

## RESOLUTION 2022-06

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF QUALIFICATION OF FIRMS FOR HIGHLANDS ACT LITIGATION TO SERVE FOR A THREE-YEAR PERIOD

**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 Council is tasked with implementing the New Jersey Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.; and

**WHEREAS**, section 6.g of the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts to effectuate the purposes of the Highlands Act; and

**WHEREAS**, N.J.S.A. 13:20-20 provides that the council shall provide legal representation to any requesting local government unit located in the Highlands Region in any cause of action filed against the local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to the “Municipal Land Use Law,” P.L. 1975, c. 291 (C. 40:55D-1 et seq.), R.S. 40:27-1 et seq., the “State Uniform Construction Code Act,” P.L. 1975, c. 217 (C. 52:27D-119 et seq.), or this act, provided that:

- a. the municipal master plan and development regulations, or, in the case of a county governmental entity, the county master plan and associated regulations, have been approved by the council to be in conformance with the regional master plan in accordance with section 14 or 15 of this act [C. 13:20-14 or 13:20-15];
- b. the council determines that the act or decision of the local government unit which is the subject of the cause of action is consistent with the regional master plan; and
- c. the act or decision of the local government unit that is the subject of the cause of action involves an application for development that provides for the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more; and

**WHEREAS**, to support the Highlands Council with implementation of this provision, the Highlands Council staff prepared a Request for Proposal (RFP) which was released to the public on July 22, 2021, seeking firms to provide counsel to Highlands municipalities in situations covered by the Act under the supervision of the Highlands Council; and

**WHEREAS**, three (3) firms submitted responses and proposals on or before the deadline of October 20, 2021; and

**WHEREAS**, the Highlands Council staff evaluated the responses based on work experience and professional qualifications, and geographic location; and

**WHEREAS**, Highlands Council staff recommends that the Council qualify each of the three (3) firms insofar as they are all qualified vendors for the scope of work specified in the RFP; and

**WHEREAS**, the Highlands Council staff recommends that the three (3) firms are suited to meet the needs articulated by the Highlands Council’s RFP and further recommends that the Highlands Council authorize the Executive Director to enter into contracts with Carella, Byrne, Cecchi, Olstein, Brody &

## RESOLUTION 2022-06

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL APPROVAL OF QUALIFICATION OF FIRMS FOR HIGHLANDS ACT LITIGATION TO SERVE FOR A THREE-YEAR PERIOD

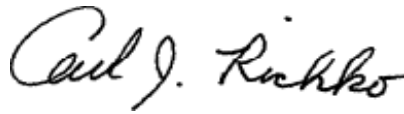
Agnello, P.C., Methfessel & Werbel P.C., and McManimon, Scotland & Baumann, LLC, to provide legal services to municipalities who qualify under the Highlands Act Litigation section of the Highlands Act.

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that:

The Executive Director, or their designee, is hereby authorized to designate as special counsel Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Methfessel & Werbel P.C., and McManimon, Scotland & Baumann, LLC consistent with the WHEREAS clauses, above, and that contracts with those firms can be executed for an amount not to exceed \$100,000 per matter assigned; and further that if the amount of defense costs is expected to exceed \$100,000, additional funds can be requested from the full Council.

### CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 21<sup>st</sup> day of April 2022.



Carl J. Richko, Chairman

Vote on the Approval of This Resolution	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Dougherty			✓			
Councilmember Dressler			✓			
Councilmember Francis			✓			
Councilmember Holtaway	✓		✓			
Councilmember James			✓			
Councilmember Sebetich			✓			
Councilmember Van Abs			✓			
Councilmember Visioli		✓	✓			
Councilmember Vohden			✓			
Chairman Richko			✓			

## **RESOLUTION 2022-07**

### **APPROVAL OF PLAN CONFORMANCE GRANT FUNDING FOR OPEN SPACE MASTER PLAN UPDATE FOR DENVILLE TOWNSHIP, MORRIS COUNTY**

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

**WHEREAS**, Section 14 of the Highlands Act expressly requires mandatory Plan Conformance for municipalities located wholly or partially in the Preservation Area, which must revise and conform their local master plan and development regulations, as they relate to development and use of land in the Preservation Area, with the goals, requirements and provisions of the Regional Master Plan within 15 months of adoption thereof, or December 8, 2009; and

**WHEREAS**, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may voluntarily revise and conform their local master plans and development regulations, as they relate to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan at any time; and

**WHEREAS**, the Highlands Act provides that Highlands Council approval of a Petition for Plan Conformance confers specific benefits on the conforming municipality including: planning grants, technical assistance, state aid, priority for projects, a strong presumption of validity and extraordinary deference in the event of legal challenge, and legal representation; and

**WHEREAS**, Section 18 of the Highlands Act obligates the Highlands Council to establish a grant funding program to reimburse municipalities for reasonable expenses associated with Plan Conformance; 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 to the Regional Master Plan; and

**WHEREAS**, the Highlands Council encourages every Highlands municipality to participate in the implementation of the Regional Master Plan and provides grants to assist Highlands municipalities in conforming with and implementing the goals, policies and objectives of the Regional Master Plan; and

**WHEREAS**, the following municipalities are in need of reimbursement-based grant funding in order to address the Highlands Act requirements for Plan Conformance:

**Plan Conformance Funding (not-to-exceed amounts):**

**RESOLUTION 2022-07**  
**APPROVAL OF PLAN CONFORMANCE GRANT FUNDING FOR OPEN SPACE**  
**MASTER PLAN UPDATE FOR DENVILLE TOWNSHIP, MORRIS COUNTY**

Municipality	Purpose	Amount
Denville Township	Open Space Master Plan Update	\$15,000

**WHEREAS**, the Highlands Council staff recommends that the Highlands Council authorize the execution of a Plan Conformance Grant Agreement with Denville Township for the funding allotted to the update of their Open Space Master Plan, in the amount designated, not to exceed, \$15,000; and

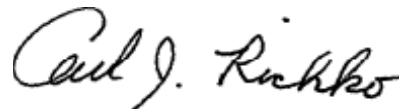
**WHEREAS**, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE, BE IT RESOLVED** that the Highlands Council hereby authorizes the Executive Director to execute the Plan Conformance Grant Agreement with the above-listed municipality, in the not-to-exceed amount as set forth above; and

**BE IT FURTHER RESOLVED**, that the Executive Director is authorized to make any amendments to the Highlands Implementation Plans and Schedules of the above-listed municipalities, consistent with direction from the Highlands Council, to properly effectuate the intent of the Council and thereafter execute the Implementation Plans and Schedules on behalf of the Council.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 21<sup>st</sup> day of April 2022.



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Carl J. Richko, Chairman

# **RESOLUTION 2022-07** **APPROVAL OF PLAN CONFORMANCE GRANT FUNDING FOR OPEN SPACE** **MASTER PLAN UPDATE FOR DENVILLE TOWNSHIP, MORRIS COUNTY**

<b>Vote on the Approval of The Resolution</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Councilmember Alstede			√			
Councilmember Dougherty			√			
Councilmember Dressler			√			
Councilmember Francis			√			
Councilmember Holtaway	√		√			
Councilmember James		√	√			
Councilmember Sebetich				√		
Councilmember Van Abs			√			
Councilmember Visioli			√			
Councilmember Vohden			√			
Chairman Richko			√			

**RESOLUTION 2022-08**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR**  
**THE TOWNSHIP OF UNION, HUNTERDON COUNTY**

**WHEREAS**, the New Jersey Highlands Region (Highlands Region) is an area of over 859,358 acres that consists of 88 municipalities in parts of seven counties – Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren; and

**WHEREAS**, the New Jersey Legislature found that the Highlands Region is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the population of the State of New Jersey, and also contains other exceptional natural resources such as clean air, contiguous forest lands, agricultural lands, wetlands, pristine watersheds, and habitat for fauna and flora, as well as sites of historic significance and recreational opportunities; and

**WHEREAS**, the Legislature found that the Highlands Region also provides a desirable quality of life and place where people live and work, that it is important to ensure the economic viability of Highlands communities and that residential, commercial, and industrial development, redevelopment, and economic growth in certain appropriate areas of the Highlands are also in the best interests of all the citizens of the State, providing innumerable social, cultural, and economic benefits and opportunities; and

**WHEREAS**, the Legislature found that the Highlands Region contains agricultural lands in active production and that these lands are important resources of the State that should be preserved, that the agricultural industry in the Region is a vital component of the economy, welfare, and cultural landscape of the Garden State and that maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible; and

**WHEREAS**, the Legislature found that the pace of development in the Highlands Region has dramatically increased, that the Region, because of its proximity to rapidly expanding suburban areas, is at serious risk of being fragmented and consumed by unplanned development and that the existing land use and environmental regulation system cannot protect the water and natural resources of the Highlands against the environmental impacts of sprawl development; and

**WHEREAS**, deeming protection of the Highlands Region an issue of State level importance, the Legislature enacted the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Act), to establish a regional approach to land use planning for the Highlands Region; and

**WHEREAS**, the Highlands Act delineates two areas in the Highlands Region: a Preservation Area, containing approximately 415,000 acres, and a Planning Area, containing approximately 445,000 acres; and

**WHEREAS**, the Legislature created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council) to advance a new regional approach to land use planning and to prepare a Regional Master Plan to protect and enhance the significant values of the Highlands resources throughout the entire Highlands Region; and

**WHEREAS**, the Preservation Area is an area with exceptional natural resource value that should be subject to stringent water and natural resource protection standards, policies, planning and regulation; and

**RESOLUTION 2022-08**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR**  
**THE TOWNSHIP OF UNION, HUNTERDON COUNTY**

**WHEREAS**, the Planning Area is the area outside of the Preservation Area that should likewise be part of a comprehensive planning approach that serves to protect the water and other significant resources of the entire Highlands Region while also accommodating appropriate patterns of development, redevelopment and economic growth; and

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

**WHEREAS**, the Highlands Act creates a bifurcated system for municipal conformance with the Regional Master Plan – mandatory Plan Conformance for any portion of a municipality located wholly or partially in the Preservation Area and voluntary Plan Conformance for the municipalities with lands wholly in the Planning Area or for any portion of a municipality lying within the Planning Area; and

**WHEREAS**, Section 14 of the Highlands Act expressly requires mandatory Plan Conformance where municipalities, located wholly or partially in the Preservation Area, must revise and conform their local master plan and development regulations, as they relate to development and use of land in the Preservation Area, with the goals, requirements and provisions of the Regional Master Plan; and

**WHEREAS**, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may voluntarily revise and conform their local master plans and development regulations, as they relate to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan at any time; and

**WHEREAS**, pursuant to Sections 14 and 15 of the Highlands Act, the Highlands Council shall approve, reject, or approve with conditions the revised plan and development regulations, as it deems appropriate, after public hearing, within 60 days after the date of submission thereof; and

**WHEREAS**, the Highlands Act provides that an approval of a Petition for Plan Conformance entitles the conforming municipality with specific benefits including planning grants, technical assistance, state aid priority for projects, tax stabilization funds, a strong presumption of validity and extraordinary deference in the event of legal challenge, and legal representation; and

**WHEREAS**, the Highlands Council adopted Highlands Plan Conformance Procedures as an update to the Regional Master Plan as Addendum 2019-2 that provide guidelines for the submission, review, and approval of municipal and county Petitions for Plan Conformance; and

**WHEREAS**, the Plan Conformance Procedures contained in Addendum 2019-2 provide a process for Plan Conformance requiring the submission of plans and regulations that are immediately necessary to ensure protection of the Highlands resources and resource areas, with more complex tasks to be completed in accordance with an Implementation Plan and Schedule as a condition of Plan Conformance; and



**RESOLUTION 2022-08**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR**  
**THE TOWNSHIP OF UNION, HUNTERDON COUNTY**

**WHEREAS**, Section 18 of the Highlands Act obligates the Highlands Council to establish a grant funding program to reimburse municipalities for reasonable expenses associated with Plan Conformance; and

**WHEREAS**, on December 18, 2008, the Highlands Council approved Resolution 2008-73 to provide grant funding for Highlands municipalities to cover the reasonable expenses associated with revisions to master plans, development regulations or other regulations to conform them to the Regional Master Plan; 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 Plan Conformance Grants; and

**WHEREAS**, Union Township is located in Hunterdon County and has 13,169 acres with 10,502 acres in the Preservation Area (79.7%) and 2,667 acres in the Planning Area (20.3%); and

**WHEREAS**, on October 21, 2021, Union Township submitted a Petition for Plan Conformance including a resolution for all lands lying in the Preservation Area; and

**WHEREAS**, on February 11, 2022, the Highlands Council staff deemed the Petition for Plan Conformance administratively complete, and on the same day, posted the Petition documents on the Highlands Council website and thereafter commenced staff review of the Petition for consistency with the Regional Master Plan; and

**WHEREAS**, on February 11, 2022, the Highlands Council provided Union Township with a Draft Consistency Review and Recommendations Report, which provides the staff's assessment of the Petition for Plan Conformance, the level of conformance with the Regional Master Plan, and recommendations for any further actions necessary for Plan Conformance; and

**WHEREAS**, on February 11, 2022, the Highlands Council staff completed the Draft Consistency Review and Recommendations Report and posted a Public Notice, the Draft Consistency Review and Recommendations Report, and the complete Petition documents on the Highlands Council website for a public review and comment period with written comments due on or before March 14, 2022; and

**WHEREAS**, the Highlands Implementation Plan and Schedule includes a detailed accounting of the existing Plan Conformance Grants and the allocation of additional grant funding in order to address the Highlands Act requirements for Plan Conformance funding; and

**WHEREAS**, no public comments were received and on April 14, 2022, the Highlands Council posted the Revised Final Consistency Review and Recommendations Report and Draft Highlands Implementation Plan and Schedule on the Highlands Council website; and

**WHEREAS**, on April 21, 2022 the Highlands Council held a public hearing on the Township of Union Petition for Plan Conformance and provided an opportunity for public comment; and



**RESOLUTION 2022-08**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR**  
**THE TOWNSHIP OF UNION, HUNTERDON COUNTY**

**WHEREAS**, the Highlands Council accepts the staff recommendation as stated in the Final Consistency Review and Recommendations Report; and

**WHEREAS**, according to the Highlands Act and the Plan Conformance Guidelines, Union Township's compliance with an approved Final Consistency Review and Recommendations Report, the Highlands Plan Conformance Procedures and the Highlands Act shall maintain Union Township's status as conforming to the Regional Master Plan and all statutory benefits associated with Plan Conformance; and

**WHEREAS**, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE, BE IT RESOLVED** that the Highlands Council hereby approves Union Township's Petition for Plan Conformance with conditions, as set forth in the Final Consistency Review and Recommendations Report; and

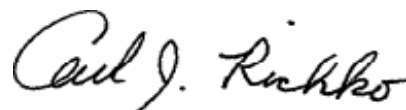
**BE IT FURTHER RESOLVED**, that the Executive Director or designee is authorized to make any amendments and publicly release the Final Consistency Review and Recommendations Report, Highlands Implementation Plan and Schedule, and amend the Plan Conformance Grant Agreement consistent with direction from the Highlands Council and the Department of the Treasury, to properly effectuate the intent of the Council and thereafter execute the Report and Schedule on behalf of the Council; and

**BE IT FURTHER RESOLVED**, that Union Township is hereby entitled to the statutory benefits associated with Plan Conformance as detailed in the Highlands Act, the Regional Master Plan and the Plan Conformance Procedures in Addendum 2019-2, so long as Union Township remains in conformance with the Regional Master Plan and to the extent such funds are made available by the State; and

**BE IT FURTHER RESOLVED**, the Executive Director or designee is authorized, consistent with direction from the Council, to oversee and monitor Union Township's compliance with this Resolution and to take any and all action necessary in coordination with the Highlands Council.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 21<sup>st</sup> day of April 2022.



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Carl J. Richko, Chairman

**RESOLUTION 2022-08**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR**  
**THE TOWNSHIP OF UNION, HUNTERDON COUNTY**

<b>Vote on the Approval of The Resolution</b>	<b>Motion</b>		<b>Second</b>		<b>Yes</b>		<b>No</b>		<b>Abstain</b>		<b>Absent</b>
Councilmember Alstede					√						
Councilmember Dougherty					√						
Councilmember Dressler	√				√						
Councilmember Francis					√						
Councilmember Holtaway					√						
Councilmember James			√		√						
Councilmember Sebetich					√						
Councilmember Van Abs					√						
Councilmember Visioli					√						
Councilmember Vohden					√						
Chairman Richko					√						



# New Jersey Highlands Council

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## Union Township

Union Township in Hunterdon County has 10,502 acres in the Preservation Area and 2,667 acres in the Planning Area of the Highlands Region. In October 2021, the municipality submitted a Petition for Plan Conformance for its Preservation Area lands.

This page contains links to documents related to the Township's conformance with the Highlands Regional Master Plan.

### Plan Conformance Petition

#### Petition Matierals

- Final Consistency Review and Reccomendations Report (pdf) - includes full petition and implementation plan with proposed budget and schedule.
- Public Notice: Public Comments Sought (pdf) - no comments received

### Prior Municipal Actions and Documents

- Municipal Resolution: [Notice of Intent](#)
- Municipal Resolution: [COAH extension](#)
- Highlands Municipal Build-Out Report (pdf)
  - Supporting files (23 MB zip)



*Township of*  
**DENVILLE**

1 St. Mary's Place  
Denville, New Jersey 07834

**Thomas Andes**  
**Mayor**  
*mayor@denvillenj.org*



(973) 625-8300  
Fax: (973) 625-2491

**Steven Ward**  
**Business Administrator**  
*administration@denvillenj.org*

March 31, 2022

NJ Highlands Council  
James Humphreys, Director of Planning, Science and GIS  
100 North Road  
Chester, New Jersey 07930

**RE: REQUEST FOR GRANT FUNDING**  
**DENVILLE TOWNSHIP OPEN SPACE MASTER PLAN UPDATE**

Dear Mr. Humphreys:

The Township of Denville respectfully requests \$15,000 from the New Jersey Highlands Council in order to update its Open Space Master Plan. The Township's current Open Space Master Plan was written and approved in 2001.

At a meeting held on March 22, 2022 of the Denville Open Space and Trails Committee, the Committee reviewed the 'targeted properties' listed in the 2001 Open Space Master Plan and recognized the Township had successfully preserved the vast majority of the targeted properties listed therein along with a host of other properties in the past 21 years. In fact, in a recent update to our Recreation and Open Space Inventory (ROSI) in 2021, the Township has successfully preserved 1,314.26 acres (2.05 sq. miles) of Open Space within our municipal boundaries, which represents more than 16% of our total municipal land area of 12.74 acres.

As only one (1) of the 'targeted properties' from our 2001 Open Space Master Plan has not been either preserved or approved for some sort of development, the Denville Open Space and Trails Committee felt it was a perfect time to update our plan and look for other opportunities to preserve more green space in the future.

Based upon our successful partnership with the NJ Highlands Council on past projects, we would request your consideration in partnering with Denville Township for the above stated purpose, which I believe fits within the realm of objectives of the NJ Highlands Council. The funding requested is based upon a quote I received from the NJ Land

Conservancy in November 2021.

Your consideration of this request is sincerely appreciated. If you have any questions or require additional information, please feel free to contact me via e-mail or at (973) 625-8300 ext. 222.

Very truly yours,



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Steven Ward, Township Administrator  
TOWNSHIP OF DENVILLE, NEW JERSEY

cc: Mayor Thomas Andes  
Open Space Coordinator Jane Garvey  
Members of the Open Space and Trail Committee

**RESOLUTION 2022-09**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF SUBMISSION OF 2021 ANNUAL REPORT**

**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**, Section 27 of the Highlands Act requires that the Highlands Council, on or before March 31 in each year, or as extended, prepare and submit an annual report of its activities and an operating and financial statement to the Governor, the Legislature, and the governing body and the chief executive officer of each municipality and county in the Highlands Region; and

**WHEREAS**, Paragraph 2 of Executive Order #37 requires each State authority's governing body to approve the issuance of the annual report; and

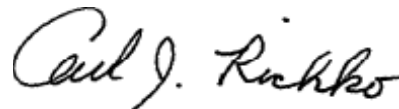
**WHEREAS**, prior to the April 21, 2022 Council meeting, the Highlands Council provided the 2021 Annual Report to the to the full body of the Council; and

**WHEREAS**, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE, BE IT RESOLVED** that the Highlands Council hereby approves the submission of the Highlands Council 2021 Annual Report to the Governor, the Legislature, and the governing body and the chief executive officer of each municipality and county in the Highlands Region.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 21<sup>st</sup> day of April, 2022.



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Carl J. Richko, Chairman

# **RESOLUTION 2022-09** **NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL** **APPROVAL OF SUBMISSION OF 2021 ANNUAL REPORT**

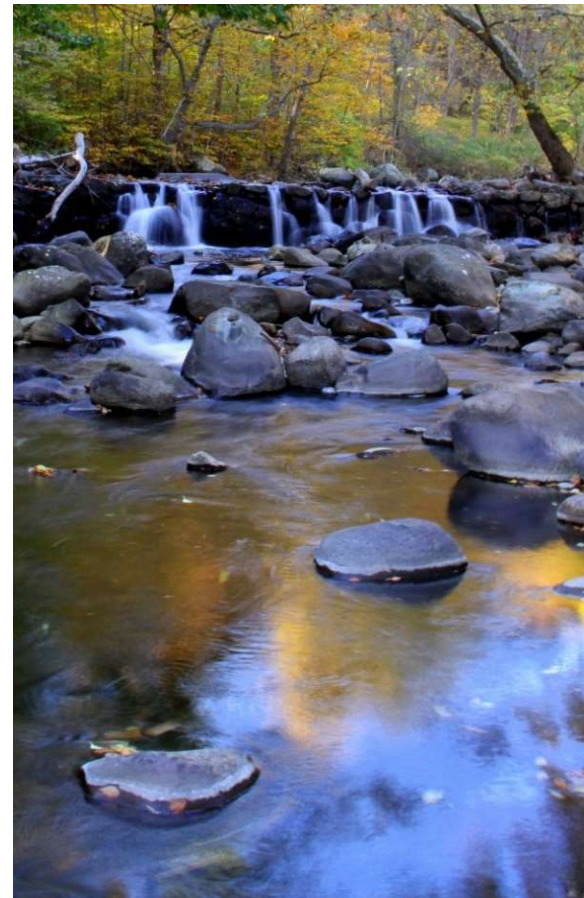
<b>Vote on the Approval of This Resolution</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Councilmember Alstede			√			
Councilmember Dougherty						√
Councilmember Dressler			√			
Councilmember Francis			√			
Councilmember Holtaway			√			
Councilmember James	√		√			
Councilmember Sebetich			√			
Councilmember Van Abs		√	√			
Councilmember Visioli			√			
Councilmember Vohden			√			
Chairman Richko			√			





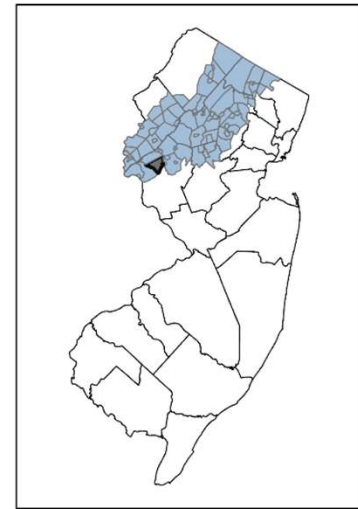
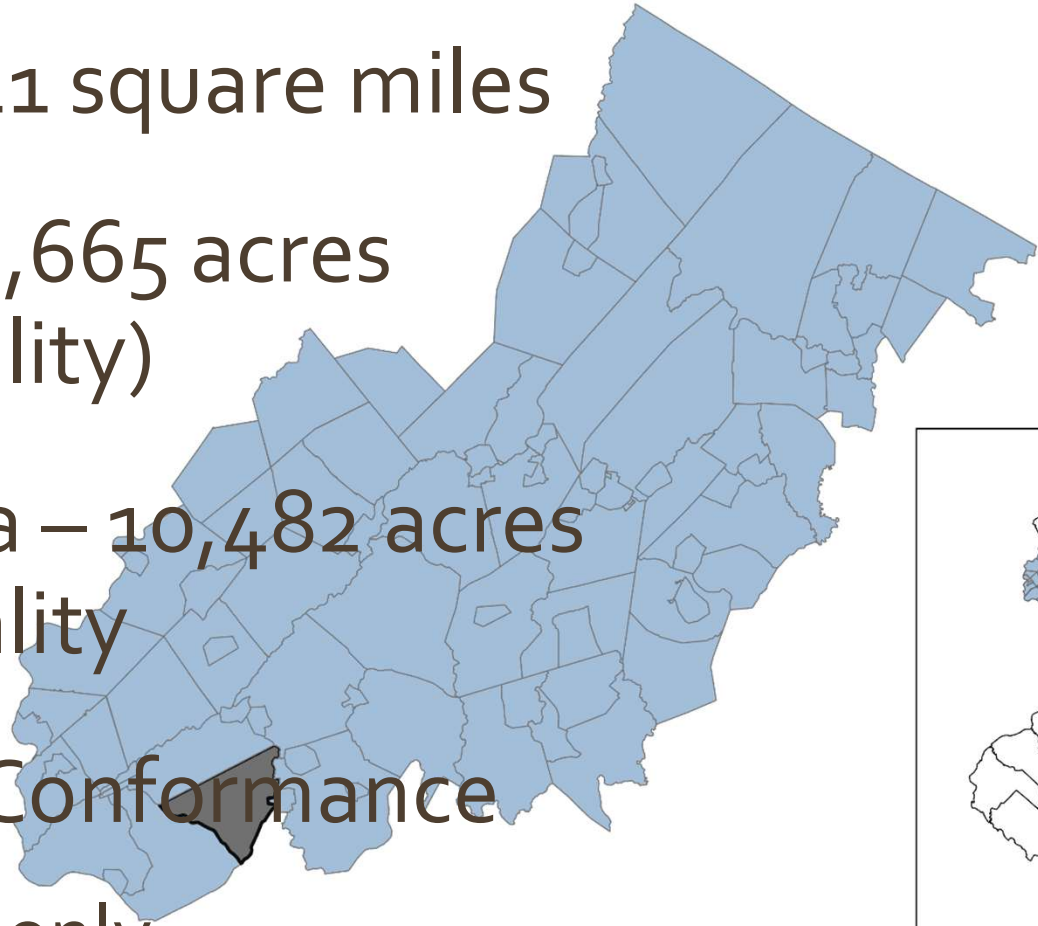
# Highlands Council Meeting

Thursday, April 21, 2022



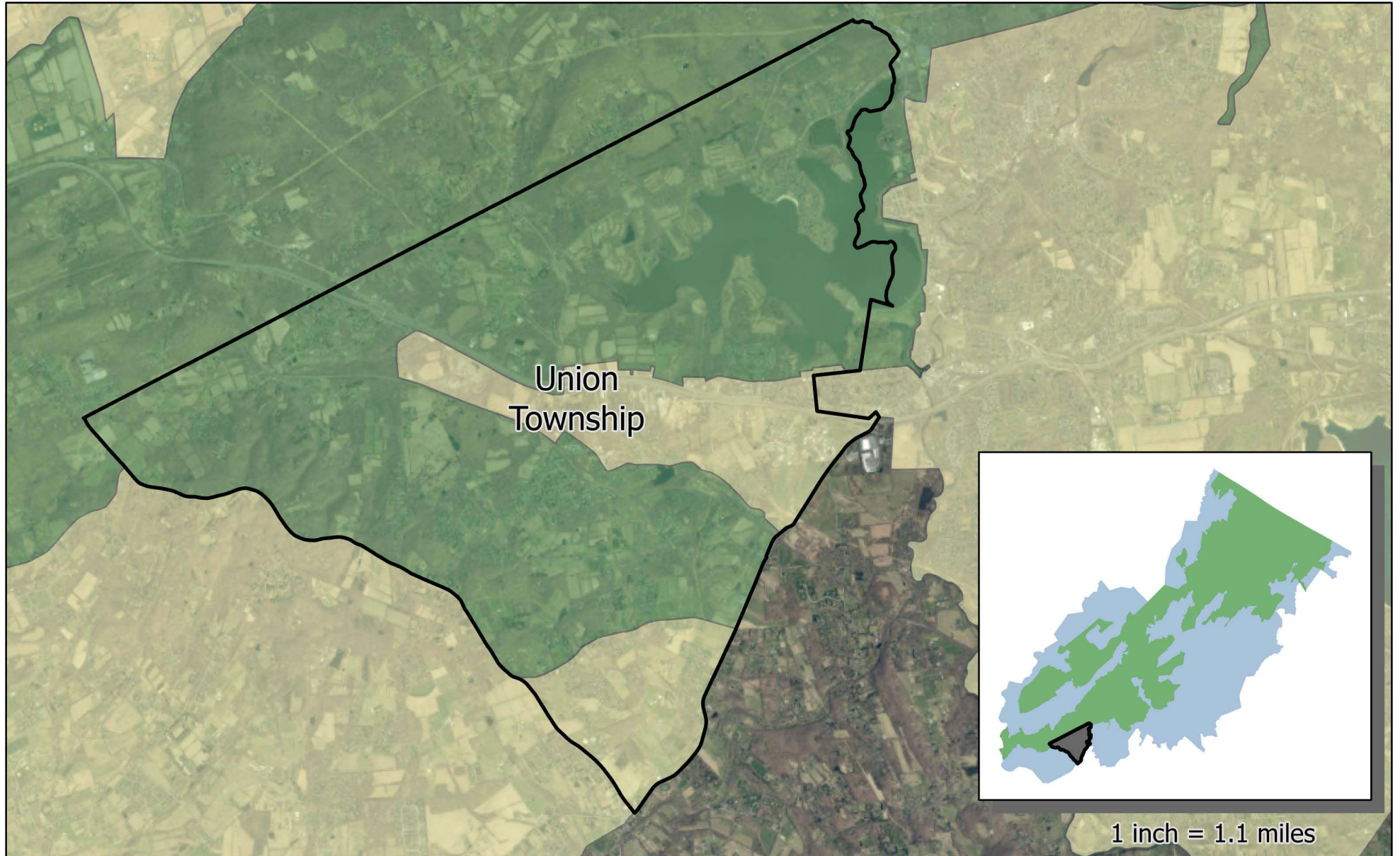
# Union Township




- 13,168.35 acres/ 21 square miles
- Planning Area – 2,665 acres  
(20% of municipality)
- Preservation Area – 10,482 acres  
(80% of municipality)
- Petition for Plan Conformance
  - Preservation Area only





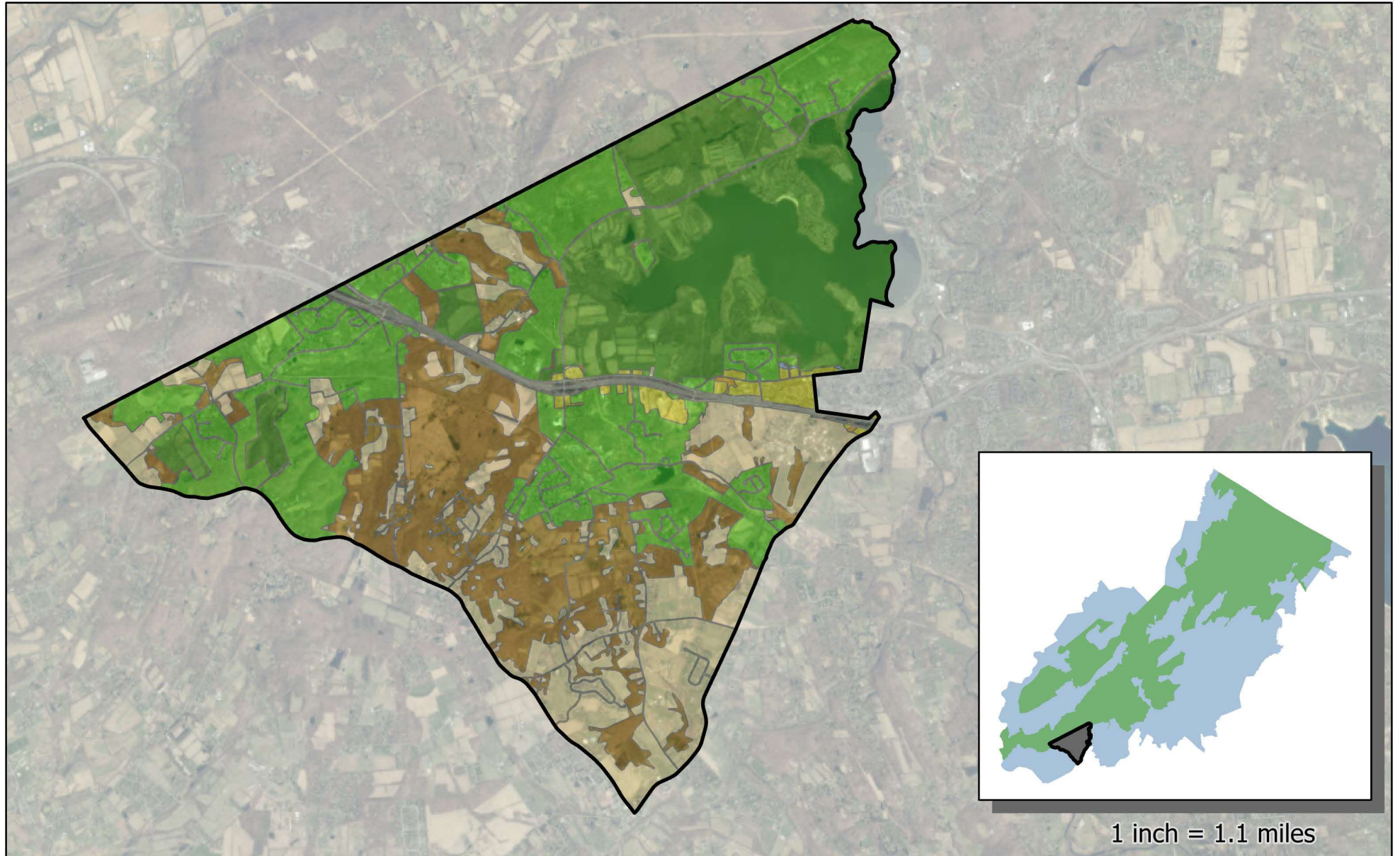
# Union Township - Preservation Area



-  Municipal Boundaries
-  Highlands Planning Area
-  Highlands Preservation Area



# Union Township - Land Use Capability Zones



- |                          |  |
|--------------------------|--|
| Municipal Boundaries     | Conservation Environmentally Constrained Subzone       |
| Protection Zone          | Existing Community Zone                                |
| Wildlife Management Area | Existing Community Environmentally Constrained Subzone |
| Conservation Zone        | Lake Community Subzone                                 |

# Public Comment Summary

- Public Comment Period:  
February 11 – March 14, 2022
- No comments received.

# Implementation Funding

- Implementation Plan and Schedule includes funding to address:
  - Master Plan Reexamination Report
  - Stormwater Management
  - Agricultural Retention and Farm Preservation Plan
  - Environmental Resource Inventory

# Staff Recommendation: Approve with conditions

- Adoption of approved:
  - Highlands Referral Ordinance
  - Master Plan Highlands Element
  - Highlands ERI
- Adherence to Implementation Plan and Schedule



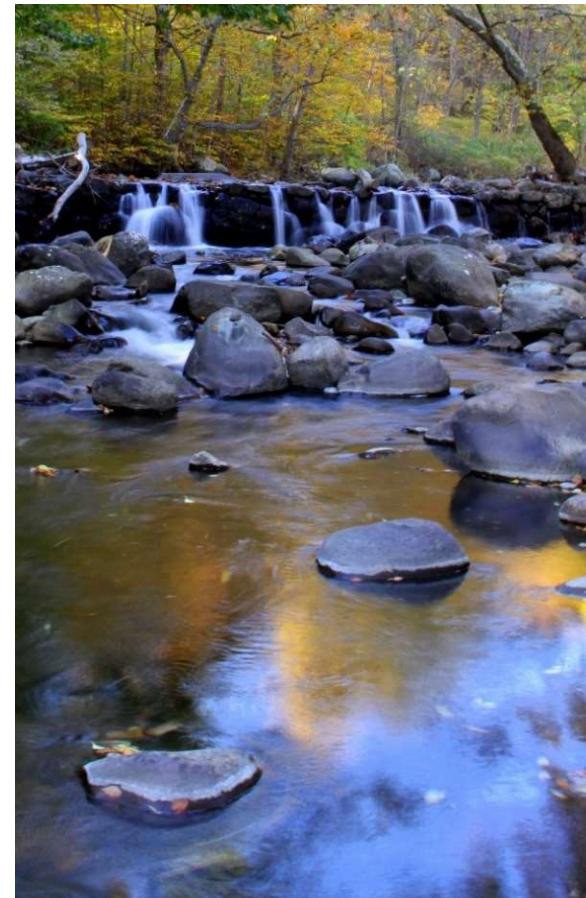
# Union Township

## Petition for Plan Conformance



# Highlands Council Meeting

Thursday, April 21, 2022



In light of the controversy created at the February meeting over material being introduced without prior notice, this is a notification that I will be making a motion at the April meeting under Old & New Business.

I would appreciate it if you would forward this information to the Council members before the April meeting.

I {will} move that we, the Council, review our Transfer of Development Program to conform to our Regional Master Plan Objective 7B7g, comply with The State TDR Act, specifically, NJSA 40:55D-155 -156 &157, and follow the direction of the Highlands TDR Technical Report, page 37, that all require a periodic review of the TDR Program.

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### **In The Regional Master Plan (page 202)**

**Policy 7B7:** Establish a Highlands TDR Program which is **sufficiently certain and predictable** to allow Sending Zone landowners to sell Highlands Development Credits or borrow against the value of such credits

**Objective 7B7g:** Review and assessment of the Highlands TDR Program **five years after the effective date of the Highlands RMP.**

### **From TITLE 40 - MUNICIPALITIES AND COUNTIES**

**C.40:55D-155** Review by planning board, governing body after three years.

**C.40:55D-156** Review after five years.

**C.40:55D-157** Periodic reviews.

(Full text of these statutes are included below on pages 4-6)

### **From the Highlands TDR Technical Report** (May 15, 2008)

Review and assessment of the Highlands TDR Program (page 37) (Full text of this section is included below on pages 7 & 8)

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### **My Comments**

1. The Highlands **Act** and our **bylaws** state that: This council shall establish a transfer of development rights program.
2. The **Act** and the **Regional Master** plan state that "The transfer of development rights program shall be **consistent** with the State Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137 et seq.) except as otherwise provided in this section."  
The only exception in this section is not requiring mandatory receiving zones. *Nothing else in this section provides for an exception from the TDR Act. (See definition of consistent on pages 3 & 4 below)*
3. The Highlands TDR program and the Master Plan were adopted and became effective on July 17, 2008
4. The State TDR Act was enacted Mar. 29, 2004 and is titled "An Act authorizing the transfer of development rights by municipalities".
5. The State TDR Act was enacted before the Highlands Act was signed, therefore the Highlands Act or regional TDR Programs are not mentioned in the State TDR Act.
6. How do we become consistent with a statute that is intended to be used by municipalities for the transfer of development potential within their jurisdiction?
7. Municipal TDR programs are carried out by municipal planning boards.
8. We are a Regional Planning Board.
9. To be consistent with the State TDR Act, we must insert Highlands Council in place of municipality in the Act. How else can we be consistent?
10. If that is not what must be done, how do we have a program? Why is the 5-year review included in the RMP?

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### **What does “be consistent with” mean?**

Definition from: *thelaw.com Law Dictionary* and *Black’s Law Dictionary 2<sup>nd</sup> Ed.*

That which agrees with something else; as a consistent condition, which is one which agrees with all other parts of a contract, or which can be reconciled with every other part.

Dictionary definitions of “consistent” are as follows:

#### Consistent

a. compatible, not contradictory, (with); (of person) constant to same principles; The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Oxford University Press, 1982)

#### Consistent (adverb)

1. conforming to a regular pattern; unchanging.
2. (consistent with) in agreement. The Compact Oxford English Dictionary, 2nd ed. (Oxford: Oxford University Press, 2002)

#### Consistent (adjective)

1. archaic: possessing firmness or coherence.
2. a: marked by harmony, regularity, or steady continuity: free from variation or contradiction.  
b: marked by agreement: compatible — usually used with with.  
c: showing steady “Have regard to,” “conformity to character, profession, belief, or custom.
3. tending to be arbitrarily close to the true value of the parameter estimated as the sample becomes large. Meriam-Webster Online Dictionary

“Dictionary meanings are a useful starting point for the purpose of establishing the meaning of a term. As an example, the Webster Dictionary defines the term “consistent” to mean:

- Marked by agreement and concord;
- Coexisting and showing no noteworthy opposing, conflicting or contradictory qualities or trends;
- In harmony with;
- Compatible with;
- Constant to the same principle as;
- Not contradictory with.

**“Shall be consistent with”** is a higher policy implementation standard and is a more demanding test than “shall have regard to”. It requires decision-makers to apply the policies and make decisions that are consistent with the applicable policies. It is a stronger implementation standard focusing on achieving policy outcomes, while retaining some flexibility in how it is implemented.”

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**C.40:55-155 Review by planning board, governing body after three years.**

19. A development transfer ordinance and real estate market analysis shall be reviewed by the planning board and governing body of the municipality at the end of three years subsequent to its adoption. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), and an assessment of the performance goals of the development transfer program, including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. *A report of findings from this review shall be submitted to the county planning board, the Office of Smart Growth and, when the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the*

municipality shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and the development transfer ordinance adopted pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

#### **40:55D-156 - Review after five years**

20. A development transfer ordinance and the real estate market analysis also shall be reviewed by the planning board and governing body of the municipality at the end of five years subsequent to its adoption. This review shall provide for the examination of the development transfer ordinance and the real estate market analysis to determine whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and, *if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.* If at least 25% of the development potential has not been transferred at the end of this five-year period, the development transfer ordinance shall be presumed to be no longer reasonable, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of the five-year period unless one of the following is met:

- a. The municipality immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 25% of the total development transfer potential created in the sending zone under the development transfer ordinance;
- b. A majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the development transfer ordinance should remain in effect;



- c. The municipality can demonstrate either future success or can demonstrate that low levels of development potential transfer activity are due, not to ordinance failure, but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the Office of Smart Growth, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program; or
- d. The municipality can demonstrate that less than 25% of the remaining development potential in the sending zone has been available for sale at market value during the five-year period.

#### **C.40:55D-157 Periodic reviews.**

21. Following review of a development transfer ordinance as provided in section 20 of P.L.2004, c.2 (C.40:55D-156), the planning board and the governing body of the municipality shall review the development transfer ordinance and real estate market analysis at least once every five years with every second review occurring in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This review shall provide for the examination of the ordinance and the real estate market analysis to determine whether the program and uses permitted in the sending zone continue to be economically viable and, if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If 25% of the remaining development transfer potential at the start of each five-year review period in the sending zone under the development transfer ordinance has not been transferred during the five-year period, the municipal governing body shall repeal the development transfer ordinance, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of that five-year period unless the municipality meets one of the standards established pursuant to section 20 of P.L.2003, c.2 (C.40:55D-156).

**From the Highlands TDR Technical Report** (May 15, 2008)

**Page 37**

REVIEW AND ASSESSMENT OF THE HIGHLANDS TDR PROGRAM

**The State TDR Act requires that any adopted municipal TDR program be reviewed and assessed to determine whether it is meeting the goals of the program. These reviews occur at the third and fifth anniversaries of the program's adoption.**

Although not specified by the TDR provision of the Highlands Act, Highlands Council believes that a similar review of the Highlands TDR Program should be conducted. Unlike the reviews required by the State TDR Act, however, these reviews would occur at the fifth and seventh anniversaries of the program's adoption because of the program's scope and voluntary nature of the Receiving Zones.

**At the fifth anniversary** of the program's adoption, the Highlands Council would examine the development potential transactions in both the private and public market, compare current conditions with those at the outset of the program, and examine the units constructed with and without utilization of the Highlands TDR Program in the seven Highlands counties. This assessment would also examine the effectiveness of the HDC allocation process and the procedures for designating voluntary Receiving Zones. With this review, the Council would prepare a report examining the efficacy of the program to date and make recommendations for program changes if warranted.

**At the seventh anniversary** of the program's adoption, the Highlands Council would conduct another assessment. If an insufficient number of

development potential transactions have occurred, the Highlands Council would presume the program is no longer reasonable and requires significant amendment. This presumption may be overcome by the Highlands Council by either:

1. immediately requiring the Highlands Development Credit Bank to acquire or provide for the private purchase of the difference between the HDCs already transferred (including consideration of fee simple and easement acquisition through State programs such as the Garden State Preservation Trust, county programs, municipal programs or non-governmental land trusts) and 15% of the total HDCs created in the Highlands Region Sending Zones; or
2. demonstrating that low levels of HDC transfer activity is due, not to the program's failure, but to low levels of development demand in general throughout the seven Highlands counties.

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**From Regional Master Plan page 125**

Establishment of the Highlands TDR Program has been shaped by a number of circumstances. First and foremost, the program is guided by the TDR provision of the Highlands Act. This provision includes an initial requirement that **the program be consistent with the State Transfer of Development Rights Act** unless otherwise stated by the Highlands Act.

Council Member Richard Vohden



**PHILIP D. MURPHY**  
*Governor*

**SHEILA Y. OLIVER**  
*Lt. Governor*

**State of New Jersey**  
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**CARL J. RICHKO**  
*Chair*

**LISA J. PLEVIN**  
*Executive Director*

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FOR IMMEDIATE RELEASE  
April 21, 2022

## **Union Township to Support Agricultural Planning and Other Priorities with Highlands Council Grant Funding**

CHESTER, N.J. — At its most recent meeting, the New Jersey Highlands Water Protection and Planning Council (Highlands Council) approved a Petition for Plan Conformance from Union Township in Hunterdon County. The approved petition allocates more than \$76,000 in grant funding to advance local planning efforts in the Township.

A rural community in northwestern Hunterdon County, Union Township is home to the Spruce Run Reservoir, one of the first water supply facilities to be constructed and operated by the state and the third largest reservoir after Round Valley and Wanaque reservoirs, also in the New Jersey Highlands. The Township is bisected by Interstate 78/US Route 22 and State Route 173, which runs parallel to the Interstate.

“In addition to the Spruce Run Recreation Area and all it has to offer, Union Township is home to beautiful woodland, historic, and agricultural landscapes, as well as a robust commercial and industrial area along its interstate corridor,” notes Lisa J. Plevin, Highlands Council Executive Director. “This diversity creates many opportunities for the Township and we’re excited to help advance their local priorities with the grant funding and expertise that we can provide.”

Among those priorities is an update to the municipality’s Farmland Preservation Plan, which was last updated in 2010. Agricultural lands account for approximately one quarter of the Township, and its history is closely tied to the agricultural industry. The approved Petition for Plan Conformance includes an Implementation Plan and Schedule (IPS) that allocates up to \$35k in grant funding for this work. Also included in the Township’s IPS are funds for updates to its Environmental Resource

Inventory (ERI) using the Highlands Council's new Interactive ERI tool, and development of a municipal Stormwater Management Plan.

Beyond what's included in the IPS, approval of the Union Township Petition opens the door to a wide range of planning grants from the Highlands Council. Planning projects that advance the goals of the Highlands Act are generally eligible for grants. This includes protection of natural resources, transportation planning, sustainable economic development, redevelopment, recreation, and historic preservation among many others. All Highlands Council grants are non-competitive and require no matching funds.

"Because it hosts the Spruce Run Reservoir, Union Township plays an important role in the protection of water resources for New Jersey," stated Highlands Council Chairman, Carl Richko. "We are very pleased to be working in partnership with them to support their stewardship efforts.

Today's approval by the Council brings the total number of approved municipal petitions for Plan Conformance to 53. Additional details about the Township's Petition, including Highlands Council recommendations and specific funding allocations related to Plan Conformance implementation, are available in the "Final Consistency Review and Recommendations Report," which can be found along with all other Petition materials on the Union Township page of the Highlands Council website: [www.nj.gov/njhighlands/planconformance/union\\_twp.html](http://www.nj.gov/njhighlands/planconformance/union_twp.html).

Actions taken by the Council at this meeting will take effect following the Governor's review and consideration of the meeting minutes, up to 10 business days from receipt of the minutes. Materials related to this meeting including resolutions, presentations, audio, and minutes will be posted at: [www.nj.gov/njhighlands/about/calend/index.html](http://www.nj.gov/njhighlands/about/calend/index.html) (click on April 21 meeting).

*The Highlands Council is a regional planning agency, established in 2004 with the passage of the Highlands Water Protection and Planning Act and charged with implementation of the Act. More information is available at [www.nj.gov/njhighlands](http://www.nj.gov/njhighlands).*

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