Introduction had been improved and offered support for the statement: “The Highlands Council may also designate and institute region-wide protection standards for broad categories of regional scenic resources within the Region that warrant protection.” The comment encouraged the Council to be proactive in advancing this protection. The comment called for protection of scenic byways, water supply reservoirs, rivers and streams, natural features, panoramas and valleys, and cultural landscapes.

RESPONSE: The Council acknowledges the comment.

**Purpose and Scope**

COMMENT: One comment submitted on behalf of multiple groups suggested that the “Purpose and Scope” be expanded to reference the NJDEP Rules, NJAC 7:38-3.12(c), and ensure that all “existing public scenic attributes” referred to in the Rules would automatically be included in the Scenic Resource Inventory and receive immediate protections.

RESPONSE: The Council acknowledges the comment, but made no change to the purpose and scope of the Procedure. The Highlands Council has initially identified a Scenic Resource Inventory of 131 scenic resource areas, including national historic landmarks, publicly-owned parks, forests, and recreation areas. This inventory will serve as a baseline from which to begin to refine a list of scenic resources. The NJDEP Rules provide regulatory protection for the Preservation Area. The Preservation Area Standards outlined in Subchapter 3 include protection for “Unique or irreplaceable land types and existing scenic attributes.” “Existing public scenic attributes” are defined as “any Federal, State, county or municipal parks, forests, wildlife management areas and natural areas,” etc. (7:38-3.12(c)). These “existing public scenic attributes” have already been afforded protection through the Rules, limiting impacts to “minimum practicable degradation.” (7:38-3.12(d))

**Regionally Significant Scenic Resources**

COMMENT: One comment stated that the definition of Regionally Significant Scenic Resources should be more precisely defined. It was suggested that the current definition is too inclusive and allows for nomination of too many potential resources. The comment called for the establishment of targeted criteria and weighting of these criteria. It also called for greater limitation and the establishment of thresholds, such as a resource of a certain size or a scenic byway of a minimum length.

RESPONSE: The Council acknowledges the comments, but made no change to the definition of a Regionally Significant Resource. The definition and criteria for designation as written in the Procedure establishes the opportunity for a nominating entity to provide sufficient justification to support the nomination. Placing size limits or similar thresholds on a scenic resource nomination may serve to eliminate some number of potential scenic resources, and would not advance the purpose of the Procedure which is to identify and protect regionally significant scenic resources in the Highlands. The Procedure does state that in the case of ridgelines, they “should be continuous for at least one mile as measured along the ridge.”

**Third Party Nominations**

COMMENT: Several comments stated that third party nominations should not be accepted and that municipal participation should be required for any nomination to be made. Additionally it was suggested that municipal environmental commissions or planning boards could serve as a third party nomination entity.

COMMENT: One comment stated that if third party nominations are allowed, endorsement should be required from the local planning board and the local governing body and county Freeholder board if county

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land or a roadway is involved. It was suggested that requiring agreement between all three bodies would assure agreement of the planning and implementation of any scenic designation.

COMMENT: Several comments expressed frustration that third party nominations may only be accomplished with the endorsement of the local governing body. These comments stated that the requirement for municipal endorsement would render the nominating process ineffective and negate most nominations because municipalities are not motivated to protect such resources. The comments pointed out that scenic resource protection is a mandate of the Highlands Act and municipalities should not have veto power over nomination and protection of regionally significant scenic resources.

COMMENT: One comment submitted on behalf of multiple groups stated that a process should be devised to deal with third party nominations; one that would occur separate and apart from the municipal governmental processes. It was further suggested that “community consensus” should refer to not only consensus within municipalities, but also to other communities, such as, the conservation community, the hiking community, the climbing community, the bird watching community, etc.

RESPONSE: The Procedure provides for participation by third parties in the nomination process with the endorsement of the municipal or county government agency. Local government involvement is necessary in order to effectuate the management and future protection of the scenic resources.

#### **Notification of Property Owners**

COMMENT: Several comments stated that private property owners should be given both notification and veto power over identification of resources on their land.

RESPONSE: The nominating entity is required to provide public notice of each scenic resource nomination or of a list of nominated scenic resources. Additionally, when a municipality implements the components of the management plan, such as a scenic resource ordinance or overlay zone for scenic resource protection, the affected landowners will be officially notified. Veto power by private landowners over a governmental process would not be appropriate.

#### **Support for Scenic Resource Inventory Procedures**

COMMENT: Several comments expressed support for the identification and protection of scenic resources within the Highlands. The comments agreed that the nomination process should not be limited to the conformance process.

RESPONSE: The Council acknowledges the comment. As stated in the Procedure under 2.1 (a) Timeframe, the nomination process may occur either during plan conformance or any time in the future.

#### **Scenic Design Advisory Board**

COMMENT: Several comments supported the creation of a Highlands Scenic Design Advisory Board. One comment anticipated that environmental advocacy groups would be appointed to the Scenic Design Advisory Board and stated that the public should be equally represented on the Board.

RESPONSE: The Scenic Design Advisory Board is intended to be comprised of individual members of the public who possess an understanding of scenic resources, landscape design and similar areas of expertise. The emphasis will be on expertise, not interest group, but the Highlands Council will endeavor to ensure that the Advisory Board will address these issues in a professional and capable manner. Additionally, public outreach will occur with each nomination process.

#### **Ridgeline Protection**

COMMENT: One comment submitted on behalf of multiple groups supported the prohibition of development near ridges. The comment called for the addition of the following statement: “No part of any new structure on a ridge or mountainside shall be permitted to extend into the area that lies within 200 vertical feet of the ridgeline, and no development shall be permitted over 1100 foot elevation.”

RESPONSE: The Council acknowledges the comment. The proposed statement would be more appropriately included in a ridgeline protection standard and will be considered when the Council develops

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such standards. A scenic resource management plan submitted to the Council may include provisions of this nature if appropriate for the resource being protected.

**Public Vantage Point**

COMMENT: Several comments stated that the “public vantage point” should be better defined. They suggested that some distance from a view should be applied and the distance should vary from one resource to another depending upon the type of resource.

RESPONSE: The Procedure requires the nomination of each scenic resource to describe the attributes of the resource as well as the public vantage points and extent of view. The appendices provide a method for developing viewsheds and profiles. Due to the varied nature of scenic resources, a “one size fits all” method is not appropriate; rather, the procedures rely on staff review, the Scenic Design Advisory Board and a public process to ensure that the selected public vantage points are justified.

**Scenic Resource Analysis and Management Plan**

COMMENT: Several comments expressed great concern that the requirement of a management plan with each nomination would be overly burdensome and would prevent most nominations from being made. It was suggested that the management plan not be a requirement for listing on the Inventory, but rather required as a second step in the process. It was further suggested that management plans could be prepared by non-profit groups, educational or professional organizations, or the Highlands Council.

COMMENT: One comment submitted on behalf of multiple groups suggested that the outline of the management plan be expanded to include, acquisition or donation of scenic or recreational easements, or a plan for acquisition in fee.

COMMENT: One comment asked for more details about the requirements of a management plan and the standards such a plan must meet.

RESPONSE: The Procedure has been amended to incorporate a two step process where the management plan component would be required as part of the second step, after a resource has been recommended by the Scenic Design Advisory Board as eligible for inclusion in the Scenic Resource Inventory. The nominating entity, as part of the proposed management plan, may include standards, ordinances, acquisition or other mechanisms deemed appropriate for protection of the resource. The nominating entity may choose to contract with an outside entity for the preparation of the management plan, such as an educational or professional institution, but the official submission would be the responsibility of the nominating entity.

**Non-conforming Municipalities**

COMMENT: One comment submitted on behalf of multiple groups suggested that local governments that do not participate in the conformance process should not be afforded the same level of involvement in the nomination process because those municipalities would be more likely to oppose rather than support scenic resource protection.

RESPONSE: The goal of the Procedure is to provide opportunity for regionally significant scenic resources to be identified and protected. This goal is served by being inclusive of all Highlands municipalities, regardless of their participation in plan conformance.

**Outdoor Recreation Resources**

COMMENT: One comment submitted on behalf of multiple groups suggested incorporating outdoor recreation resources into the Scenic Resources Inventory. The comment pointed out that the inventory of parks and recreation lands and scenic resources as listed in the Draft Historic, Cultural, Scenic Recreation and Tourism Technical Report were the same and protection of both resources is required by the Highlands Act.

RESPONSE: Although outdoor recreation resources may also be scenic resources, many are not. The Procedure has been developed to provide for nomination, evaluation and designation of scenic resources within the Highlands Region.

**Water Features**

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**COMMENT:** One comment submitted on behalf of multiple groups stated that the water features included under “natural features” should not have to meet the “outstandingly remarkable” criteria of the National Wild and Scenic Rivers Act because the Procedure addresses resources that are regionally significant for the Highlands, not the nation.

**RESPONSE:** The Procedure states that in order to be considered “outstandingly remarkable” the river resource should be “significant at a regional **or** national scale.” [emphasis added] The Procedure throughout refers to resources that are regionally significant to the Highlands Region.

### **Natural Features**

**COMMENT:** One comment submitted on behalf of multiple groups suggested that natural features should also include woodlands, forests, wetlands, marshes, meadows, bogs, fens and swamps, that are visually remarkable or that meet critical habitat criteria according to the Regional Master Plan.

**RESPONSE:** Each of the natural features suggested for inclusion may be nominated and will be included if they meet the criteria as regionally significant scenic resources.

### **Scenic Resource Evaluations**

**COMMENT:** One comment questioned who would conduct the evaluations of scenic resource nominations and make recommendations to the Scenic Design Advisory Board. A question was also raised regarding possible veto power of the actions of the Scenic Design Advisory Board.

**RESPONSE:** As stated in the Procedure: “Highlands Council staff will prepare evaluations and recommendations based upon the ... evaluation criteria and present these to the Advisory Board for consideration.” (Section 2.2 b) The recommendations of the Advisory Board do not constitute an action of the Highlands Council. The Council may accept the recommendations of the Advisory Board, or make its own determination regarding whether a nomination meets the appropriate evaluation criteria.

### **Consequences of Nomination**

**COMMENT:** One comment questioned the implications of listing a scenic resource on the inventory. The question was raised in relation to a development proposal; whether the presence of a scenic resource would be grounds for denial.

**COMMENT:** One comment was concerned with the land use implications of viewshed management and requested more details be made available to the public. It was pointed out that the public outreach is part of the process, but the public would not be able to effectively participate if they were not aware of how the nominations may affect their property rights.

**RESPONSE:** The management plan developed to support a nomination would establish the implications of being designated a regionally significant scenic resource and inclusion in the inventory. Adoption of the nomination by the Highlands Council will include a requirement for implementation of the management plan. In addition to the public outreach component, public notice, and public meeting required of the nominating entity, the Highlands Council will consider and make a determination on each nomination at a public meeting.

### **General Comments**

**COMMENT:** One comment submitted on behalf of multiple groups suggested that the discussion of the National Wild and Scenic Rivers Act should apply more broadly to other scenic resource areas, not just waterways.

**RESPONSE:** The Council acknowledges the comment; however, no change was made to the Procedure. Although the Council “accepts the five goals in support of the Highlands Region Scenic Resources,” the specific language of the goals of the National Wild and Scenic Rivers Act was developed to address river corridors.

**COMMENT:** One comment submitted on behalf of multiple groups suggested that at the same time that municipalities identify regionally significant scenic resources, they should also identify locally significant scenic resources.

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RESPONSE: The Procedure states that, “Locally significant scenic resources may be identified as part of RMP Plan Conformance; however, the Highlands Scenic Inventory is specific to “regionally significant” scenic resources.”

COMMENT: Several comments identified specific resources, both historic and scenic, that ought to be included in the Inventory.

RESPONSE: Specific nominations should be formally submitted according to the Procedure once it is adopted by the Highlands Council.

COMMENT: Several comments suggested that the definitions listed under scenic byway/corridor should be cross-referenced in the glossary.

RESPONSE: The Council acknowledges the comment; however, no change was made to the Procedure. The definitions for the various scenic byway/corridor resources are contained within the section describing those resources (See section 1.2 (b) 1).

COMMENT: One comment stated that the section is well written, clearer and much more understandable with the changes in the updated Procedures.

RESPONSE: The Council acknowledges the comments and appreciates the support for scenic resource protection.