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Governor

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JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

MEETING AGENDA

Thursday, October 15, 2009 - 1:00 p.m.

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – August 27, 2009
6. CHAIRMAN'S REPORT (and Council Member Reports)
7. CONSIDERATION OF RESOLUTION – *Support for the Ballot Question on the Garden State Preservation Trust* - (voting matter with public comment)
8. COMMITTEE REPORTS
 - a. Budget Committee – Council Member and Treasurer Cogger
9. CONSIDERATION OF RESOLUTION — *Approval of FY2010 General Operating Budget* (voting matter with public comment)
10. EXECUTIVE DIRECTOR'S REPORT
 - a. Update on Highlands Plan Conformance
 - b. Update on 2009 Plan Conformance Grant Program
 - c. Update on Highlands TDR Program
11. CONSIDERATION OF RESOLUTION – *Approval of Certain Planning Assistance Grants* - (voting matter with public comment)
12. CONSIDERATION OF RESOLUTION – *Decision in Response to a Request to Stay the 2009 Plan Conformance Grant Program - Module 3* - (voting matter with public comment)
13. PUBLIC COMMENTS (*please note – the Council requests that public comments be limited to three (3) minutes per person. Questions raised in this period will not be responded to at this time but, where feasible, will be followed up by the Council and its staff.*)
14. EXECUTIVE SESSION (if deemed necessary)
15. ADJOURN

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF OCTOBER 15, 2009

PRESENT

JOHN WEINGART)	CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
MIMI LETTS)	
MICHAEL FRANCIS)	
ERIK PETERSON)	
TRACY CARLUCCIO)	
JANICE KOVACH)	
JACK SCHRIER)	
ELIZABETH CALABRESE)	
BILL COGGER)	
SCOTT WHITENACK)	

TELECONFERENCE

TAHESHA WAY)

ABSENT

GLEN VETRANO)

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 88th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:12 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.

PLEDGE OF ALLEGIANCE was then recited. *Mr. Peterson joined the meeting.*

APPROVAL OF MINUTES OF AUGUST 27, 2009

Mr. Schrier introduced a motion to approve the minutes. Ms. Kovach seconded it. Mr. Cogger and Ms. Calabrese abstained. Mr. Vetrano was absent. All other members present voted to approve. The minutes were APPROVED.

CHAIRMAN'S REPORT

Chairman Weingart mentioned that this would be Liz Calabrese's last meeting and he thanked her for her service to the Highlands Council. He announced that the next Council meeting would be November 12th at 1 pm, noting the change in time from 4 pm.

Mr. Weingart discussed the letter in Council Members packets advocating the extension of the dual appraisal methodology and expanding the TDR receiving areas to anywhere in the State. He asked for an indication from members of support for his sending this letter to the Governor. There was unanimous agreement.

RESOLUTIONS

I. CONSIDERATION OF RESOLUTION – SUPPORT FOR VOTER REFERENDUM BALLOT QUESTION #1 – (Voting matter with public comment)

Ms. Kovach introduced a motion to approve this resolution. Mr. Schrier seconded it. There was some discussion among Council Members and Mr. Borden as to whether it was appropriate for the Highlands Council to endorse this ballot questions. Mr. Borden indicated that it was a policy issue and not a legal issue for the Council to adopt a resolution on this ballot question and was appropriate.

PUBLIC COMMENT ON THIS RESOLUTION

Julia Somers, New Jersey Highlands Coalition

Ms. Somers spoke on behalf of her organization as part of the Keep It Green Campaign and encouraged the Council Members to support the Ballot Question #1. She noted that State funds for SADC and Green Acres have been an essential part of land preservation in this State and that 40% of all funding from Green Acres and SADC has been used in the Highlands. She mentioned that it was her understanding that the Council had supported a similar Ballot Question in 2007.

Wilma Frey, New Jersey Conservation Foundation

She also spoke in support of the Council Members advocating for Ballot Question #1 and made the point that municipal and local governments also utilized the funding from these funds.

Helen Heinrich, New Jersey Farm Bureau

She agreed with Ms. Somers and Ms. Frey's comments and mentioned that her organization was also part of the Keep It Green organization.

Debra Post, Chester Township

She believes that the bond issue if passed will not provide funding for the Highlands unless the dual appraisal methodology is renewed as well.

David Shope, Long Valley

He also believes that without the dual appraisal methodology the bond issue does not make sense. He did believe that the flood plan portion of the ballot question description was reasonable. He

would prefer a water tax to provide funding. He submitted an article from *NJBIZ* for the record on marketing property in the Highlands.

Monique Purcell, Department of Agriculture

She raised the issue of a two step process. The first step would be the voter action on the bond act and the second would be to craft legislation as to how to spend it and consider extending the dual appraisal methodology.

Mr. Schrier commented that the funds are to be used for open space and farmland preservation and that as citizens of the State, all should be aware that preserved land is less expensive to maintain than developed land as a cost to taxpayers. He noted that development was at a standstill in Morris County thanks to the Highlands Act, but that fact should not preclude support of the bond issue to buy land when prices are down.

Mr. Cogger made additional comments regarding the value that taxpayers received for investing in open space preservation in Chester Township – 10 to 1 return investing \$55 million and only \$6 million in debt and that the State had a history going back forty plus years of passing bond issues for preservation. He also spoke to the criticism of borrowing and suggested looking at it like a mortgage. He spoke in favor of advocating for the dual methodology. Mr. Alstede also spoke to the failure of the legislature to pass the dual appraisal methodology as an affront to the Highlands landowners. He does not believe that the bond issue should be supported without the dual appraisal methodology. Mr. Francis spoke in support of the resolution

Mr. Vetrano was absent and Mr. Alstede voted no. All other members present voted to approve this resolution. The resolution was APPROVED.

BUDGET COMMITTEE REPORT

Chairman Cogger discussed the proposed General Operating Budget with a reduction of \$85,000 in technology, temporary help and legal fees. He mentioned that there had been no across the board increase for staff since 2006 and that he could see turnover in the future. He believes that this budget represents the most the organization can give and continue to operate. He expressed concern that the budget might not be sufficient to cover the unforeseen costs that might be associated with legal fees.

II. CONSIDERATION OF RESOLUTION – APPROVAL OF FISCAL YEAR 2010 GENERAL OPERATING BUDGET – (voting matter with public comment)

Mr. Cogger introduced a motion to approve this resolution. Ms. Letts seconded it.

Mr. Schrier spoke against approving the budget as he did not want the organization to go out of business and be crippled. There were no public comments on the resolution.

Mr. Vetrano was absent. Mr. Schrier voted no. All other members present voted to approve this resolution. The resolution was APPROVED.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan began with a power point presentation that highlighted the Plan Conformance process, a Grant Program update and the Highlands TDR program.

For Plan Conformance, she reviewed the progress to date: 76 of the 88 Highlands municipalities have filed a Notice of Intent, 72 municipalities and 4 counties have applied for an Initial Assessment Grant, and 75 municipalities have filled a 2009 Plan Conformance Grant Application. She showed a slide of the Notice of Intent municipalities that have filed. Ms. Swan showed a slide describing the 7 modules for the 2009 Plan Conformance Program and began a summary of the status of Modules 1 and 2. For Module 1, 72 municipalities have received their Module 1 report. She noted that this module was the most complex for staff and professionals with verification of block and lot date and 59 municipalities have received their final Highlands Municipal Build-Out Report. The reports are sent to the appointed liaison professionals and the mayor and they have 10 business days to examine for any necessary corrections. If there are no issues, the reports are posted to the Highlands Council website completing Module 2. She said that currently there are 55 Highlands Municipal Build-Out Reports posted on the website with 2 undergoing revisions and 2 scheduled to be posted later this month and showed a slide that indicated the Build-Out status for all municipalities.

She next turned to the Module 3 (Fair Share Plan and Housing Element) and discussed the various actions by COAH including approving a Resolution on August 12 granting a waiver from its third round growth projections for conforming municipalities and authorizing calculation of a municipality's RMP Adjusted Growth Projections based on conformance with the RMP. COAH also approved a Resolution on August 12 extending submittal until June 8, 2010 for all Highlands municipalities that previously received an extension from COAH. Also, Chapter 46 an amendment to the Fair Share Housing Act signed on July 17, 2008 provides regional planning entities with new opportunities to identify and coordinate affordable housing based on regional planning consideration. She continued noting that on September 10, COAH approved the Regional Affordable Housing Development Program Guidelines to authorize municipalities to transfer up to 50 percent of their affordable housing obligation consistent with Chapter 46. The prioritization for this new program will be managed by the Highlands Council. In the sending area, they will be prioritized by need based on an inability to provide for fair share due to environmental or capacity constraints. A receiving area would have to show capacity to support the additional density. In total, 87 of the 88 Highlands municipalities, with the exception of Phillipsburg, may participate in the transfer program. For those in the Preservation Area with a deadline of December 8, 2009, she noted that there is a requirement to examine their prior round sites for consistency with RMP.

For Module 4 (Highlands Environmental Resource Inventory), a sample ERI was sent to all participating Highlands municipalities. To date, 43 municipalities have submitted their draft ERI's and there have been 38 Environmental Resource Inventories reviewed and sent back out. They will be resubmitted as part of the petition for Plan Conformance.

In Module 5, the Model Highlands Master Plan Element was provided to Highlands municipalities to give all the information necessary for consideration at a public meeting. To date, 22 municipalities have submitted their draft Highlands Master Plan Element. Next, she spoke on Module 6 for the Highlands Land Use Ordinance. Instructions have been provided on editing and the Highlands maps have been used. There have been informational sessions on all these sessions and staff has received their comments. The Land Use Ordinance is a supplement covering Planning and Preservation Areas and addresses basic Plan Conformance.

Regarding Module 7, the Municipal Petition for Plan Conformance includes detailed instructions for the preparation and review of a Petition. After December 8, 2009, those petitions will be brought for decision to the Highlands Council. The professionals have asked for a Self-Assessment template and that has been provided. The required elements are a cover letter, point of contact, a completed submittal checklist and Preservation Area resolution. She mentioned that the Highlands Act requires an ordinance for the Planning Area, so the Module 7 instructions specify that a municipality may submit a resolution to petition for both the Planning and Preservation Areas and it would be nonbinding in the Planning Area until such time as an ordinance is adopted. Planning Area municipalities can submit a resolution without an ordinance at this time. Along with the Petition, the submittals for Modules 4, 5 and 6 will also be provided in draft form.

She reviewed the Plan Conformance timeline as follows: Petitions submitted December 8, 2009 for Preservation Area lands and no date for Planning Area; within 60 days staff will issue a completeness determination and coordinate with municipal representatives for any additional information; within 45-90 days a draft consistency review and recommendations with municipal response period will occur. At the conclusion of that period, there will be a public notice and staff will bring recommendations to the Council to approve, approve with conditions or reject. She mentioned that the Counties have also been given information for Plan Conformance.

TDR Program Update

Ms. Swan reviewed the various editions and public comment periods that had resulted in the latest version of the Deeds of Easement for the TDR program. She noted that these Deeds of Easement had been sent out to Council Members and that they are in final review with the Division of Law. She then showed a slide summarizing the role of the Highlands Council and the role of the HDC Bank as it pertains to the TDR Program. She next reviewed the progress made on the HDC Estimator Tool (which provides landowners with a range of HDC credits on a property) that has required significant design work by Jeff LeJava, Nathan McLean and Roger Keren. The expected launch of the HDC Estimator Tool will be at the next HDC Bank Board Meeting on November 5th after further testing and mapping of stream buffers.

She summarized the features of the HDC Estimator Tool as providing an estimated range of HDCs to a parcel that is: located in the Preservation Area and situated in Protection and Conservation Zones or environmentally-constrained subzones; the parcel has to be residentially zoned based upon Highlands Council composite zoning and contains at least five acres in size or, if less than five acres, is at least three times the minimum lot size in effect on August 10, 2004. She noted that after accounting for pre-Highlands Act environmental constraints a parcel would have to have had at least one lost development opportunity (i.e. at least one potentially buildable lot). She mentioned that the HDC Estimator Tool does not provide an estimated HDC range if the parcel is non-residentially zoned, presently preserved, or has not lost at least one development opportunity and although a parcel might receive an allocation, it does not mean that the parcel is entitled to have its HDCs purchased by the Highlands Development Credit (HDC) Bank or on the private market.

Ms. Swan showed a movie demonstration of how the HDC Estimator Tool will work. She then described the process that starts with inputting either the address or block and lot. Information shown relates to the municipality, county, block and lot, address, acres in block and lot, the combined constrained acres, non-constrained acres, municipal zoning and range of credits applicable to the lot. The next section, she indicated, is the administrative information showing the county,

municipality, parcel, Planning and Preservation Areas and Existing Community Zones. She explained that a lot would not be eligible in the Existing Community Zone. Next, the constraint layers show the combined constraints, water bodies, slopes greater than 25%, slope 15-25%, flood prone areas. The Estimator Tool also has a "Create Report Feature" which will put the report together. The default feature will show the combined constraints on the particular sites but can be used for individual maps on the constraints.

Ms. Way left the teleconference. Mr. Schrier left the meeting.

Ms. Swan continued with a discussion of the background information tool and discussed the links from the tool to the technical reports and to the website. She noted that if someone owned non-residential property, they will have to fill out an HDC Allocation Application from the website. The tool also allows one to look at Google Earth to have a closer look at the particular block and lot. There are also links to the Allocation Application, which can be filled in and then and it must be sent to the office in hard copy. There is also background information on eligibility, allocation and a disclaimer.

She then reviewed the timeline to launch the Highlands TDR Program: finalize the deeds of easement after Attorney General review, launch the web-based HDC Estimator tool at the November 5th HDC Bank Board meeting, begin reviewing the HDC allocation applications in November 2009, open period for processing of HDC Allocation Determination applications for Highlands Council November 5, 2009 through January 5, 2009, review HDC Certificate application materials (HDC Bank) November, 2009, and consideration of HDC hardship purchases by the HDC Bank January 2010 through March 2010.

Finally, she summarized the status of TDR Feasibility Grants. She noted that to date the Highlands Council has approved 10 TDR Feasibility Grants for Bogota Borough, Chester Borough, City of Clifton, Town of Clinton, Harmony Township, Hopatcong Borough, Lopatcong Township, Oakland Borough, Tewksbury Township and Washington Borough. She mentioned that today Long Hill Township which is outside of the Highlands Region has submitted a grant application as allowed for receiving zones to be in one of the seven counties within the Highlands Region and that she, Tom Borden and Jeff LeJava had made a presentation to Long Hill Township on June 9, 2009.

III. CONSIDERATION OF RESOLUTION – APPROVAL OF A TRANSFER OF DEVELOPMENT RIGHTS RECEIVING ZONE FEASIBILITY GRANT TO LONG HILL TOWNSHIP – (voting matter with public comment)

Mr. Whitenack introduced a motion to approve this resolution. Ms. Kovach seconded it.

PUBLIC COMMENT ON THIS RESOLUTION

David Shope, Long Valley

Mr. Shope expressed his disapproval of this \$25,000 grant and mentioned the grant awarded to the Town of Clinton for the same purpose that was still not completed since March 2008. He also objects to the next resolution on agricultural grant funding.

Debra Post, Chester Township

She began making general comments on the TDR update and the Chairman asked her to be specific to this resolution. She responded that she thought it was time for general comments.

Messrs. Schrier and Vetrano and Ms. Way were absent. All other members voted to approve this resolution. The resolution was APPROVED.

Ms. Swan clarified that a \$10 million allocation to the HDC Bank will be used to support the TDR program in accordance with Executive Order 114.

IV. CONSIDERATION OF RESOLUTION – APPROVAL OF THE HUNTERDON COUNTY AGRICULTURAL MARKET DEVELOPMENT PROGRAM – (voting matter with public comment)

MS. Swan described this resolution as a modification to an existing grant and summarized the grant history for Hunterdon County. She noted that this requested amendment totals \$41,281.37 and would increase the 2009 grant award to a total of \$81,281.37 and would include work that continued through the winter of 2008 thus requiring a modification of the grant period. The grant is used by the New Jersey Council of Farmers and Communities as they are the entity that is the final recipient of the grant through Hunterdon County. Staff has reviewed the request with respect to the original scope as well as all invoices and checks and is recommending approval.

Ms. Kovach introduced a motion to approve this resolution. Mr. Cogger seconded it.

Ms. Letts asked if were possible to tract the revenue of farmers as a result of the grant. Mr. Steiner, the new Treasurer of the New Jersey Council of Farmers & Communities, spoke to the support from the Highlands Council and commented that the purpose of the funding was to increase the customer base for farmers by getting more customers to the farmers markets and that his organization does not get financial information from the farmers. He noted that there have been 3 more markets established this year.

PUBLIC COMMENT ON THIS RESOLUTION

Chairman Weingart reiterated that Mr. Shope had expressed his disapproval for this resolution in his previous comments.

Debra Post, Chester Township

Ms. Post spoke to what she described as exclusivity for the selection of which farmers participated in the Chester Farmer's Market noting that she had applied as the owner of an apple farm and had been declined.

Ms. Swan committed to having staff write up how the Highlands Council is involved in the Agricultural Grant and what rules are in place to safeguard how these markets are run.

Messrs. Schrier, Vetrano and Ms. Way were absent, Messrs. Alstede and Peterson abstained due to conflicts. All other members voted to approve the resolution. The resolution was APPROVED. Mr. Schrier rejoined the meeting.

V. CONSIDERATION OF RESOLUTION – DENIAL OF A REQUEST TO STAY 2009 PLAN CONFORMANCE GRANT PROGRAM MODULE 3:

HOUSING ELEMENT AND FAIR SHARE PLAN INSTRUCTIONS (voting matter with public comment)

Mr. Borden gave background on this matter. It is a request for a stay of a Council action in connection with litigation filed by a non-profit organization, Fair Share Housing Center (FSHC) that was involved in the original litigation challenging the RMP along with private developers. FSHC has filed a subsequent action challenging the Module 3 instructions for the 2009 Plan Conformance Grant Program for the Fair Share Housing Planning Element. While they have an appeal in the Appellate Division, they have requested a stay and in accordance with New Jersey Court rules the stay request must go to the agency first for a decision and then to the Appellate Division should the stay be denied. A similar request was made to COAH at its September 9th meeting and it was denied.

Mr. Borden continued his comments with an overview that this action involves the important aspect of the RMP that requires municipalities that conform to the RMP to comply with their constitutional obligation to provide affordable housing. The RMP requires municipalities to prepare a Housing Element and Fair Share Plan consistent with the constitutional obligation and in accordance with the resource protections in the RMP. Conforming municipalities are also required to either submit a petition for substantive certification to COAH or a petition the Superior Court. The Council incorporated those provisions into the RMP in July, 2008 and the Governor approved through the issuance of Executive Order 114 and subsequently the Highlands Council established the 2009 Plan Conformance Grant Program with 7 modules. The third module was to provide funding for the development of Fair Share Plans and Housing Elements. Those instructions were published by the Executive Director after COAH's resolution to extend the deadline to June 8, 2010 and the resolution providing guidance on the mechanism to calculate adjusted growth projections. Those two actions approved by COAH are on appeal as well and COAH denied FSHC's motion seeking that COAH stay these actions.

Mr. Borden advised the Council that FSHC is appealing the 2009 Plan Conformance Grant Program instructions for Module 3 and is requesting a stay of that action. However, Mr. Borden wanted the Council Members to hear from Kevin Walsh, staff attorney for FSHC and hear public comment before his making a recommendation to the Council Members.

PUBLIC COMMENT ON THIS RESOLUTION

Kevin Walsh, Fair Share Housing Center Attorney

He noted that his organization represented the interests of low income residents to State agencies and the courts. They had filed a September 23, 2009 request asking Executive Director Swan to consider staying her 8-20-2009 email that transmitted to the mayors of the Highlands instructions on how to prepare and follow the Module 3 process. He noted that it was his understanding that the Council did not prepare those instructions and that it was his view that the Council was the only body that could adopt what he described as rules. He asked the Council to grant the motion to stay and to allow the validity of the rules be litigated at the Appellate Division. He commented that his organization had many problems with how the Highlands Council and COAH have handled affordable housing. He focused on the narrow issue of whether there is a likelihood of success on the merits of its appeal with the Appellate Division of Ms. Swan's issuance of the Module 3 instructions. He believes that these are regulations that require a notice and comment process including publishing in the New Jersey Register. He also noted that the second reason that the stay be granted was that these instructions were issued by a staff person without proper authorization by

the Highlands Council. He made additional comments that he believed that the Highlands Council had ignored the requirements of the Administrative Procedures Act (APA) and enabling legislation. He commented that the process that had been followed by the Highlands Council was not transparent.

Eliot Ruga, New Jersey Highlands Coalition

He spoke to his New Jersey roots. He commented that he had provided comments to COAH that were considered and it is COAH's belief that they followed APA regulations and did not agree to the motion to stay. He recommends the stay not be granted.

David Shope, Long Valley

He commented that as a result of Executive Order 114, there had been exclusionary zoning to exclude some lower income people from the area by having lower COAH obligations. He noted that he had heard the Executive Director of COAH comment that units not being built in one area would not be built elsewhere. He supports the stay.

Julia Somers, New Jersey Highlands Coalition

She commented that this stay being discussed is an attempt to overturn Executive Order 114. She urged that the stay be denied.

Kevin Walsh, Fair Share Housing Center

He disagreed with Ms. Somers' comments and said that his position was there should not be any further units of affordable housing in the Highlands, however, the need does not disappear. There is no plan by Highlands Council or COAH for the reallocation. He recommended that the units be reallocated near to transit. He noted that there was an obligation of 13,000 units in the third round and prior round obligations.

Mr. Borden continued with a summary of the 8 page resolution as follows with a recommendation to deny the stay request. He noted that FSHC in seeking a stay request has to meet a four part test – likelihood of success on the merits, suffering irreparable harm, relative hardships to the party bringing the action, and whether the public interest is harmed. The primary test is the likelihood of success on the merits. He pointed out that FSHC is misunderstanding the actions of the Highlands Council as the Council adopted, as part of the Regional Master Plan, a stringent requirement that all conforming municipalities prepare a Fair Share Plan and Housing Element. This will ensure that Highlands municipalities meet the current and prior round obligations including those municipalities not participating in COAH currently. He noted that the Council started providing planning dollars in the form of grants for municipalities to take an affirmative role in addressing their constitutional obligations. The FSHC argues that the Administrative Procedures Act was violated by the Council. Mr. Borden pointed out the Highlands Act required an extensive public process in the adoption of the RMP and the Council prepared two drafts of the RMP, two comment/response documents and held nine public hearings. He believes that for all intents and purposes, the requirements of the Highlands Act exceed the protections of the Administrative Procedures Act and that FSHC has not met the test in terms of success on the merits.

The next test of irreparable harm was addressed by Mr. Borden noting that FSHC is seeking to provide affordable housing, but asking that the Highlands Council stop giving grant dollars to municipalities to analyze affordable housing. He believes that the grant dollars are essential to municipalities meeting those obligations in weighing the benefits of this action. In terms of the

public interest, Mr. Borden believes that the planning dollars should move forward to continue to address the constitutional obligation. COAH denied the stay request. He recommended that the Council deny the stay request.

Mr. Weingart asked Mr. Borden to clarify that the Council did not send the Module instructions and asked why the Council was being asked to take action. Mr. Borden commented that the Council did adopt a resolution in December of 2008 create the \$7.5 million 2009 Plan Conformance Grant Program. Part of the 2009 Plan Conformance Grant program was the delegation of authority to the Executive Director to implement mechanisms to facilitate grant funding and keep the municipalities on schedule. He noted that the Plan Conformance schedule of December 2009 sets a statutory deadline for municipalities in the preservation Area. Also that the Planning Area deadline for filing with COAH for municipalities that had received an extension was established for June 2010 by COAH. As a procedural matter on the stay request, the Court rules require that the agency that must make the stay decision according to Mr. Borden.

Ms. Carluccio introduced a motion to approve the resolution. Ms. Kovach seconded it.

Mr. Schrier asked if the Highlands Council needed to act. Mr. Borden recommended that the Council take the action. Mr. Weingart then asked for a vote.

Mr. Vetrano and Ms. Way were absent. All other members voted to approve the resolution. The resolution was APPROVED.

Chairman Weingart read a portion of a resolution that had been adopted by the Township of Mt. Olive and signed by the Council President complimenting Executive Director Eileen Swan.

Mr. Alstede asked Mr. Borden if there had been any progress with the NJDEP in defining "Property Owner". Mr. Borden indicated that he had had a telephone conference with the Attorney General's office and hoped to report resolution soon.

GENERAL PUBLIC COMMENT

Julia Somers, New Jersey Highlands Coalition

She offered her congratulations to Ms. Swan on the Mt. Olive resolution. Her organization is part of the Keep It Green organization. She invited anyone who wanted to come to one or both Press Conferences on endorsement of Ballot Question #1 on Oct. 22 at 2:30 pm Monksville Reservoir and Oct. 29 12 noon at Teetertown in Hunterdon County.

Mr. Schrier left the meeting.

David Shope, Long Valley

He spoke about studies on equity with monkeys and people. He expressed his opinion that there was no sense of fair play for Highlands landowners. He also cited a study (Whitehall) in England with findings that the lower you are on the social economic ladder the more prone you are to poor health. He maintained that the Highlands Council has created a public health problem for landowners and farmers with the bureaucratic measures that are a part of the process. He did not agree with Mr. Cogger's comments about the 10 to 1 return on investment as being a fair rate of return. He noted that the United States Department of Agriculture shows a return on equity of \$348

per acre for farmers and also that the development potential elsewhere outside the Highlands was 82% so that has not been paid for in the Highlands. He believes the Highlands is like a colony of the State.

Chairman Weingart thanked Ms. Calabrese for her service to the Highlands Council.

The meeting was adjourned at 3:03 pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 11/13/09

Name: Paula M. Dees
Paula M. Dees, Executive Assistant

TRUE COPY

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 Carluccio			✓			
Councilmember Cogger			✓			
Councilmember Francis			✓			
Councilmember Kovach		✓	✓			
Councilmember Letts			✓			
Councilmember Peterson						✓
Councilmember Schrier	✓		✓			✓
Councilmember Vetrano						
Councilmember Way			✓			
Councilmember Whitenack			✓			
Councilmember Weingart			✓			

Real Estate

'Very affordable prices,' but many limitations, for Highlands tract

NAI Hanson marketing 360 acres in protected region of North Jersey

BY EVELYN LEE

NAI JAMES E. HANSON, a Hackensack-based commercial real estate brokerage firm, announced last month that it is marketing a 360-acre tract of vacant land spanning parts of Franklin, Hamburg and Hardyston in Sussex County.

As a result of the Highlands Act, which limited new development in northwestern New Jersey when it was passed in 2004, "land in this area is now available at very affordable prices," said John Schilp, senior vice president and sales agent for the property.

The tract encompasses three separate parcels, the firm said. The first comprises 14 acres of residentially zoned vacant land in Hamburg and 17 acres of vacant land in neighboring Hardyston Township. The latter portion is zoned as a minimum impact development district — where development is constrained by environmental issues, such as steep slopes and flood plains — and includes a billboard sign on Route 23.

The second parcel, which has frontage on Route 23 in Franklin, is composed of 76 acres of farmland-assessed wooded land — a type of property with a very low real estate tax assessment — that is located in the Highlands Planning Area, where development is permitted. The front-



Aerial view of a 360-acre tract of vacant land in Franklin and Hamburg boroughs and Hardyston Township.

age is zoned highway commercial; the remainder is zoned for three-acre single-family residential development, where each residential lot must be at least three acres in size.

The third parcel, which comprises approximately 257 acres of farmland-assessed wooded and open vacant land in Hardyston, is zoned as a minimum impact development district in the Highlands Core Preservation area, where development is severely restricted. The property, however, could be used for two large residential estates, farming or hunting, Schilp said.

The 360-acre property has an aggregate value of more than \$2 million: about \$1.1 million for the 257-acre site, \$760,000 for the Franklin Borough parcel and \$150,000 for the smallest parcel, he said.

But before the Highlands Act was signed by then-Gov. James McGreevey, Imperatore Sussex Partnership L.P., the property owner, received two unsolicited offers ranging between \$8 million and \$10 million, Schilp said. The higher offer came from a developer looking to construct residential and commercial buildings on the site, while the lower offer came from a church group that wanted to establish a retreat on the property.

"Neither use could be accomplished today, because the Highlands Act prevents it" — which has led to a 60 percent to 80 percent loss in value for the property, he said. The partnership declined the offers, though Schilp said he was not familiar with their reasons for doing so.

A 2007 study by Holzhauser & Holenstein

LLC, a real estate advisory services firm in Newton, said vacant and minimally developed properties located within the Highlands region lost an average of 70 percent to 80 percent of their values as a result of the Highlands Act.

The legislation prevented some \$80 billion of real estate development from occurring within the preservation area, with about \$15 billion of that directly tied to a loss in land value, the study said.

But "there's no substantial information to really be able to draw any conclusions on values," said Eileen Swan, executive director of the New Jersey Highlands Council, which developed and oversees the Highlands Regional Master Plan. "It's too early to understand the true effects of the Highlands Act."

In the planning area of the Highlands, "the full effect of the act isn't in place until a town makes the decision to conform" to the regional master plan, she said.

The preservation areas are required to conform, and must submit a conforming petition by Dec. 8, she said. Planning areas are not required to conform, and do not have a deadline to file a petition if they decide to do so, but 74 of the 88 municipalities in the Highlands Region are working with the council toward conformance, she said. ♦

E-mail to elee@njbiz.com



Highlands Council Meeting

October 15, 2009

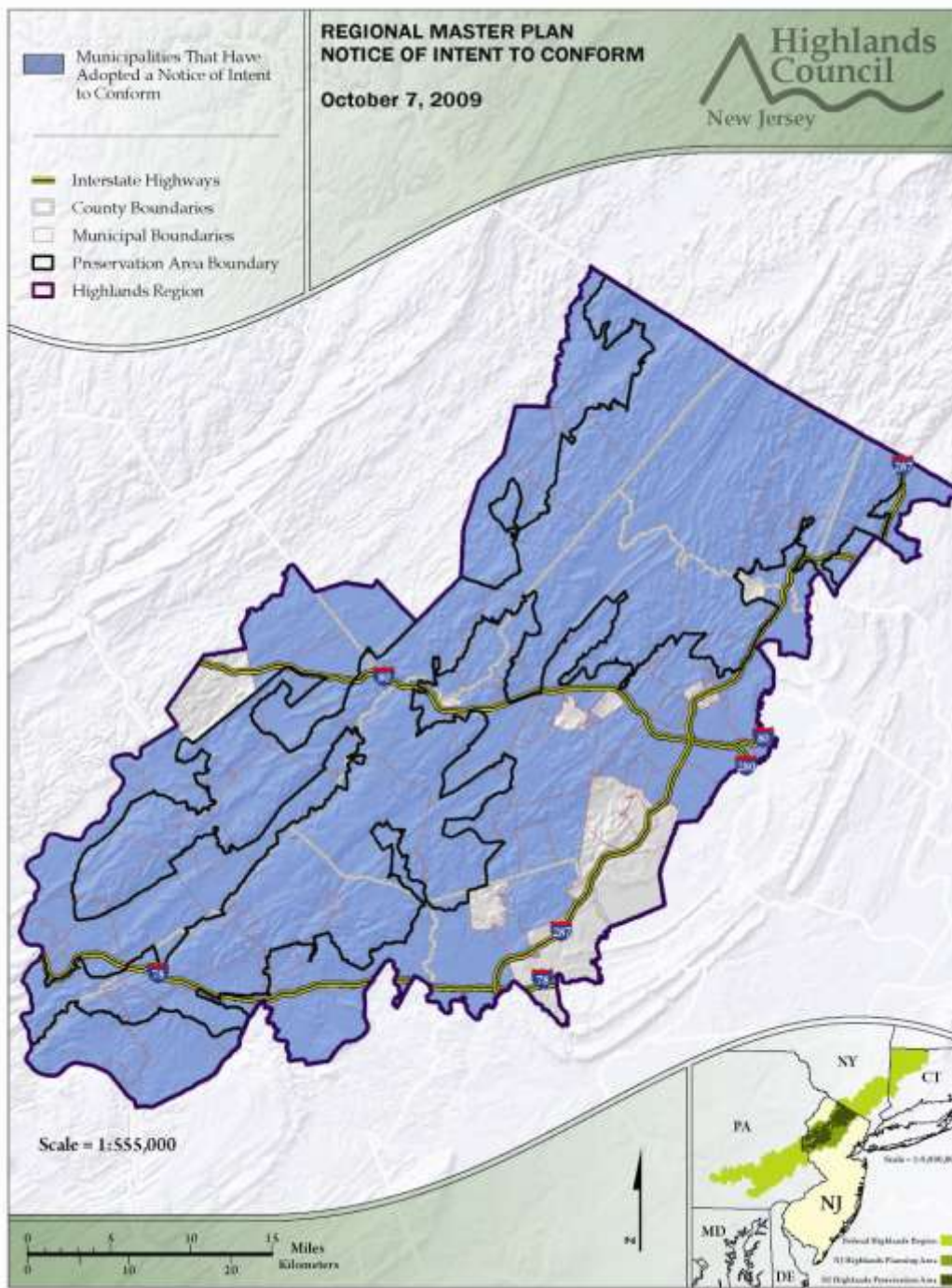


Executive Director's Report

- Plan Conformance Update
- Highlands TDR Program

Municipal Plan Conformance

- ❑ 76 of the 88 Highlands municipalities have filed a Notice of Intent
- ❑ 72 municipalities and 4 counties have applied for an Initial Assessment Grant
- ❑ 75 municipalities have filed a 2009 Plan Conformance Grant Application



Plan Conformance Modules

Modules:

1. Current Municipal Conditions & Build-Out Analysis
2. Land Use and Resource Capacity Analysis
3. Housing Element & Fair Share Plan
4. Environmental Resource Inventory
5. Highlands Master Plan Element
6. Highlands Land Use Ordinance
7. Municipal Petition with Self-Assessment and
Highlands Implementation Plan & Schedule

Modules 1 and 2

Highlands Municipal Build-Out

- ❑ 72 Highlands municipalities have received their Module 1 Reports
- ❑ 59 municipalities have received a final Highlands Municipal Build-Out Report
- ❑ 55 Highlands Municipal Build-Out Reports are available on the Highlands Council website
 - ❑ Two Highlands Municipal Build-Out Reports are undergoing revisions
 - ❑ Two Highlands Municipal Build-Out Reports are scheduled to be posted to the Highlands Council website later this month

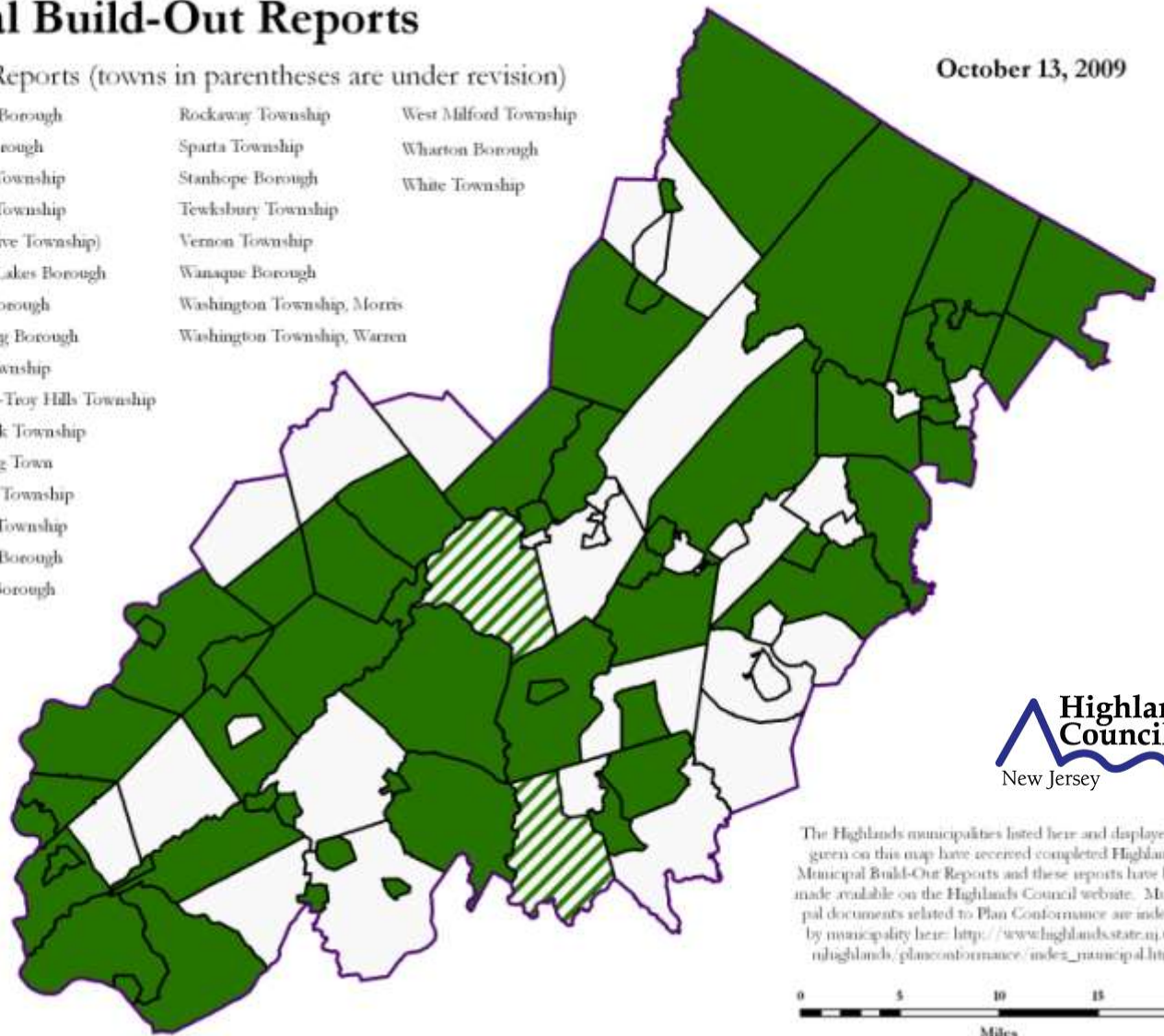
Highlands Municipal Build-Out Reports

 Posted Municipal Build-Out Reports (towns in parentheses are under revision)

October 13, 2009



- | | | | |
|-----------------------|--------------------------------|-----------------------------|-----------------------|
| Alexandria Township | Mendham Borough | Rockaway Township | West Milford Township |
| Allamuchy Township | Milford Borough | Sparta Township | Wharton Borough |
| Alpha Borough | Mine Hill Township | Stanhope Borough | White Township |
| (Bedminster Township) | Montville Township | Tewksbury Township | |
| Belvidere Town | (Mount Olive Township) | Vernon Township | |
| Bernardsville Borough | Mountain Lakes Borough | Wanaque Borough | |
| Bethlehem Township | Oakland Borough | Washington Township, Morris | |
| Bloomington Borough | Ogdensburg Borough | Washington Township, Warren | |
| Bloomsbury Borough | Oxford Township | | |
| Byram Township | Parsippany-Troy Hills Township | | |
| Califon Borough | Pequannock Township | | |
| Chester Borough | Phillipsburg Town | | |
| Chester Township | Pohatcong Township | | |
| Clinton Town | Randolph Township | | |
| Far Hills Borough | Ringwood Borough | | |
| Glen Gardner Borough | Rivendale Borough | | |
| Hackettstown Town | | | |
| Hamburg Borough | | | |
| Hampton Borough | | | |
| Harmony Township | | | |
| High Bridge Borough | | | |
| Holland Township | | | |
| Hopatcong Borough | | | |
| Independence Township | | | |
| Kinnelon Borough | | | |
| Lebanon Borough | | | |
| Liberty Township | | | |
| Lopatcong Township | | | |
| Mahwah Township | | | |



**Highlands
Council**
New Jersey

The Highlands municipalities listed here and displayed in green on this map have received completed Highlands Municipal Build-Out Reports and these reports have been made available on the Highlands Council website. Municipal documents related to Plan Conformance are indexed by municipality here: http://www.highlands.state.nj.us/nhighlands/planconformance/index_municipal.html

0 5 10 15 20
Miles

Module 3

Fair Share Plan and Housing Element

- ❑ COAH approved a Resolution on August 12 granting a waiver from COAH's third round growth projections for conforming municipalities, authorizing calculation of a municipality's RMP Adjusted Growth Projections based on conformance with the RMP.
- ❑ In addition, COAH also approved on August 12 a Resolution extending submittal until June 8, 2010 for all Highlands municipalities that previously received an extension from COAH.

Module 3

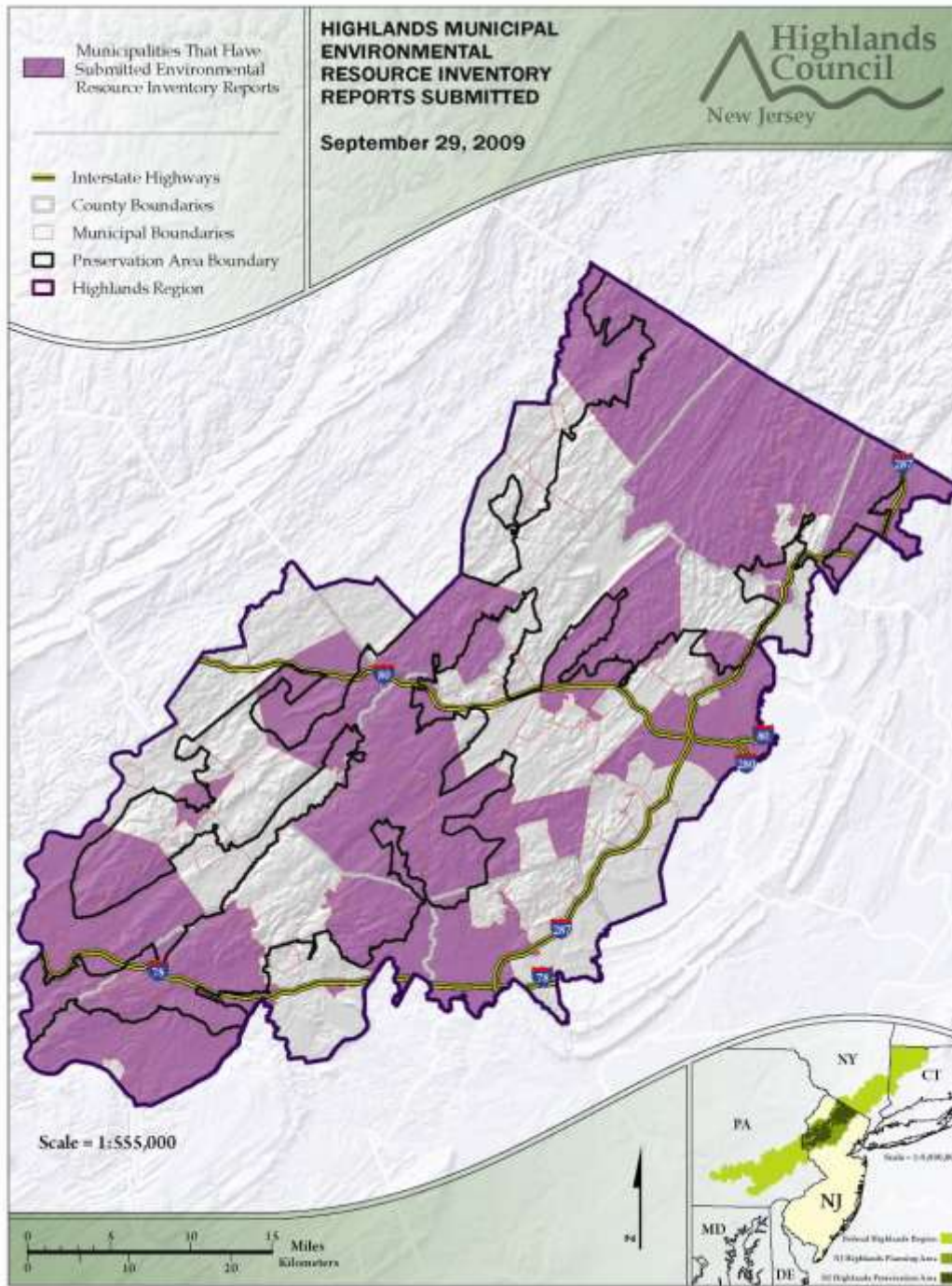
Fair Share Plan and Housing Element

- ❑ The Fair Housing Act amendments (July 17, 2008) provide regional planning entities with new opportunities to identify and coordinate affordable housing based on regional planning considerations (N.J.S.A. 52:27D-329.9)
- ❑ On September 10, COAH approved the Regional Affordable Housing Development Program Guidelines to authorize municipalities to transfer up to 50 percent of their affordable housing obligations.

Module 4

Highlands Environmental Resource Inventory

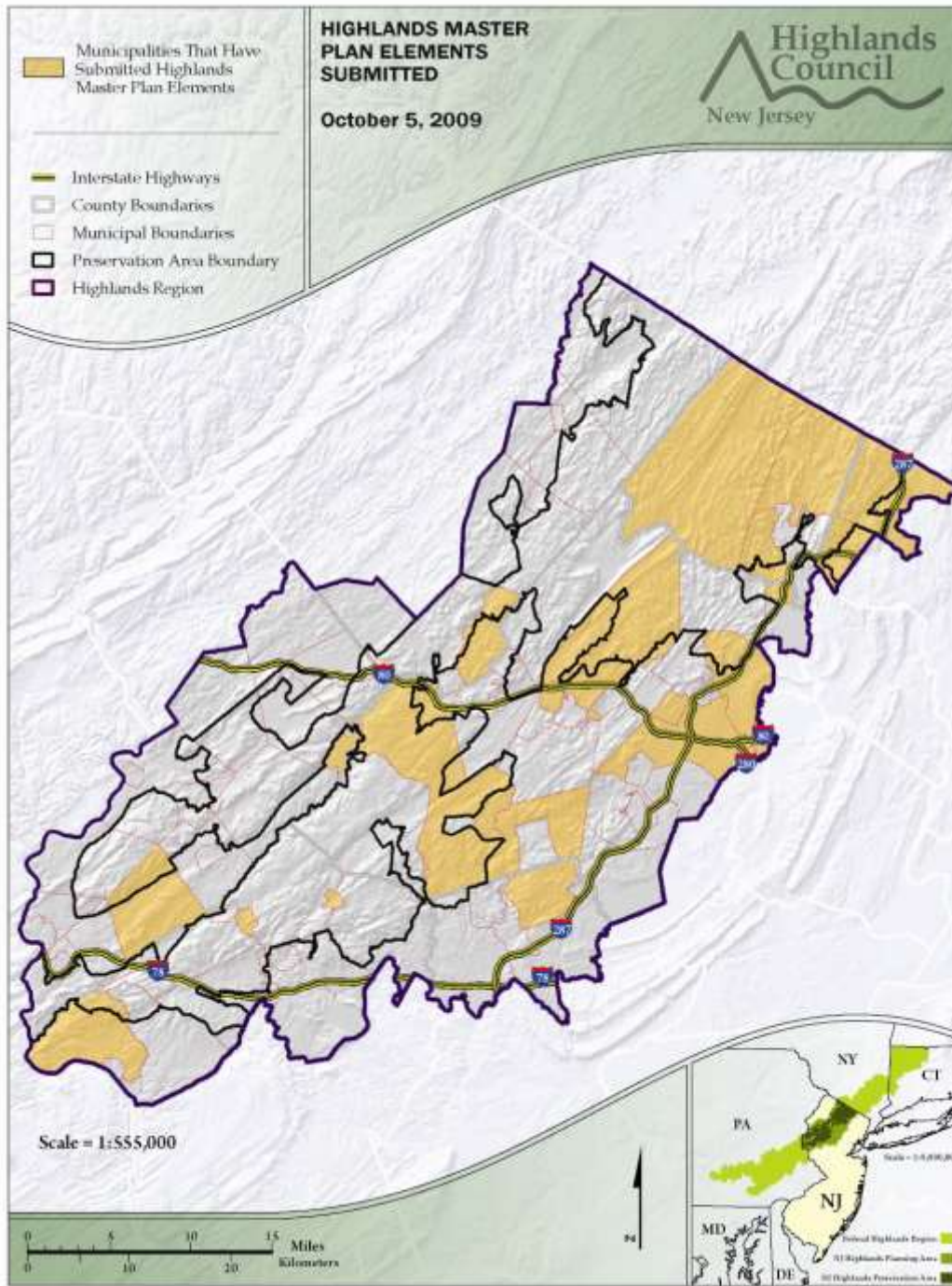
- Municipalities were given a sample Highlands ERI to supplement and update with local information
- 43 municipalities submitted a draft Highlands ERI



Module 5

Model Master Plan Highlands Element

- ❑ A Model Master Plan Highlands Element was provided addressing all requirements of Basic Plan Conformance
- ❑ The Model should be tailored to municipal circumstances and submitted in Draft
- ❑ 21 municipalities have submitted a Master Plan Highlands Element



Module 6 – Model Highlands Land Use Ordinance

- ❑ Model ordinance provided, which incorporates all relevant RMP requirements for that topic.
- ❑ Includes all provisions necessary to implement ordinance, e.g., definitions, admin. procedures.
- ❑ Instructions provided on editing and submittal requirements. Maps from Highlands Element.
- ❑ Municipalities will edit and submit draft with their Petition – no preliminary draft.
- ❑ Model ordinance was revised based on comments from municipal professionals.

Module 6 – Model Highlands Land Use Ordinance

- ❑ SUPPLEMENT to Existing Land Use Ord's
 - ❑ NOT a replacement; NOT an overwrite
 - ❑ RELIES on underlying municipal ordinances
 - ❑ ADOPTION as a supplement recommended
- ❑ Covers Planning & Preservation Areas, as Written
- ❑ Addresses Basic Plan Conformance

Module 7

Municipal Petition for Plan Conformance

- ❑ Module 7 Instructions provide detailed instructions for the development of a Petition for Plan Conformance
- ❑ Outline the general process for Highlands Council review and approval of Petitions
- ❑ Provide templates for the Municipal Self-Assessment Report and Implementation Plan & Schedule

Module 7

Municipal Petition for Plan Conformance

- ❑ Required Contents of Municipal Petition
 - ❑ Cover Letter – Identifies portion of municipality petition for PC is applicable, Point of Contact
 - ❑ Completed Submittal Checklist – sample provided as Appendix A
 - ❑ Preservation Area Resolution
 - ❑ Planning Area Ordinance or Resolution
 - ❑ Module 3, 4, 5 and 6 DRAFT documents

Module 7

Review Process for Municipal Petitions

- ❑ December 8, 2009 – Petitions submitted
- ❑ Within 60 days – Completeness determination and coordination with municipal representatives
- ❑ Within 45-90 days – Draft Consistency Review and Recommendations Report issued by Highlands Council Executive Director
- ❑ Municipal Response Period – Allows the municipality to amend Petition to address issues in the Report
- ❑ Public Notice, Final Report, and Council consideration

TDR Program Update

Highlands TDR Program

Role of Highlands Council

- ❑ Establish TDR program, including working with municipalities to establish TDR Receiving Zones; approve model deeds of easement;
- ❑ Establish initial Highlands Development (HDC) Credit value (currently \$16,000 per HDC);
- ❑ Determine HDC allocation for Sending Zone parcels;
- ❑ Assess program at specified intervals for improvements;
- ❑ Work to pass new TDR legislation providing greater opportunities for use of HDCs (i.e. create more demand).

Role of HDC Bank

- ❑ Issue HDC certificates after property owner records appropriate deeds of easement;
- ❑ Serve as administrator of TDR program by tracking all HDC transactions;
- ❑ Serve as an information clearinghouse regarding the TDR program and link potential HDC buyers and sellers; and
- ❑ Serve as buyer and seller of HDCs.

Highlands TDR Program

- ❑ HDC Bank adopted its Operating Procedures on 9-3-2009.
 - ❑ Operating Procedures authorize the acquisition of HDCs from property owners to alleviate a demonstrated extenuating financial circumstance if:
 - ❑ Adequate funds are available for the purchase;
 - ❑ The expenditure of funds does not substantially impair the Board's ability to carry out its duties for HDC guarantees which may have already been extended;
 - ❑ The owner's equity in the land to which the HDCs are allocated is substantial in relation to the owner's net worth; and
 - ❑ The owner demonstrates an extraordinary financial hardship, including but not limited to imminent bankruptcy, extraordinary medical expenses, or loss of job.
- ❑ HDC Bank adopted resolution authorizing Initial HDC Purchase Program
 - ❑ Resolution sets priorities for HDC acquisition
 - ❑ To begin in January 2010 or upon the New Jersey State Treasury appropriating the funds necessary to effectuate this program, whichever is later.

Highlands TDR Program

- ❑ HDC Bank Resolution adopted on 9-3-2009 sets priorities for HDC acquisition:
 - ❑ First priority consideration to any property that satisfies both of the following criteria:
 - ❑ comprises a major Highlands development that would have qualified for an Exemption #3 but for the lack of a necessary State permit; and
 - ❑ which satisfies the extenuating financial circumstance criteria;
 - ❑ Second priority consideration to any parcel of land whose owner only satisfies the extenuating financial circumstance criteria; and
 - ❑ Third priority consideration to any parcel of land that only satisfies the missing an exemption criteria above.
- ❑ For each priority level, consideration is given for the protection of land with significant ecological or agricultural importance consistent with the RMP.

Highlands TDR Program

TDR Program Deeds of Easement are in final form review by the Division of Law:

- ❑ Ag with Exemption Retained: Properties currently involved in agricultural production where the owner is retaining an applicable single family dwelling exemption under the Highlands Act;
- ❑ Ag with Bonus: Properties currently involved in agricultural production where the owner is foregoing an applicable single family dwelling exemption under the Highlands Act;
- ❑ Non-Ag with Exemption Retained: Properties not currently involved in agricultural production where the owner is retaining an applicable single family dwelling exemption under the Highlands Act; and
- ❑ Non-Ag with Bonus: Properties not currently involved in agricultural production where the owner is foregoing an applicable single family dwelling exemption under the Highlands Act.

Highlands TDR Program

❑ HDC Estimator Tool

- ❑ Provides estimated range of HDCs to a parcel that is:
 - ❑ Located in the Preservation Area and situated in Protection and Conservation Zones or environmentally-constrained subzones;
 - ❑ Residentially zoned based upon Highlands Council composite zoning;
 - ❑ At least five acres in size or, if less than five acres, are at least three times the minimum lot size in effect on 8-10-2004; and
 - ❑ After accounting for pre-Highlands Act environmental constraints, had at least one lost development opportunity (i.e. at least one potentially buildable lot).
- ❑ Does not provide an estimated HDC range if non-residentially zoned, presently preserved, or parcel has not lost at least one development opportunity.
- ❑ Although a parcel may receive an allocation, this does not mean that that parcel is entitled to have its HDCs purchased by the Highlands Development Credit (HDC) Bank or on the private market.

Highlands TDR Program Timeline

- ❑ Finalize deeds of easement and HDC allocation application materials (Highlands Council) – October -November 2009
- ❑ Launch web-based HDC Estimator Tool (Highlands Council) – November 2009
- ❑ Begin reviewing HDC allocation applications (Highlands Council) – November 2009
- ❑ Open period for processing of HDC Allocation Determination applications (Highlands Council) – November 5, 2009 through January 5, 2010
- ❑ Review HDC Certificate application materials (HDC Bank) – November 2009
- ❑ Consideration of HDC hardship purchases (HDC Bank) – January 2010 through March 2010.

Status of TDR Feasibility Grants

- ❑ Highlands Council has approved **10 TDR Feasibility Grants** – Bogota Borough, Chester Borough, City of Clifton, Town of Clinton, Harmony Township, Hopatcong Borough, Lopatcong Township, Oakland Borough, Tewksbury Township and Washington Borough.
- ❑ **Long Hill Township**, Morris County (outside of Highlands Region) submitted a grant application that is being considered today by the Highlands Council.
- ❑ Highlands Council staff gave a presentation to Long Hill Township on June 9, 2009.



Highlands Council Meeting

October 15, 2009



RESOLUTION 2009- 51
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
SUPPORT FOR VOTER REFERENDUM BALLOT QUESTION #1

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 Legislature has adopted the Highlands Act in recognition that the Highlands Region serves as an essential source of drinking water for over 65% of the State of New Jersey's population and that the area includes exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, habitat for fauna and flora, many sites of historic significance and provides abundant recreational opportunities for the citizens of the New Jersey, all of which are an invaluable and irreplaceable asset of the current citizens of New Jersey; and

WHEREAS, the Highlands Act acknowledges that the protection of these water resources, because of their vital link to the future of the State's drinking water supplies is an issue of statewide importance; and that the State has given an abiding and generous commitment to protecting the incomparable water resources and natural beauty of the New Jersey Highlands so as to preserve them intact, in trust, forever for the pleasure, enjoyment and use of future generations; and

WHEREAS, as the steward of that trust, it is incumbent upon the State to commit itself to the management and preservation in perpetuity of those resources indispensable to the health and welfare of its citizens; and

WHEREAS, the Highlands Act empowers the Highlands Council to identify and designate areas in the Highlands Region within which development shall not occur in order to protect water resources and environmentally sensitive lands while recognizing the need for a strong and significant commitment by the State to fund the acquisition of exceptional natural resources; and

WHEREAS, the Highlands Act authorizes the Highlands Council to identify lands in which the public acquisition therein is necessary or desirable in order to ensure preservation thereof; as well as any lands the beneficial use of which are so adversely affected by the restrictions of the Highlands Act as to require a guarantee of just compensation thereof; and

WHEREAS, the Garden State Preservation Trust Fund that funds the Green Acres Program and State Agriculture Development Committee Farmland Preservation Program, and other programs is no longer be able to issue any new bond, note or other obligation after June 30, 2009 unless the Trust Fund is reauthorized; and

WHEREAS, the Highlands Council acknowledges and applauds the numerous federal, State, county, local and other funding mechanisms in place to preserve water resource and environmentally sensitive lands through the Garden State Preservation Trust ("GSPT") Fund, including the Green Acres Program and State Agriculture Development Committee Farmland Preservation Program, the New Jersey Historic Trust, and the Blue Acres Program; and

WHEREAS, the "Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009", signed by Governor Corzine August 18, 2009, authorized the voter referendum on Question #1 seeking approval to issue \$400 million in New Jersey General Obligation bonds "for (1) the acquisition and development of lands for recreation and conservation purposes, including lands that protect water supplies, (2) the preservation of farmland for agricultural or horticultural use and production, (3) the acquisition, for recreation and conservation purposes, of properties that are prone to or have incurred flood or storm damage, and (4) funding historic preservation projects; and providing the ways and means to pay the interest on the debt and also to pay and discharge the principal thereof, with full public disclosure of all spending"; and

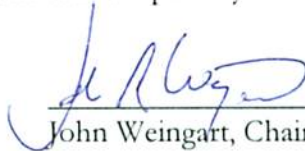
RESOLUTION 2009- 51
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
SUPPORT FOR VOTER REFERENDUM BALLOT QUESTION #1

WHEREAS, Question #1 will be on the November 3, 2009 Election Day Ballot for consideration by the citizenry of New Jersey.

NOW, THEREFORE, BE IT RESOLVED that the Highlands Council supports the approval and passage of the voter referendum on Question #1 in order to acquire and protect the resources of the New Jersey Highlands including acquisition, preservation and stewardship of the lands or other interests in lands necessary for the preservation and protection of these Highlands resources.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 15th day of October, 2009.



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 Francis	_____	_____	✓	_____	_____	_____
Councilmember Kovach	✓	_____	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	✓	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	_____	_____	_____	✓
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

DRAFT

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
HIGHLANDS GENERAL OPERATING BUDGET FY2010

Revenues:

State of New Jersey Appropriation	\$	2,315,000.00
Balance from prior fiscal year	\$	480,914.85
Miscellaneous Revenues & Reimbursements	\$	8,500.00
Total Revenues	\$	2,804,414.85

Expenditures:

Salaries	\$	1,890,021.09
Materials and Supplies	\$	34,917.00
Other Operating Expenses	\$	169,000.00
Maintenance and Repairs	\$	259,600.00
Equipment, Additions, and Improvements	\$	92,293.49
Transfer to RMP Account	\$	358,583.27
Total Expenditures:	\$	2,804,414.85

RESOLUTION 2009-52

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF FISCAL YEAR 2010 GENERAL OPERATING BUDGET

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 6.g of the Highlands Act authorizes the Highlands Council to conduct its business as needed to effectuate the purposes of the enabling legislation; and

WHEREAS, to satisfy its duties, responsibilities and obligations under the Highlands Act, the Council desires to prepare a general operating budget for Fiscal Year 2010; and

WHEREAS, the Budget and Finance Committee has reviewed a proposed general operating budget for Fiscal Year 2010; and

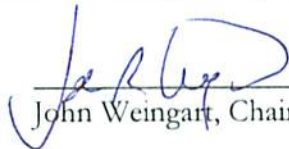
WHEREAS, the Budget and Finance Committee recommends the approval of the proposed general operating budget for Fiscal Year 2010.

NOW, THEREFORE, BE IT RESOLVED that the Highlands Council approves the attached Fiscal Year 2010 General Operating Budget; and

BE IT FURTHER RESOLVED that the Budget and Finance Committee shall review the budget periodically and make recommended adjustments to the Council, as appropriate.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 15th of October, 2009.



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 Francis	_____	_____	✓	_____	_____	_____
Councilmember Kovach	_____	_____	✓	_____	_____	_____
Councilmember Letts	_____	✓	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	_____	✓	_____	_____
Councilmember Vetrano	_____	_____	_____	_____	_____	✓
Councilmember Way	_____	_____	✓	_____	_____	_____
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
HIGHLANDS GENERAL OPERATING BUDGET FY2010

Revenues:

State of New Jersey Appropriation	\$	2,315,000.00
Balance from prior fiscal year	\$	480,914.85
Miscellaneous Revenues & Reimbursements	\$	8,500.00
Total Revenues	\$	2,804,414.85

Expenditures:

Salaries	\$	1,890,021.09
Materials and Supplies	\$	34,917.00
Other Operating Expenses	\$	169,000.00
Maintenance and Repairs	\$	259,600.00
Equipment, Additions, and Improvements	\$	92,293.49
Transfer to RMP Account	\$	358,583.27
Total Expenditures:	\$	2,804,414.85

Adopted by the Highlands Council, Resolution 2009-52, October 15, 2009

RESOLUTION 2009- 53

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF A TRANSFER OF DEVELOPMENT RIGHTS RECEIVING ZONE FEASIBILITY GRANT TO LONG HILL TOWNSHIP

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 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 Long Hill Township 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 Long Hill Township for a TDR Receiving Zone Feasibility Grant in the amount of \$25,000, provided that the Executive Director may authorize additional amounts under this contract pursuant to her authority under the Highlands Council Bylaws.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 15th day of October, 2009.



John Weingart, Chairman

RESOLUTION 2009- 53

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF A TRANSFER OF DEVELOPMENT RIGHTS RECEIVING ZONE FEASIBILITY GRANT TO LONG HILL TOWNSHIP

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 Francis			✓			
Councilmember Kovach		✓	✓			
Councilmember Letts			✓			
Councilmember Peterson			✓			
Councilmember Schrier						✓
Councilmember Vetrano						✓
Councilmember Way						✓
Councilmember Whitenack	✓		✓			
Councilmember Weingart			✓			

RESOLUTION 2009-54
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
APPROVAL OF THE HUNTERDON COUNTY AGRICULTURAL MARKET
DEVELOPMENT PROGRAM

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 2 of the Highlands Act specifies that the maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible; and

WHEREAS, Section 10 of the Highlands Act sets goals for the Regional Master Plan to preserve farmlands, promote compatible agriculture uses, and promote the continuation and expansion of uses and opportunities within the framework of protecting the Highlands environment; and

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

WHEREAS, by Resolution 2006-19, the Highlands Council established a process for the approval of grants for the support of sustainable agriculture and determined the availability of an amount not to exceed \$450,000 in grant funds to support a sustainable agriculture grants program; and

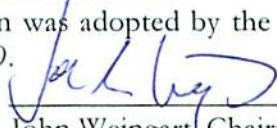
WHEREAS, the Highlands Council approved a grant application from Hunterdon County for a \$50,000 grant for an Agricultural Market Development Program in Resolution 2007-7 on February 15, 2007 which provided grant funding through May 30, 2008, and the Council thereafter approved a grant application from Hunterdon County for a \$40,000 grant for an Agricultural Market Development Program in Resolution 2009-30 on March 19, 2009; and

WHEREAS, the Highlands Council staff has reviewed a grant application from Hunterdon County for an Agricultural Market Development Program for the grant period after May 30, 2008 through April 16, 2009 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 modify Hunterdon County's 2009 Grant for an Agricultural Market Development Program as memorialized in Resolution 2009-30 on March 19, 2009 in an amount not to exceed \$42,000 to cover approved grant activities from April 2008 through the 2009 grant period provided that the Executive Director may authorize additional amounts under this agreement pursuant to her authority under the Highlands Council Bylaws.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 15th day of October, 2009.



John Weingart, Chairman

RESOLUTION 2009-54

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF THE HUNTERDON COUNTY AGRICULTURAL MARKET DEVELOPMENT PROGRAM

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 Francis			✓			
Councilmember Kovach	✓		✓			
Councilmember Letts			✓			
Councilmember Peterson					✓	
Councilmember Schrier						✓
Councilmember Vetrano						✓
Councilmember Way						✓
Councilmember Whitenack			✓			
Councilmember Weingart			✓			

RESOLUTION 2009- 55

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL DENIAL OF A REQUEST TO STAY 2009 PLAN CONFORMANCE GRANT PROGRAM MODULE 3: HOUSING ELEMENT AND FAIR SHARE PLAN INSTRUCTIONS

WHEREAS, the Legislature, in 2004, enacted the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Act) finding 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 exception 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 an abundance of recreational opportunities for the citizens of the State; and

WHEREAS, the Legislature declared that in light of these findings, it is in the public interest of all the citizens of the State to create a comprehensive approach to the protection of the water and other natural resources of the Highlands Region, which approach shall consist of a strict regulatory program to restrict major development in the Preservation Area and creation of the Highlands Water Protection and Planning Council (Highlands Council) charged with development and implementation of a Highlands Regional Master Plan to plan future development throughout the Highlands Region; and

WHEREAS, the Legislature recognized the need to ensure the protection of the resources in the Highlands Region are considered in reviewing the municipal obligation to provide though its land use regulation, sound land use, and long range planning, a realistic opportunity for its fair share of affordable housing; and

WHEREAS, the Highlands Act expressly provides that COAH "shall take into consideration the regional master plan prior to making any determination regarding the allocation of 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," N.J.S.A. 13:20-23; and

WHEREAS, on July 17, 2008, the Highlands Council adopted the Highlands Regional Master Plan (RMP) pursuant to the Highlands Act, with the RMP becoming effective on September 8, 2008; and,

WHEREAS, the RMP specifically requires that conforming municipalities implement both the resource protection requirements of the RMP along with the New Jersey Supreme Court's Mount Laurel doctrine that every municipality in a "growth area" has a constitutional obligation to provide through its land use regulations, sound land use, and long range planning, a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families (RMP, Policy 6O7, p.200); and

WHEREAS, the RMP also requires "that conforming municipalities update and adopt a housing element, fair share plan, and implementing ordinance(s) to reflect current conditions and resource protection requirements of the RMP" (RMP, Policy 6O8, p.200); and

WHEREAS, the Housing Element and Fair Share Plan must be developed in compliance with all applicable RMP requirements, with the Land Use Capability Zone Map, water availability, wastewater utility capacity, water supply utility capacity, and resource protection provisions being of particular relevance; and

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WHEREAS, the Highlands municipalities in the Preservation Area of the Highlands Region shall file a Petition for Plan Conformance within 15 months of the adoption of the RMP, or by December 8, 2009, that shall consist of the revisions to master plans and development regulations, as applicable to the development and use of land, as may be necessary to conform them with the goals, requirements and provisions of the RMP; and

WHEREAS, the RMP requires that conforming municipalities shall, consistent with the Fair Housing Act, either petition COAH for a substantive certification of its housing element and ordinances or institute an action for declaratory judgment granting it repose in the Superior Court (RMP, Ch 5, p.338); 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 and historic preservation factors; 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 to provide for a realistic opportunity for a region's fair share obligation; and

WHEREAS, on December 18, 2008, the Highlands Council approved Resolution 2008-73 to provide grant funding for the Highlands municipalities to cover the reasonable expenses associated with revisions to master plans, development regulations or other regulations to conform them with the RMP for lands within the Preservation Area where conformance is mandatory, as well as for lands in the Planning Area where conformance is voluntary; and

WHEREAS, under Resolution 2008-73, the Highlands Council authorized the Executive Director to develop and implement a process for the solicitation and distribution of the 2009 Plan Conformance Grants in an amount not to exceed \$7.5 million with grant to municipalities authorized up to \$100,000 for each municipality; and

WHEREAS, the Executive Director developed the 2009 Plan Conformance Grant Program to assist municipalities in developing each of the components required for a Petition for Basic Plan Conformance, with the program being made up of seven Plan Conformance Modules, each of which sets forth a specific scope of work, applicable requirements and completion timeframes, and the grant allocation that will be made available upon completion of the work; and

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WHEREAS, municipalities in the Highlands Region intending to submit a Petition for Plan Conformance with the RMP must prepare a Housing Element and Fair Share Plan in accordance with the requirements of the RMP, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and, where applicable, the Council on Affordable Housing's (COAH) Third Round Regulations, N.J.A.C. 5:96 and N.J.A.C. 5:97; and

WHEREAS, on August 12, 2009, COAH adopted two resolutions providing further guidance to the Highlands municipalities under COAH's jurisdiction, with the first resolution granting an additional six-month extension for the submission of a petition for substantive certification to June 8, 2010, and the second resolution granting a waiver for the Highlands municipalities to provide revised growth projections based on the resource protection requirements of the RMP in accordance with the methodology developed by COAH in coordination with the Highlands Council; and

WHEREAS, on August 22, 2009, the Highlands Council issued to each of the 88 Highlands municipalities, whether or not under the jurisdiction of COAH or the Superior Court, the Module 3: Housing Element and Fair Share Plan Instructions of the 2009 Plan Conformance Grant Program to provide assistance in the development of the required Housing Element and Fair Share Plan documents as part of Basic Plan Conformance; and

WHEREAS, the Module 3: Housing Element and Fair Share Plan Instructions incorporated, in appendices, the guidance and resolutions adopted by COAH on August 12, 2009 to adjust the Highlands municipalities' fair share obligations based on the resource protection constraints of the RMP; and

WHEREAS, the Module 3: Housing Element and Fair Share Plan Instructions instructs the municipalities to submit the following items by the date indicated in order to be eligible for the applicable grant funding and to ensure consistency with the RMP prior to local approval of the final Housing Element and Fair Share Plan by the municipality:

1. Summary of Housing Obligations including Prior Round Obligations and the Highlands RMP Adjusted Growth Projections based on the methodology set forth in COAH's August 12, 2009 Resolution by December 8, 2009;
2. Summary of consistency review with the RMP for each of the proposed Prior Round Sites by December 8, 2009;
3. Discussion of interest in participating as a sending or receiving area through a Housing Partnership Agreement under COAH's Regional Affordable Housing Development Planning Program (RAHDPP) adopted pursuant to the recent reforms of the Fair Housing Act, N.J.S.A. 52:27D-329.9 by December 8, 2009;
4. Summary of Fair Share Plan by March 1, 2010;
5. Draft Housing Element by March 1, 2010;
6. Highlands RMP Adjusted Growth Projection calculated pursuant to the methodology set forth in the August 12, 2009 COAH Resolution by March 1, 2010;
7. Narrative of sites and/or mechanisms to meet prior round and projected growth share obligations including method for providing the units, the block and lot, supporting utilities, approvals and/or settlement agreements, and ownership status by March 1, 2010;

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8. Highlands site consistency review report for each project proposed for affordable housing by block and lot by March 1, 2010;
9. Narrative discussing the proposed sending or receiving of any affordable housing obligations under COAH's RAHDPP by March 1, 2010; and
10. Copy of the municipally-approved and adopted Housing Element and Fair Share Plan for the entire municipality as part of the Petition for Substantive Certification due to COAH by June 8, 2010 in accordance with the August 12, 2009 COAH Resolution.

WHEREAS, to date, 75 of the 88 Highlands municipalities are actively participating in the 2009 Plan Conformance Grant Program; and

WHEREAS, on August 26, 2009, Fair Share Housing Center (FSHC) filed a Notice of Appeal that challenges the Highlands Council's "adoption" of the Module 3: Housing Element and Fair Share Plan Instructions; and

WHEREAS, FSHC's Notice of Appeal raises the following issues on appeal:

1. The August 20, 2009 rules issued by the Executive Director of the Highlands Council were not approved by the Highlands Council and thus contravene the Highlands Act.
2. The August 20, 2009 rules issued by the Executive Director of the Highlands Council are contrary to the New Jersey Fair Housing Act of 1985.
3. The August 20, 2009 rules issued by the Executive Director of the Highlands Council are contrary to the Highlands Act.
4. The August 20, 2009 rules issued by the Executive Director of the Highlands Council violate the Administrative Procedures Act; and

WHEREAS, on September 23, 2009, FSHC filed a Motion to Stay the Module 3: Housing Element and Fair Share Plan Instructions pursuant to New Jersey Court Rule 2:9-7 contending the instructions are rules as a matter of law and were not adopted in conformance with the rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -25 (APA); and

WHEREAS, that a motion to stay an administrative action pending appellate review is "an extraordinary equitable remedy utilized primarily to forbid and prevent irreparable injury, and it must be administered with sound discretion and always upon consideration of justice, equity and morality in a given case," Zoning Bd. of Adj. of Sparta v. Service Elec. Cable Television, 198 N.J. Super. 370, 381 (App. Div. 1985); and

WHEREAS, in order to grant a stay of the Module 3: Housing Element and Fair Share Plan Instructions, FSHC must demonstrate that: 1) there is a reasonable likelihood of eventual success on the merits; 2) the party will suffer irreparable harm if the stay is not granted; 3) the relative hardships to the parties weigh in favor of granting the relief; and 4) the public interest will not be harmed. See Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); Sparta, supra, 198 N.J. Super at 379.

NOW, THEREFORE, BE IT RESOLVED, that the Highlands Council finds FSHC has failed to demonstrate each of the four criteria set forth in Crowe v. DeGioia necessary to grant a stay of the administrative action, and is therefore not entitled to this extraordinary equitable relief; and

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BE IT FURTHER RESOLVED, the Highlands Council specifically finds that FSHC has failed to prove a reasonable likelihood of eventual success on the merits for the following reasons:

1. The Module 3 Instructions is not a rule as defined under the APA, but rather is part of a seven-step grant process under the 2009 Plan Conformance Grant Program. The 2009 Plan Conformance Grant Program and the Module 3 Instructions are specifically designed to lay out the scope of work, the timeframes to complete each of the necessary tasks, and the grant allocation upon completion of the work.
2. Development of the 2009 Plan Conformance Grant Program and the Module 3 Instructions are a proper exercise of the Highland Council's authorized duties, under N.J.S.A. 13:20-18b, to provide grants and other financial assistance, utilizing the Highlands protection Fund, and to pay for the reasonable expenses of the revision of municipal master plans, development regulations, or other regulations to be in conformance with the RMP.
3. The Executive Director created the 2009 Plan Conformance Grant Program at the direction of the Highlands Council under Resolution 2008-73 to, among other things, assist the Highlands municipalities in the development of Housing Elements and Fair Share Plans that conform to the requirements of the RMP and ensure appropriate use of public funds made available by the Highlands Council pursuant to the Highlands Act.
4. Adoption of a Housing Element and Fair Share Plan that protects the character and natural resources of the Highlands Region and acknowledges infrastructure limitations are requirements of the RMP, not the Module 3 Instructions.
5. Like the Module 3 Instructions, the RMP is not a rule as defined by the APA, and therefore not subject to the public participation requirements set forth therein. Instead, the RMP is a comprehensive regional master plan adopted by the Highlands Council pursuant to the Highlands Act that consists of the minimum standards necessary to adequately protect the critical resources of the Highlands Region while simultaneously creating realistic opportunities for development of affordable housing. The RMP will be primarily implemented by the municipalities and counties through the Plan Conformance process.
6. The Highlands Council adopted the RMP in accordance with the public notice and hearing requirements of the Highlands Act that the Legislature determined appropriate to satisfy the public's right to due process of law. The Legislature ensured general fairness and decisional soundness by mandating at least five public hearings in various locations of the Highlands Region and at least one public hearing in Trenton before final adoption. N.J.S.A. 13:20-8. The Legislature also empowered the Council to solicit and consider public input and comment on the regional master plan by periodically holding public hearings or conferences and providing other opportunities for such input and comment by interested parties. N.J.S.A. 13:20-6k. The Legislature also authorized the Governor to veto the plan, or any part or amendment thereto, if necessary. N.J.S.A. 13:20-5j.
7. In accordance with the Highlands Act, the Highlands Council held eleven public hearings throughout the Highlands Region and one public hearing in Trenton to take testimony on the various drafts of the RMP. The drafts of the RMP were also subject to extensive public comment, with the comment period for the 2006 draft RMP lasting 160 days and the comment period for the 2007 final draft RMP lasting 90 days. Responses were developed for comments received from more than 2000 commenters, and posted on the Highlands Council's website as an official Comment and Response document. Notice of the hearings and comment periods were generally effectuated through press releases in local and regional

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newspapers, on the Highlands website, through electronic mail to interested parties, announced at council and committee meetings, and posted in a conspicuous place at the Highlands Council's offices. The Highlands Council considered all of the comments and testimony, and incorporated them as necessary into the final RMP. The Highlands Council adopted the RMP at a public meeting on July 17, 2008. On September 5, 2008, Governor Corzine signed Executive Order 114 that approved the RMP as adopted, and offered further protections for the Highlands Region.

8. Although not a rule as defined by the APA, the steps taken by the Highlands Council to ensure full public participation in the adoption of the Highlands RMP went far beyond that which is required under the APA, and clearly satisfies the requirements of the Highlands Act and due process of law.
9. Municipal adjustment of the affordable housing obligations is based on conformance with the resource protection policies embodied in the RMP and pursuant to the methodology adopted by COAH on August 12, 2009 in accordance with the Fair Housing Act and the Highlands Act, not the Module 3 Instructions.

BE IT FURTHER RESOLVED, the Highlands Council finds that FSHC failed to demonstrate that it will suffer substantial, immediate and irreparable harm if the stay is not granted for the following reasons:

1. There is no immediate, substantial and irreparable harm to FSHC pending review of the issues by the Appellate Division where 75 of the 88 Highlands municipalities in the Highlands Region continue to work on developing Housing Elements and Fair Share Plans that meet New Jersey's constitutional requirement to create a realistic opportunity for the region's affordable housing obligations while incorporating the resource protection policies of the RMP, whether or not they are under the jurisdiction of COAH or the Superior Court.
2. The only irreparable harm alleged by FSHC is the harm to the public for failing to adopt rules without complying with the APA. As previously discussed, the Module 3 Instructions is not a rule subject to the APA, but rather instructions for municipalities on how best to conform to the policies of the RMP within the statutorily mandated time period. The Highlands Council adopted the RMP through a comprehensive public review and comment process established by the Legislature in the Highlands Act to ensure full public participation, thereby satisfying the public's right to due process.
3. COAH has indicated that it will propose amendments to its regulatory scheme pursuant to the APA in keeping with the Fair Housing Act to adjust the prospective fair share obligations based on the amount of vacant, developable land, infrastructure considerations, and environmental and historic preservation factors.
4. Additionally, the scarce resource restraint ordered by COAH in November 2008 that requires the Highlands municipalities under COAH's jurisdiction to take all necessary action to preserve scarce land, water and sewer resources remains in full force and effect under the August 12, 2009 Resolution, and therefore the municipalities shall continue to dedicate those resources on a priority basis for affordable housing until such time as a municipality receives substantive certification from COAH.

BE IT FURTHER RESOLVED, the Highlands Council finds that the hardship to the Highlands Council and the Highlands municipalities to delay development of housing elements and fair share plans that conform to the RMP far outweighs the alleged harm to FSHC for the following reasons:

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1. There is no hardship to FSHC, an advocacy group for creation of affordable housing, if the Highlands municipalities continue to work under the Module 3 Instructions to develop Housing Elements and Fair Share Plans that conform to the requirements of the RMP while the matter is decided on appeal.
2. On the other hand, there will be substantial harm to the Highlands municipalities if they are prevented from developing and adopting housing elements and fair share plans that conform to the RMP until after the issues are decided on appeal. The Highlands municipalities are statutorily mandated to conform to the RMP within 15 months of its adoption, or by December 8, 2009. The Module 3 Instructions are part of a step by step process offered to the municipalities to help them conform their planning documents and ordinances to the comprehensive planning requirements of the RMP within that limited time period. The Grant Program ensures that the municipalities appropriately incorporate the environmental protection policies of the RMP while simultaneously planning for affordable housing, and receive financial assistance to do so.
3. Ironically, the effect of FSHC's requested relief is that the Highlands municipalities would not have the benefit of the technical and financial assistance offered by the Highlands Council to develop plans that conform to the policies of the RMP; the municipalities will likely not be able to meet the December 8, 2009 deadline to file a Petition for Plan Conformance nor the June 8, 2010 deadline to file a Petition for Substantive Certification with COAH; the relief undermines the coordination of state agencies to protect the natural resources of the Highlands Region and simultaneously ensure the creation of affordable housing; and inevitably continues the trend of creating plans that do not result in the actual development of affordable housing.

BE IT FURTHER RESOLVED, the Highlands Council finds that there will be substantial harm to the public interest if the relief sought by FSHC is granted for the following reasons:

1. FSHC seeks to enjoin the Highlands Council and Highlands municipalities from working under the Module 3: Housing Element and Fair Share Plan Instructions contending that the public interest will be harmed because there was no opportunity for public participation before important changes of policy were made.
2. The Module 3 Instructions are not rules that implicate the public participation requirements of the APA and did not change policy. Instead, the instructions create a process for implementation of the environmental protection policies of the State embodied in the RMP. Thus the Highlands Council's development and implementation of the instructions does not harm the public interest as alleged by FSHC.
3. To the contrary, enjoining a municipality's use of the instructions to develop a housing element and fair share plan that conform to the environmental protection policies of the RMP will work to undermine the interest of the public to create a realistic opportunity for development of the region's affordable housing obligation in a way that does not harm the unique and critical resources of the Highlands Region.
4. The Legislature declared in the Fair Housing Act that the interest of all of the citizens of the State would best be served by a comprehensive planning and implementation process to create affordable housing; 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; and that COAH shall

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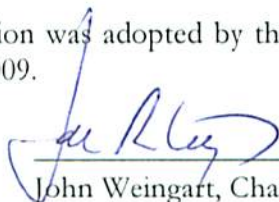
base a municipality's present and prospective fair share obligations upon available vacant and developable land, infrastructure considerations and environmental and historic preservation factors with adjustments made whenever the pattern of development and conditions of the land do not support such obligations.

5. The Legislature further declared in the Highlands Act that it is in the interest of all citizens of the State to create a comprehensive approach for the protection of the critical drinking water and other natural, agricultural and recreational resources found in the Highlands Region; that protection of these resources shall be through a stringent regulatory scheme for the Preservation Area where development is severely restricted; and which approach shall include the development of the RMP to encourage appropriate patterns of residential, commercial and industrial development, redevelopment and economic growth in or adjacent to areas that can support such growth without harming the Region's unique and critical resources.
6. The Plan Conformance activities presently being conducted by 75 of the 88 Highlands municipalities in accordance with the Module 3 Instructions will ensure that the amount of, and location for, affordable housing will be more in line with the capacity of the land to accommodate it. Municipalities are no longer left to their own devices to plan for affordable housing without having the financial and technical resources of the State to help them make an informed decision of how and where the affordable housing should be built.
7. It is clearly in the interest of the public and in keeping with the legislative intent of the Highlands Act and Fair Housing Act to have the Highlands municipalities, whether or not under the jurisdiction of COAH or the Superior Court, to continue to develop housing elements and fair share plans that conform to the requirements of the RMP. Utilizing the step by step process of the Module 3 Instructions to develop these plans will ensure conformance with the policies of the State within the time prescribed under the Highlands Act and COAH's rules, as well as provide for reimbursement for the reasonable costs associated with the work, thereby alleviating the burden on the taxpayers of the Highlands Region.

BE IT FURTHER RESOLVED, that for these reasons, the Highlands Council denies FSHC's motion to stay the implementation of the Module 3: Housing Element and Fair Share Plan Instructions.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 15th day of October, 2009.



John Weingart, Chairman

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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 Francis	_____	_____	✓	_____	_____	_____
Councilmember Kovach	_____	✓	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Peterson	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	_____	_____	_____	✓
Councilmember Way	_____	_____	_____	_____	_____	✓
Councilmember Whitenack	_____	_____	✓	_____	_____	_____
Councilmember Weingart	_____	_____	✓	_____	_____	_____