

NEW JERSEY HIGHLANDS WATER PROTECTION  
AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF APRIL 10, 2008

**PRESENT**

JOHN WEINGART	)	CHAIRMAN
KURT ALSTED	)	COUNCIL MEMBERS
TRACY CARLUCCIO	)	
BILL COGGER	)	
MIMI LETTS	)	
ERIK PETERSON	)	
JACK SCHRIER	)	
GLEN VETRANO	)	
TAHESHA WAY	)	
ELIZABETH CALABRESE	)	
TIM DILLINGHAM	)	

**VIA TELECONFERENCE**

DEBBIE PASQUARELLI )

**ABSENT**

JANICE KOVACH )  
SCOTT WHITENACK )

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 65th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:13 am.

**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.

**APPROVAL OF MINUTES OF MARCH 27, 2008**

Chairman Weingart introduced a motion to approve the minutes. Mr. Schrier seconded it. Elizabeth Calabrese abstained and all others present voted to approve. The minutes were APPROVED.

**CHAIRMAN'S REPORT**

Chairman Weingart announced that July 17<sup>th</sup> meeting of the Highlands Council will be at the Frelinghuysen Arboretum in Morristown in order to accommodate a larger attendance. Mr. Vetrano and Mr. Alstede joined the meeting.

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Chairman Weingart announced that the Council and Staff were presented with an environmental achievement award from the South Branch Watershed Association. Both he and Eileen Swan attended the event to accept the award. He pointed out that the award is being displayed in the front entryway.

Chairman Weingart noted that the next Council meeting is in two weeks on April 24, 2008 at 4 pm.

**EXECUTIVE DIRECTOR'S REPORT**

Ms. Swan also acknowledged the environmental achievement award received by the Council and Staff. She then reviewed recent meetings: April 4<sup>th</sup> County planners meeting; April 2<sup>nd</sup> presentation at Transportation Association Conference; March 28<sup>th</sup> presentation before the New Jersey Institute for Continuing Legal Education on the RMP; March 28<sup>th</sup> award presented to the Council and Staff from the South Branch Watershed Association; April 4<sup>th</sup> presentation at the New Jersey Institute of Technology on the RMP.

**COMMITTEE REPORTS**

The Chair of the Audit Evaluation Committee, Tracy Carluccio, reported that the Committee reviewed the proposals to conduct an audit for the Council for the last three years. A report has been written up with a suggested selection and has been sent on to the Audit Committee.

**CONSIDERATION OF RESOLUTION TO ENSURING CONTINUATION OF HIGHLANDS RELATED FUNCTIONS OF DEPARTMENT OF AGRICULTURE**

Ms. Swan introduced the Resolution. She stated that the Highlands Council recognizes the importance of the Department of Agriculture and that their essential functions must be preserved. Ms. Pasquarelli joined the meeting via telephone.

Mr. Alstede mentioned that the Resolution put into words what could happen if the functions continue, but that the Resolution hasn't addressed what would happen if the functions that the Council relies upon don't exist anymore. He stated that if the Department of Agriculture is eliminated, there needs to be discussion about who sets the rules and how this will be addressed. Mr. Alstede continued to explain how the elimination of the Department of Agriculture cuts deep into the intent and goals of the Highlands Act.

Chairman Weingart added that the goal of the Resolution is to address that issue. He continued by stating that if the functions of the Department of Agriculture ceased there would be numerous issues to be resolved; accordingly the Resolution addresses what the needs are according to the Act and how they need to be maintained in order for the Council to achieve its mandates.

Mr. Alstede mentioned his concern that there isn't much discussion of what has to happen if the Department of Agriculture is not funded. He stated that this will have a large impact on not only the Highlands Act but other entities as well.

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Chairman Weingart asked Mr. Alstede if he would approve the addition of “Administrative and Legislative” (to actions in #3) as stated in the Resolution. Mr. Alstede agreed and stated that the Council needs to bring this to the Governor’s attention. Ms. Calabrese seconded that amendment to the Resolution.

**PUBLIC COMMENT:**

**DAVID SHOPE, landowner Lebanon Twp** – Mr. Shope stated that the Resolution doesn’t reference economic viability; it simply mirrors the Governor’s statements. He referenced a 2002 study which shows returns on investments for agriculture. He discussed how agriculture depends on economic viability and will fail without it.

**HELEN HEINRICH, NJ Farm Bureau** – Ms. Heinrich stated her appreciation for the Resolution as it shows that Department of Agriculture is important to the Highlands Council. She mentioned their hope for a more pointed resolution. Ms. Heinrich brought up the importance of viability – and their hope that it is going to improve because of the Highlands regulations. She expressed concern that the NJDEP is not the proper entity to be handling the functions relating to Agriculture. Ms. Heinrich stated that they would like to see stronger language about economic viability as well as language to address the Departments’ role in setting some of the rules in the Highlands.

**MONIQUE PURCELL, Department of Agriculture** – Ms. Purcell expressed concerns that Mr. Alstede’s suggestions would set up a “map of legislation that will dismantle the Department of Agriculture”. She suggested that instead the Council ask for reassurance that all functions will continue and make clear the impact of the loss of those functions. Chairman Weingart clarified that Mr. Alstede’s point was to include legislation in the Resolution. Mr. Schrier noted that this is an important resolution on a proposal which many have opposed. He commented that a resolution coming from the Council, a State agency – may be taken more into consideration. He stated his support for this resolution.

***Mr. Cogger introduced a motion to approve this resolution. Ms. Calabrese seconded it. All members present voted to approve the resolution. THE RESOLUTION WAS APPROVED.***

**CONSIDERATION OF RESOLUTION – CONTRACT WITH RUTGERS UNIVERSITY**

***Mr. Schrier introduced this resolution as Chairman Weingart recused himself due to his employment by Rutgers. Ms. Carluccio introduced a motion to approve this resolution. Ms. Letts seconded it.***

Mr. Cogger expressed his concerns with benchmarks and deadlines, and asked Ms. Swan if they were contained in the agreement.

Ms. Swan answered that staff had worked with Rutgers to set specific deadlines with dates that they are comfortable with for delivery. She noted that those agreed to dates have been highlighted in the draft scope of work.

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***All members present voted in favor of the Resolution. THE RESOLUTION WAS APPROVED.***

Chairman Weingart returned to the meeting.

**CONSIDERATION OF RESOLUTION – APPROVAL OF CERTAIN PLANNING ASSISTANCE GRANTS**

Ms. Swan gave an overview of this resolution regarding the approval of a TDR Receiving Zone Feasibility Grant for the Town of Clinton. She noted that they did have an approved grant with COAH and having successfully performed the grant requirements that Council requested release of those funds from Treasury. She also discussed how the staff has been working together with the Town of Clinton on another grant for a Water Management Plan. The Town expressed interest in pursuing this grant after an informational meeting with Eileen Swan and Tom Borden.

***Mr. Schrier introduced a motion to approve this resolution. Ms. Way seconded it.***

Ms. Letts asked if Council staff received verification of how the funds are spent. Ms. Swan explained that reports are submitted and that Mr. LeJava monitors the deliverables, and Ms. Interlante monitors all vouchers for appropriate costs. Ms. Letts questioned the timing of the release of funds. Ms. Swan explained that it varies by municipality and grant – payment for deliverables is set forth in the agreement.

Mr. Schrier recommended that if the resolution is approved, that Ms. Benecki prepare a press release as the TDR program is gaining interest as shown by this grant and a press release may bring even more interest in this program.

**PUBLIC COMMENT:**

**DAVID SHOPE** - Mr. Shope expressed his concern about the public not having access to the grant application. He stated that it is difficult for the public to comment without full knowledge of the subject. He was also questioning what areas are being considered for TDR. Mr. Schrier clarified that this is what the analysis will show. Mr. Shope stated that he would like to see the grant application and where they intend to put this development.

**JULIA SOMERS, NJ HIGHLANDS COALITION** - Ms. Somers expressed concern regarding sufficient resources to support further development.

Chairman Weingart asked that the record show that David Shope would like a copy of the application. (Staff gave a copy of the application to Mr. Shope)

***All members present voted in favor of this resolution. The resolution was APPROVED.***

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Mr. Alstede recommended that the staff should look at the economic implication of the parks closing. He continued to comment on how the RMP discusses bringing in economic activity to the Region and that the numerous revenue inducing functions of the parks should be looked into. He said that the Council needs to promote green economic activity.

Chairman Weingart argued against that idea because he believes that there are implications of all budget cuts and also that the staff is already on an aggressive schedule and he is reluctant to give them more tasks.

Mr. Alstede stated that the Council is here for that purpose – and that the closing of the parks would curtail the actions of the Council. Mr. Vetrano noted that last year there was only one ballot question that was passed and that was in relation to parks. He argued that the closing of the parks contradicts what the public has asked for.

Mr. Schrier agreed but stated that he is against the closing of the parks. He expressed his lack of understanding regarding these budget cuts. Then he continued in expressing concerns about enforcement within closed parks. He mentioned his belief that raising these issues is important but that it is not necessarily the responsibility of the Council.

Mr. Cogger stated that he thinks it is appropriate to send the NJDEP a letter regarding the Council's opposition to closing the parks. Chairman Weingart questioned if the Council wanted a resolution on the matter. Ms. Swan said staff could prepare a resolution but expressed her concern that the staff has an aggressive work plan and that she is fearful of them being able to meet deadlines if they are going to need to provide any analysis. Chairman Weingart recommended that this discussion be held off until later in the meeting.

### **RMP DISCUSSION**

Ms. Swan began a presentation regarding the Regional Master Plan Discussion. She first discussed the Land Preservation Program. She gave an overview of innovative preservation and conservation tools that other states are employing as well as some new concepts that may be beneficial. Any new Land Preservation tools would be added to the Technical report of the RMP and labeled as areas for further study. These programs require no immediate endorsement of the Council. The main innovative tools discussed were: Conservation Tax Credits, Installment Purchase Options/Agreements (IPA), Property Tax Relief, Next Generation Farmland Acquisition Programs (NGFAP), Statewide or Regional Local Land Trusts/Fee Simple, Term Conservation Easements, Land Preservation Tontines, Agricultural Conservation Pensions, and Mandatory Source Water Protection Programs for Water Purveyors.

Mr. Dillingham asked about revenue for the water protection programs. Ms. Swan explained that fees could be utilized, similar to the practices of the NJ Water Supply Authority. Ms. Carluccio stated that it would be similar to the NYC policy where tax revenue is used. Ms. Swan said that a water tax would be one way to fund the program then stated that this list of programs will be added to over time. Mr. Cogger expressed his concern about the fact that many farms are turned over due to state and federal tax.

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Mr. Dillingham added suggestions to be added to the list. One suggestion was under water source protection regarding a watershed moratorium and looking into making it permanent. He also requested that the staff look into the agricultural community having issues obtaining financing to maintain their farms. Ms. Swan stated that those can be added to the list. Ms. Letts agreed that it is crucial that the Council help the farmers to gain capital.

Chairman Weingart noted that the Council isn't endorsing any of these and they are not in particular order for feasibility. He also stated that these programs would be a great addition to the RMP.

Ms. Swan then continued her presentation with discussion of the Water and Wastewater Utilities Program. She referenced goals, policies and objectives directly from the plan and stated that there will be changes to them to provide consistency. She discussed that the Water and Wastewater Utilities Program would be new for Chapter V and will provide additional guidance in determining existing and potential capacity for service, identifying appropriate or inappropriate areas for provision and how capacity would be allocated as well as to address protective measures for resources. This program would include a build-out analysis and would also address clusters and waivers. Cluster will be discussed in detail at a future meeting of the Council and goals, policies and objectives will be updated as a result of that discussion. Ms. Swan also explained how the program would involve planning and project review, and that appropriate procedures will be adopted by municipalities during conformance.

Ms. Carluccio brought forth concerns about safe yields and how the use of NJDEP standards could present a conflict with the Council's data. Dr. Van Abs addressed those concerns explaining that the safe yields are accepted and are being updated - but that the plan does call for recommendations for updating the yields. He went on to assure that the stringency of net water availability is to protect the safe yields.

Ms. Carluccio also expressed concerns about allocations, particularly during drought conditions. Ms. Swan assured that the Council would start with the water management plans and would work with municipalities to look at drought conditions so that they would plan for all conditions.

Mr. Dillingham stated that he would like more language in the plan on protected areas in which we will not allow further sewers or growth. Ms. Carluccio mentioned other areas that need language changes or clarifications. She addressed the language and context of clusters and how it is unclear how and why they are being allowed in areas designated for no further growth. Ms. Swan stated that there would be a future discussion on clusters and if the Council would like to make changes, then that would be the appropriate time.

Ms. Carluccio questioned the discussion on septic density and the need to meet set nitrate standards. Dr. Van Abs explained that the standards are infrastructure driven. He continued in stating that in the Protection Zone or Conservation Zone you may have an area with sewers and that the expectation is that you should be developing at an appropriate density. Ms. Carluccio suggested that 6B7A be edited as it seems inconsistent.

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Ms. Letts expressed concerns regarding wastewater systems that are not limited to that town alone, but are regional. Ms. Swan stated that this scenario is taken into consideration and that the staff will assist with making it area wide.

Mr. Dillingham pointed out that there are two major parts to this program: evaluating the current system and planning for future. Dr. Van Abs explained that is easier for municipalities to work with larger entities to reduce service area rather than to enlarge it. Ms. Swan pointed out that page 12 of this program speaks to the analysis of the greater area and to the build out analysis. She then stated that Plan Conformance will come first. Dr. Van Abs mentioned that when the NJDEP adopts the new water management rules it will in fact be at the same time as the Council's deadlines.

Ms. Pasquarelli stated that this section of the plan will be inadequate without more specific standards. She mentioned her concerns with the language in objective Ia2d and the use of the word prohibit. She stated that with frequent modifiers like accept, it is unclear what is and isn't acceptable. Ms. Pasquarelli also commented that this isn't the only area where this appears in the RMP and urged the Council to insist that these sections be amended.

Chairman Weingart stated that specific recommendations would be more helpful. He also mentioned that he thinks that the RMP is more specific than most plans and policies by other state entities, and that because the plan covers a large region, there needs to be some room for exceptions.

Ms. Pasquarelli agreed to bring specific recommendations to the Council. She also commented that the statement "To provide for minimal practical use" was unclear. Mr. Borden explained that the staff is creating a new section that would delineate all exemptions and waivers in one place. He also mentioned that the staff will amend the GPOs to take out repetition. Dr. Van Abs said that the staff is working on a significant rewrite to clarify the language in the RMP. He suggested that if the council members have specific concerns, to let the staff know. Ms. Swan requested the Council members to send her any changes that they are requesting.

Mr. Dillingham asked if there are maps of areas currently being served. Ms. Swan answered that there are maps of both existing areas for potable water and wastewater and that the staff is following up to receive updates from the municipalities. Mr. Dillingham made a suggestion to add headings in order to make the documents clearer. He also mentioned that inconsistencies in the language make some areas unclear and that he would provide more information on that. He also questioned whether there were changes to the policies from public comments. Lastly, he mentioned his concerns regarding exemptions for clustering. Ms. Carluccio suggested rewriting Policy 3c1 on page 4 as it is inconsistent with others.

Ms. Swan then continued her presentation with a discussion on Plan Conformance key requirements. She stated that many local officials had requested an overview to facilitate consideration of conformance. Ms. Pasquarelli asked if this page could be distributed. Ms. Swan answered that it is in draft form, but can be distributed.

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Ms. Swan continued her presentation explaining that conformance involved environmental/infrastructural capacity analyses as well as planning analyses which includes developing a land use plan. She explained that municipalities must complete a self-assessment and prepare a report which would address all of the items necessary for conformance. She continued with discussing how conformance involves municipal Master Planning taking into consideration land use ordinances and development regulations, resource areas and their supporting regulations, and will include redevelopment plans and any proposed map adjustments. She stated that the first steps of conformance (Basic Plan Conformance) are to be achieved within 15 months of the RMP adoption.

Mr. Dillingham suggested that the Council focus on their role in the implementation of conformance and breaking it down to simple and advanced steps. He also suggested that the Council provide a "technology transfer" to municipalities and have staff available to go out and assist municipalities with conformance.

Ms. Swan expressed her concern about staff capacity, but that the staff would be available to help and to share information with municipalities. She also stated that it is important that the information is updated so that everyone involved would be working from the same maps and information.

Ms. Letts agreed with the staff providing assistance. She also suggested that perhaps some of the Council's funding could be used for the staff to be able to go out into the municipalities. She also stated that conformance should be broken down to make it easier for municipalities to understand and adopt. Ms. Swan clarified that the staff does go out and work with municipalities. She also agreed that the whole document can be overwhelming which is why the staff helps to guide them.

Mr. Cogger suggested that the different funding options be shown in appropriate areas. Ms. Swan commented on the value of the studies that the staff has already done and is providing to municipalities.

Mr. Dillingham questions whether there was a fiscal analysis to show locals impacts. Ms. Swan answered that the staff will be providing a regional buildout analysis which will have to be revised for local conditions. There was then discussion about the possibility of providing a cost analysis and the difficulties of gathering the data necessary for the different municipalities.

Ms. Swan stated that some of the data is available in the buildout analysis that will be provided. Mr. Dillingham suggested that the staff look at costs and do a fiscal analysis like the environmental analysis that is being done. Ms. Swan pointed out that it would vary by municipality. Ms. Calabrese stated that municipalities will need to know the benefit of conformance.

Mr. Dillingham then suggested that the Council guide municipalities to look at sustainability and to have a cost analysis. Mr. Schrier agreed that municipalities would consider such an

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analysis when they are looking to opt in. Ms. Carluccio stated that ANJEC has a simple calculation that they use. Mr. Cogger explained that there are issues in creating a standard calculation and that it is better left to the towns to do the analysis. Ms. Swan explained that the buildout analysis does help guide them to that analysis.

Chairman Weingart expressed concern in making the information too basic and the need to make sure that municipalities know their obligations. Ms. Swan assured that the contractual obligations will be made clear.

Ms. Letts stated that she was concerned that conformance may be held back by the towns' ability to meet all of the requirements of the housing plan. Ms. Swan acknowledged her concern and explained that it is only under full conformance that they would have to adopt the full housing requirement – so there is time. Ms. Letts also expressed concern that it hasn't been agreed upon what the fair share obligation is and she believes that there will be a lot of arguments over it.

**RETURN TO DISCUSSION ON CLOSING STATE PARKS:**

Mr. Alstede addressed whether it is appropriate for the Council to comment on the closing of the parks. He explained that the Act calls on the Council to adopt an RMP that has a goal to provide outdoor recreation opportunities and the law states that the Council needs to maintain these opportunities. Further in the plan – the Council is told to talk to the State about any actions or proposals that contradict the Regional Master Plan.

Chairman Weingart suggested that if the Council comments it should provide a proposal with suggestions and not just a statement of disapproval.

Mr. Alstede expressed concern that the Council has difficulty agreeing on what to comment on and how to do so. He agreed with the Council providing suggestions. Then he stated that green activities are essential for economic viability in the highlands and that closing the parks is against what the Council has been mandated to do. He expressed that the Council needs to be willing to comment on more than water and sewers – as these issues are just as important.

Ms. Letts stated the issues that come with closing the parks and the future costs (financial and conceptual) of doing so. Chairman Weingart asked if any of the members wanted to make a motion for a resolution on this matter.

***Ms. Letts motioned for a Resolution opposing the closing of the State Parks. Ms. Pasquarelli seconded the motion.***

Ms. Calabrese mentioned that if the Council addresses this issue it may water down the issue of the Department of Agriculture. Chairman Weingart expressed his concern about how budget cuts might affect the Highlands Council staffing. Ms. Letts expressed that both issues affect the Council and their mission, so she supports both. Mr. Vetrano agreed that the Council take a stance on both issues. He also stated that the Council should provide

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suggestions to get a more positive response. The Council members agreed not to combine the issues.

Ms. Letts suggested that the Council point out the economic impact of closing the parks, for example, through tourism. Chairman Weingart stated that there is a motion for a resolution on this matter.

**PUBLIC COMMENT:**

**DAVE PEIFER, ANJEC** - Mr. Peifer expressed his support of the Resolution addressing parks closing as it is a major component on which the highlands planning process depends. He then explained that in looking at the history of parks, you will see a decline in funding with an increase of visitation. Mr. Peifer stated that if the Highlands Council wants to use ecotourism, it has to take a strong position on adequate funding for outdoor recreation.

**JULIA SOMERS, NJ Highlands Coalition-** Ms. Somers discussed that saving open space was the only thing that the public supported during the last election; and that if the parks are closed people will not continue to support them.

**DAVID SHOPE** – Mr. Shope stated that the money that would be saved by the closing of the Department of Agriculture and State Parks is miniscule and would be foolish.

Mr. Cogger expressed concern that the burden will fall on the municipalities to take care of the parks. He also stated that inappropriate use and lack of upkeep will make it costly to reopen them. Chairman Weingart stated that there will be a resolution on this matter for the next meeting.

**PUBLIC COMMENT:**

**JULIA SOMERS, NJ Highlands Coalition-** Ms. Somers commented on making the materials for the Council meetings available to the public. She stated that the Council needs to provide the public access if they want to get appropriate and informed comments – it will be a great service to communities. She also requested information on the Council’s budget so that the Coalition may present support in Trenton.

Mr. Schrier left the meeting.

**ELLIOT RUGA, NJ Highlands Coalition** – Mr. Ruga stated that in regards to Plan Conformance, the Council needs to focus on community visioning sessions (as mentioned in the RMP). He expressed that conformance should not to be achieved behind closed doors and that community involvement is a very necessary part of the process.

**DAVID SHOPE** – Mr. Shope questions whether the changes that will be made to the RMP will be significant enough for another public comment period. Chairman Weingart answered that there will not be another public comment period.

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**DAVID SHOPE** – He expressed his disapproval of changes being made without public comment. He then stated that the Clinton application involves two proposed receiving areas with numerous environmental issues, and that he feels the grant money was poorly spent.

**HELEN HEINRICH, NJ Farm Bureau** - (written comments submitted): Ms. Heinrich stated that it is important to provide more than the agenda to the public ahead of time. She also asked if the Council could invest in a better microphone system as it is difficult to hear. She then discussed preservation and commented that with budget and financing questions, along with the lack of movement on the TDR program, this program needs work. She expressed her concern that several entities are looking into a water tax. She brought up another concern that counties and municipalities have money in their open space funds but are currently unable to use it. Ms. Heinrich then discussed land conservation and the importance of incentives in this voluntary program. She expressed her disappointment that the NJ Farm Bureau’s comments are not reflected in the Water Utility section. She pointed out that the biggest problem is where it is stated “no expansion of sewers” when there are kinds of agricultural development that need expansions such as for Bed and Breakfasts. The language is getting tighter and making these types of expansions harder.

Chairman Weingart responded to the request to post documents ahead of time. He stated that he did not believe that this process would be advisable as some will read the documents ahead of time and may misunderstand or misrepresent what is written without hearing the discussion at the meeting. He also expressed the concern that the information will be in the press without the advantage of staff explanation.

Ms. Carluccio expressed her support for making the documents available the night before or the day before. She explained that she sympathizes with the public who don’t know what is going to be discussed without prior notice. She believes that posting ahead of time will help the Council to get more informed public input.

Ms. Swan clarified that the application from the Town of Clinton listed two tracts that are to be sending areas not receiving areas as Mr. Shope had described. The Receiving Areas are underutilized areas along Rte 173 that are currently zoned as Office or Commercial. The two environmentally sensitive areas are to be considered for Sending Areas.

A motion was made to adjourn and the meeting was adjourned.

**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: \_\_\_\_\_

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

Laura Forrest, Administrative Assistant

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<b><u>Vote on the Approval of these Minutes</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Abse nt</u></b>
Councilmember Alstede	_____	_____	_____	✓
Councilmember Calabrese	✓	_____	_____	_____
Councilmember Carluccio	✓	_____	_____	_____
Councilmember Cogger	✓	_____	_____	_____
Councilmember Dillingham	✓	_____	_____	_____
Councilmember Kovach	✓	_____	_____	_____
Councilmember Letts	✓	_____	_____	_____
Councilmember Pasquarelli	_____	_____	_____	✓
Councilmember Peterson	_____	_____	_____	✓
Councilmember Schrier	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	_____	✓
Councilmember Way	✓	_____	_____	_____
Councilmember Whitenack	✓	_____	_____	_____
Councilmember Weingart	✓	_____	_____	_____

**PUBLIC COMMENTS SUBMITTED**

## NOTES ON "LAND PRESERVATION" IN THE HIGHLANDS

Helen H. Heinrich PP CLA

April 10, 2008

1. Today's view of land preservation relative to current state funding (follow the money):

Budget discussions show State scrambling for ways to cover the deficit – is land preservation anywhere going to be a high enough priority to get some of any new tax or fee? Especially in the Highlands? Everybody wants to tax water use.

The State obviously can't maintain the property it owns now. (closing state parks). So HLC should really emphasize easement purchase rather than public acquisition and let landowners do the maintenance. Most conservation and TDR programs have some form of monitoring of private landowners to make sure they live up to their deeds.

HLC should ensure that preserved farmland at least be monitored by the CADBs who already are experienced and knowledgeable about how to do this. Save money, staff, and time.

For open space land, the State and municipalities can turn over the monitoring to a nonprofit land trust etc. who could pay for the privilege of doing this.

2. State financing of easement purchase and acquisition is questionable: enable the counties and municipalities to use their funds and taxing power to pay directly for the rights on land they want to preserve. Data: \$100 million plus in local funds? PIG money sitting idle? The money is at the local and nonprofit level.

Use installment purchase agreements (IPAs) to stretch dollars over time – many successful models out there.

Use options and other tools to jump-start preservation.

Set up a valuable municipal 8-year program with money up front for those willing to sign up for 8 years, gives landowners ability to request soil and water conservation funding (more likely than preservation dollars) and thus advance protection of Highlands resources.

3. "Coordinate with the SADC and Green Acres" – for now, while funding and staff is limited to work on preservation, let the state land preservation agencies and the locals do the work – from a priority list developed from the Council. Don't try to take on an entirely new, separate land conservation program.
4. Gaps – developing an easement purchase program for open space and forest landowners should be top priority because of the reasons stated above.

5. "Special Environmental Areas" are vague, lack standards at this date, seem to be a tool available to any town for any reason as a way of reducing use of the property (and thereby value). With no use possible, isn't this a "taking"? Should the HLC pay for designating a property in this area?
6. "In a natural state" – because "natural" has no scientific definition and leaving land as is often leads to its own type of degradation, the RMP should use other terms instead:

Existing state – hardly what the HLC would like to see over time in many cases.

Undeveloped – no buildings, roads, structures. Better definition of what is meant.

Assuming everything not planted with nonnative plants is not "natural" will work against RMP goals if buffers are in conservation plans or could be replanted as such, agriculture has some exemptions to farm even in wetlands and transition areas, forestry can continue in wetlands using forestry BMPs, ALL PROVIDING MORE MONITORING AND MAINTENANCE FOR WATER SUPPLY AND QUALITY PURPOSES THAN LEAVING THE LAND ALONE.

State with its policy against the use of the necessary chemicals seems to be willing to let the gypsy moth devastate NJ forests – should acres of dead forests be left in their "natural state"? Fire? More invasive species?

7. Is "land conservation" to continue as a voluntary program, with "willing sellers"? Then everything should be done to appeal to the landowners of the properties the HLC wants to protect through preservation forms.

Pay landowners with the top priorities more money whether or not they can show "development value".

Meet with a focus group of such landowners and experienced CADB, Green Acres, nonprofit officials to develop some powerful incentives.

Take away the fear of eminent domain.



JON S. CORZINE  
*Governor*

**State of New Jersey**  
Highlands Water Protection and Planning Council  
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Chester, New Jersey 07930-2322  
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JOHN R. WEINGART  
*Chairman*

EILEEN SWAN  
*Executive Director*

## **NOTICE OF AMENDED MEETING SCHEDULE NEW JERSEY HIGHLANDS COUNCIL**

Please take notice that the New Jersey Highlands Water Protection and Planning Council has scheduled additional meetings and has rescheduled the meeting times. Accordingly, the Council's revised annual meeting schedule through the end of this year will be as follows:

April 24, 4 p.m.  
May 1, 10 a.m. \*  
May 15, 10 a.m.  
May 22, 4 p.m. \*  
June 5, 10 a.m. \*  
June 12, 10 a.m. \*  
June 26, 4 p.m. \*  
July 10, 10 a.m. \*  
July 17, 10 a.m.  
July 24, 10 a.m. \*  
August 21, 10 a.m.  
September 18, 10 a.m.  
October 16, 4 p.m.  
November 20, 10 a.m.  
December 18, 10 a.m.

\*Indicates new meetings

Please note that the meeting previously scheduled for June 19<sup>th</sup> has been removed from the meeting schedule. All meetings will be held at the Council's office at 100 North Road, Route 513, in Chester, New Jersey except the meeting on July 17<sup>th</sup> will be held at the Morris County Frelinghuysen Arboretum, Haggerty Education Center, 53 East Hanover Avenue, Morristown, NJ. At these meetings, the Council will consider agenda items as published on the Council's website at [www.highlands.state.nj.us](http://www.highlands.state.nj.us). Please take notice that should a quorum of the Highlands Council not be available at any of the above meetings, the available Council members may continue to meet in a work session setting.



JON S. CORZINE  
Governor

## State of New Jersey

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JOHN R. WEINGART  
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Executive Director

### **DRAFT FOR REVIEW BY THE HIGHLANDS COUNCIL**

#### **RMP Program: Water and Wastewater Utilities**

*Version: April 9, 2008*

<b>Issue Overview</b>	<p>The Regional Master Plan includes many policies and objectives regarding water supply and wastewater utility capacity, service areas, service densities, and environmental protection requirements. Utility services support more dense development than on-site wells and septic systems, and therefore can provide for more housing and job creation per square mile. They also can result in more intensive environmental impacts and a greater drain on available water resources. For this reason, the RMP's emphasis on utilities is critical to protection of Highlands Region resources.</p> <p>Smart growth principles emphasize the concentration of development in centers and other compact forms, to bring jobs and housing together, reduce commutes, make efficient use of infrastructure and protect the landscape from fragmented "sprawl" development. Provision of water supply and wastewater utilities to such areas is a prerequisite of smart growth. In more rural landscapes, the extension or creation of water supply and wastewater utility services is also important for supporting clustered development adjacent to or distinct from existing areas served, respectively. Clustered development is an important approach for preserving large areas where land preservation does not take the land out of the marketplace.</p> <p>Management of water and wastewater utilities is a shared responsibility of utilities, municipalities, and State agencies such as the Highlands Council, the New Jersey Department of Environmental Protection (NJDEP) and the Board of Public Utilities. The RMP provides a framework for coordination of these entities by ensuring that compact growth requiring such utilities happens only where utility capacity <u>and</u> resource capacity exist, the growth is at densities that ensure cost-effective service provision, and environmental resources are protected. Each component is related to the others. Municipal comprehensive planning under Plan Conformance must provide an analytical framework that will drive decisions in conformance with the RMP. The intent of RMP policies is to ensure that any development in conformance with the RMP will also be in conformance with NJDEP planning requirements under the Water Quality Planning Act, providing a basis for approval by both State agencies. Where a County Wastewater Management Plan already incorporates the necessary information, a municipality may rely on that information as appropriate. Because the resource constraints regarding water availability are linked to this process, conformance with the RMP should also address NJDEP planning requirements for water supply. The RMP does not address specific</p>
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	<p>design, permitting or operational aspects of water and wastewater utilities; rather, it leaves those issues to NJDEP regulation.</p>
<p><b>RMP Policies and Objectives Addressed</b></p>	<p><b><u>Water Supply and Sewer Service Area Policies and Objectives</u></b></p> <p><b>Objective 1A2d</b> To prohibit through local development review and Highlands Project Review the expansion of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into the Forest Resource Area except as shown to be necessary for and is approved by the Highlands Council to support clustered development (see Objectives 2K3d and 2K3f) that cannot feasibly be located outside the Forest Resource Area or the forested portion of the Forest Resource Area, to serve a designated Highlands Redevelopment Area, to address a documented threat to public health and safety where no alternative is feasible, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of forest.</p> <p><b>Policy 2I1</b> To ensure compliance with the statutory revocation of designated sewer service areas <b>in the Preservation Area</b> unless the wastewater collection systems had been installed by August 10, 2004, and unless extensions are <b>approved through a HPA or an exemption determination in accordance with N.J.A.C. 7:38</b> <del>warranted to address documented threats to public health and safety or are exempt from the Highlands Act.</del></p> <p><b>Policy 2J4</b> To minimize, through Plan Conformance, local development review and Highlands Project Review, the extension of public water supply systems within the Protection Zone and the Conservation Zone for the protection of water resources.</p> <p><b>Objective 2J4a</b> Prohibit new, expanded or extended public water systems unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a designated Highlands Redevelopment Area, or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources.</p> <p><b>Objective 2J4b</b> Accommodate compact development served by existing or proposed public water systems only where such development is within or immediately adjacent to an existing service area and provides for the clustering or aggregation of development that will preserve at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes and the development impacts are otherwise consistent with the goals and requirements of the Plan. Where agricultural purposes are involved, increased impervious surfaces of greater than 3% but less than 9% of the agricultural lands requires the approval of a Farm Conservation Plan from the USDA Natural Resource Conservation Service and impervious surfaces of 9% or greater requires the approval of a Resource Management System Plan from the USDA Natural Resource Conservation Service.</p> <p><b>Objective 2J9b</b> Coordinate with NJDEP, water purveyors and water utilities to ensure that service areas and franchise areas are supplied by and consistent with sustainable yields from their designated sources.</p> <p><b>Objective 2K3b</b> Prohibit new, expanded, or extended wastewater collection or treatment outside of Existing Areas Served unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area, or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental</p>

resources.

**Objective 2K3c** Expansion of wastewater service shall be permitted in areas where there is a demonstrated threat to public health caused by a pattern of documented failing septic systems located within Existing Areas Served, or adjacent to Existing Areas Served where the failing septic systems cannot reasonably be addressed through rehabilitation or replacement of the existing septic system.

**Objective 2K3d** Permit cluster development served by existing or expanded wastewater collection and treatment systems in an Agricultural Resource Area only where such development is within or immediately adjacent to an Existing Areas Served and adequate provision is made for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agricultural purposes and provided that the proposed development is otherwise consistent with the goals and requirements of the Plan. Where agricultural purposes are involved, increased impervious surfaces of greater than 3% but less than 9% of the agricultural lands requires the approval of a Farm Conservation Plan from the USDA Natural Resource Conservation Service and impervious surfaces of 9% or greater requires the approval of a Resource Management System Plan from the USDA Natural Resource Conservation Service.

**Objective 2K3f** Cluster development utilizing community-based on-site treatment facilities shall be permitted: (1) where such development is not within an Existing Area Served or adjacent to an Existing Area Served with available capacity, (2) where the system is designed and has capacity only for the cluster development, (3) where the system does not create the potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served, (4) where adequate provision is made for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes, (5) where agricultural purposes are involved, increased impervious surfaces of greater than 3% but less than 9% of the agricultural lands requires the approval of a Farm Conservation Plan from the USDA Natural Resource Conservation Service and impervious surfaces of 9% or greater requires the approval of a Resource Management System Plan from the USDA Natural Resource Conservation Service , and (6) provided that the proposed development is otherwise consistent with the goals and requirements of the Plan.

**Objective 2K4c** Allow the expansion or creation of wastewater collection systems beyond Existing Areas Served to serve lands which are appropriate for infill or redevelopment, or to serve areas if they are shown to be necessary for and are approved by the Highlands Council to address a documented threat to public health and safety where no alternative is feasible, to serve cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources.

**Objective 2K5a** Allow community-based on-site treatment facilities for those areas located outside Existing Areas Served that are shown to be necessary for and are approved by the Highlands Council to address a documented threat to public health and safety due to failing septic systems; these facilities shall only serve existing wastewater and shall not include infrastructure to support future growth.

**Objective 2K5c** Prohibit expansion of a public wastewater collection and treatment systems and community on-site treatment facilities within the Preservation Area, except as provided by the Highlands Act. Further, prohibit such systems and facilities within Open Water buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep

Slopes, and Critical Habitat Areas unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, cluster development (see Objectives 2K3d and 2K3f), Highlands Redevelopment Areas, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of these sensitive environmental resources.

**Objective 2K5f** Wastewater Management Plan or amendments thereto, or to an Areawide Water Quality Management Plan, shall be consistent with requirements of this Plan.

**Policy 3C1** To prohibit through Plan Conformance, local development review and Highlands Project Review the development of additional water and wastewater infrastructure in a Agricultural Resource Area within the Protection Zone and the Preservation Area, unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area or mandatory cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of agricultural lands within the Agricultural Resource Area.

**Policy 3C2** To prohibit through Plan Conformance, local development review and Highlands Project Review the development of additional water and wastewater infrastructure in a Agricultural Resource Area in a Conservation Zone, unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area or mandatory cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of agricultural lands within the Agricultural Resource Area.

**Objective 6B1e** Prevent the extension or creation of water and wastewater utility services in environmentally constrained sub-zones, unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources.

**Objective 6B7a** Center based development initiatives should be planned within the Existing Community Zone to meet minimum density thresholds of three dwelling units per acre. Higher densities of five dwelling units and above are encouraged in areas designated as TDR Receiving Zones. Attainment of these density thresholds is discretionary, and shall be consistent with the resource and capacity goals and requirements in this plan. Centers in the Protection Zone and Conservation Zone, potentially including clustered development, shall be at densities appropriate to the zone, the community character and the use of septic systems or community wastewater systems.

**Sewerage Allocation Policies and Objectives**

**Policy 2K2** To base projected demand for appropriate economic revitalization and opportunities for designated Receiving Zones within Existing Areas Served on existing maximum three month demands plus an estimate of redevelopment needs based on either Highlands Council regional analyses or more detailed local analyses,

to assess whether there is adequate treatment capacity to encourage redevelopment.

**Objective 2K3a** Allocate any available sewer system capacity to address documented threats to public health from failing septic systems on a priority basis.

**Policy 2K4** To provide new growth and development in the Existing Community Zone with adequate and appropriate wastewater treatment, through Plan Conformance, local development review and Highlands Project Review.

**Objective 2K4a** The highest priority for allocation of excess or additional wastewater treatment capacity is to areas where there are clusters of failed septic systems that are located within or adjacent to Existing Areas Served.

**Objective 2K4b** The second highest priority for the allocation of excess or additional wastewater treatment capacity is to regional growth and redevelopment areas that can serve as designated Receiving Zones.

**Objective 2K5e** Existing wastewater collection and treatments systems which are non-compliant with state water quality standards for wastewater treatment and effluent discharge shall be prohibited from collecting and treating additional wastewater until the treatment systems are fully compliant with State permit requirements.

#### **Water Supply Allocation Policies and Objectives**

**Objective 2B3a** Water utilities that rely for their water sources on a HUC14 subwatershed that have a positive Net Water Availability for potable supplies shall be given priority for public community water systems serving the Existing Community Zone, based on the development capacity for that Zone.

**Policy 2B4** To require through Plan Conformance the development and implementation of Water Management Plans to address any Current Deficit Areas or subwatershed that could become deficit areas based on projected development and water uses, to ensure sustainable water supply, water resource and ecological values.

**Objective 2B4a** Water Management Plans shall include provisions to reduce consumptive and depletive uses of ground and surface waters as necessary to reduce or prevent deficits in Net Water Availability; or to ensure continued stream flows to downstream Current Deficit Areas from Existing Constrained Areas, to the extent practicable within each zone.

**Objective 2B4b** Proposed increases in water use, including consumptive or depletive water uses, within a Current Deficit Area or an area where the proposed increase would cause the HUC14 subwatershed to become a Current Deficit Area shall provide mitigation equal to 125% of the proposed new consumptive or depletive water uses within the same HUC14 subwatershed through: a permanent reduction of existing consumptive and depletive water uses; ground water recharge in excess of the requirements of N.J.A.C. 7:8 (Stormwater Management Rules); or other permanent means.

**Policy 2B6** To require, through local development review and Highlands Project Review, the use of water conservation, recycling and reuse methods (where appropriate) and devices for any redevelopment or development activity, including renovations to existing residential, institutional, commercial or industrial buildings, to minimize consumptive water use tailored to meet the resource protection and other goals for each Zone and considering subwatershed-specific conditions and Net Water Availability status.

**Policy 2B7** To require through Highlands Project Review that Wastewater Management Plans or amendments demonstrate that the proposed service area will not directly or indirectly cause or contribute to, or could help mitigate, a Net Water Availability deficit.

**Objective 2B8e** PZ: Ensure, through NJDEP Water Allocation regulations, that

any new or increased water allocation permits do not result in significant reductions in safe yields for any water supply facility with an existing water allocation permit and NJDEP-approved safe yield.

**Objective 2B9f** CZ: Ensure, through NJDEP Water Allocation regulations, that any new or increased water allocation permits do not result in significant reductions in safe yields for any water supply facility with an existing water allocation permit and NJDEP-approved safe yield.

**Objective 2B10h** ECZ: Ensure, through NJDEP Water Allocation regulations, that any new or increased water allocation permits do not result in significant reductions in safe yields for any water supply facility with an existing water allocation permit and NJDEP-approved safe yield.

**Objective 2J1d** The identification of remaining available water supply system capacity to support regional growth opportunities within the Highlands Region.

**Policy 2J2** To ensure, through Plan Conformance and Highlands Project Review, that the service areas, water allocation permits and bulk water purchases of Highlands Public Community Water Systems shall be limited such that the maximum monthly demand shall not exceed or contribute to an exceedance of the water availability of its source waters.

**Policy 2J3** To identify potential opportunities for public water systems where domestic water supplies have been documented as a threat to public health due to source contamination.

**Policy 2J5** To allocate available water supply in the Existing Community Zone to provide for the maximum direct and indirect protection of water resources in the Highlands Region.

**Objective 2J5a** The highest priority for the allocation of available utility capacity in Existing Community Zones shall be given to areas of regional growth opportunities that constitute designated Receiving Zones.

**Objective 2J5c** Limit future water system demand and/or reducing existing demand by water systems that are dependent on Current Water Availability Deficit Areas or Existing Water Availability Constrained Areas as a source of water.

**Objective 2J5d** Limit future water system demands to levels that will not cause a Current Water Availability Deficit where one does not currently exist.

**Policy 2J6** To prohibit, through local development review and Highlands Project Review, new or increased water resource transfers between subwatersheds unless it is demonstrated that no other option exists to meet public health, safety and welfare objectives and where such transfers do not result in impairment of resources in the subwatershed from which water is proposed to be transferred.

#### **Design and Operation Policies and Objectives**

**Objective 1K4d** Public works projects, including but not limited to water supply, sewerage, stormwater and transportation facilities, shall be constructed and maintained such that the potential for damage from karst features and the contamination of ground water are avoided.

**Objective 2G3c** Wastewater Management Plans or amendments shall demonstrate that the proposed service area will not directly or indirectly support development that would be in violation of an adopted TMDL.

**Objective 2H2a** Prohibit land uses that have a significant potential to result in the discharge of pathogens (including but not limited to septic systems and engineered stormwater infiltration from surfaces with significant potential for contact with pathogenic contaminants) to ground water or to the land surface within a designated Tier 1 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality.

	<p><b>Objective 2H5d</b> Amend Wastewater Management Plans for conforming municipalities and counties to ensure that any activity associated with the proposed service area will not adversely affect a Wellhead Protection Area.</p> <p><b>Objective 2J8c</b> Require that new residential development served by public community water systems be at a minimum density of 1/2 acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, recreational space), to ensure cost-effective utility service.</p> <p><b>Objective 2J8c</b> Require that new non-residential development served by public wastewater collection and treatment systems be designed to target a floor area ratio (FAR) of 0.84 for the developed part of the site (i.e., not including wetlands, open water buffers, recreational space) to the maximum extent feasible, as a means to maximize parking and employment efficiency and compact development.</p> <p><b>Objective 2K5b</b> Prohibit the construction of sewer lines within Tier 1 of Well Head Protection Areas that may result in seepage of untreated sewage into ground water supplies.</p> <p><b>Objective 2K6a</b> Require that new residential development served by public wastewater collection and treatment systems be at a minimum density of 1/2 acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, and recreational space) to ensure cost-effective utility service.</p> <p><b>Objective 2K6b</b> Require that new non-residential development served by public wastewater collection and treatment systems be designed to target a floor area ratio (FAR) of 0.84 for the developed part of the site (i.e., not including wetlands, open water buffers, recreational space) to the maximum extent feasible, as a means to maximize parking and employment efficiency and compact development.</p> <p><b>Policy 6J1</b> To encourage Preservation Area redevelopment of sites with 70% or greater impervious surfaces or a brownfield in areas designated by the Highlands Council as Highlands Redevelopment Areas in accordance with N.J.A.C 7:38-6.6.</p> <p><b>Policy 6J2</b> To encourage redevelopment activities in the Existing Community Zone in the Planning Area on sites that meet the Preservation Area redevelopment site designation criteria, grayfields and other previously developed lands that have adequate water, wastewater, transportation capacity and are appropriate for increased land use intensity or conversion to greenfields.</p> <p><b>Policy 6J3</b> To encourage redevelopment activities in the Conservation and Protection Zones in the Planning Area on sites that meet the Preservation Area Highlands Redevelopment Area designation criteria, or are grayfields, and that have adequate water, wastewater, transportation capacity and are appropriate for increased land use intensity or conversion to greenfields.</p>
<b>Program Summary</b>	<p>The Water and Wastewater Utilities Program provides a step-wise approach to determining the existing and potential capacity for service provision within the Highlands Region, identification of appropriate and inappropriate areas for the provision of utility services, and how capacity will be allocated among Existing Areas Served and proposed areas for new services both adjacent to and distinct from Existing Areas Served. Provision is made for incorporation of resource constraints and the protection of sensitive environmental features.</p>
<b>Verification of Available Facility Capacity for Water Supply and Wastewater</b>	<p>The RMP's estimation of available utility capacity is based on a comparison of the NJDEP-approved facility capacity to the maximum monthly demand for water supply and the maximum three month flows for wastewater through the year 2004. Municipalities and utilities may provide updated or more detailed information to revise the RMP estimates, through the RMP Update process. Updated or detailed information may include, but is not limited to:</p>

<p><b>Utilities</b></p>	<ul style="list-style-type: none"> <li>• Updated or corrected information on NJDEP-approved facility capacity, such as approved Wastewater Management Plans, NJPDES permits, treatment works approvals and Capacity Assurance Plans (for facilities where three month average flows exceed 80% of their facility capacity) for wastewater utilities, or water allocation permits, “safe yield” and “firm capacity” for water supply utilities.</li> <li>• Corrections regarding the water demands or wastewater flows during the period used in the RMP estimates, including information from Discharge Monitoring Reports, Water Allocation Permit reports, or Safe Drinking Water Permit reports.</li> <li>• More recent estimates of the maximum monthly water demands or rolling three month wastewater flows based on information reported to NJDEP.</li> <li>• Documentation of temporary demands (especially for water supply) that should not be included in the demand analysis, such as temporary bulk sales of water to an adjacent utility to address an emergency or other temporary situation.</li> <li>• Documentation of the permanent conversion of a land use that will significantly change (increase or decrease) its water use or wastewater generating characteristics.</li> <li>• Documentation of any temporary cessation or major reduction in water demand or wastewater generation, where renewal previous levels is anticipated and should be reflected in the calculation of existing demands.</li> <li>• Documentation of contractual commitments for new water use or wastewater generation with all relevant regulatory approvals, which should be added to the existing demands. (Note: these values must not include general contracts for service that are not directly connected to approved land uses, such as contracts between a regional utility and a municipality.)</li> <li>• Court-ordered commitments for new water use or wastewater generation (e.g., scarce resource orders), which should be added to the existing demands.</li> <li>• Estimates regarding the impact of RMP requirements for water conservation and efficiency methods on water demands and wastewater flows.</li> </ul> <p>The results of any reanalysis of available utility capacity must be provided to the Highlands Council with supporting documentation for consideration as an RMP Update. If approved, the updated estimates will become the basis for planning. Changes in system ownership, identification or permit limits resulting from privatization, transfer of ownership or utility consolidation should also be reported. These changes do not modify the estimated utility capacity, but allow the Highlands Council to track utility capacity through ownership changes.</p>
<p><b>Identification of Resource and Regulatory Constraints on Utility Capacity</b></p>	<p>Each water and wastewater utility faces unique constraints on its ability to provide services to a defined service area. In addition to facility capacity as discussed above, resource and regulatory constraints may exist and must be identified. Some of these factors are addressed under the <i>Land Use Capability Analysis Program</i>, and are briefly discussed here as well. In each case, the Highlands Council may consider RMP Updates based on the corrections or updated information provided. Constraints include but are not limited to:</p>

	<ul style="list-style-type: none"> <li>• Net water availability, which may constrain both water supply service and the resulting wastewater generation. Water availability may constrain growth potential in an area, regardless of water treatment facility capacity. If the areas within a sewer service area lack sufficient water supply, then wastewater generation will be constrained regardless of facility size. Where net water availability is zero or negative, no extension of service from an existing utility facility may occur unless all RMP mitigation requirements are met. No increase in utility facility capacity for an existing facility shall occur unless a Water Management Plan has been approved that will provide sufficient water availability to support the additional capacity. In such instances the operator or municipality must agree to implement the Water Management Plan in a timeframe that achieves continuing and routine reductions in the deficit in advance of additional water uses. Full implementation shall be mandatory in accordance with a schedule established in the Water Management Plan.</li> <li>• NJDEP Preservation Area rules at N.J.A.C. 7:38-2.5 and 3.2 regarding restrictions on increased or new water allocations of 50,000 gallons per day, and N.J.A.C. 7:38-2.6 and 3.4, prohibiting new or expanded NJPDES-permitted wastewater treatment works except where exemptions or waivers apply.</li> <li>• Safe yields for reservoirs, which will limit water supply capacity regardless of water treatment facility capacity.</li> <li>• Source water quality, which may constrain the capacity of water supply facilities due to treatment requirements that the current facilities cannot meet.</li> <li>• Areawide Water Quality Management Plans, including:             <ul style="list-style-type: none"> <li>○ Wastewater Management Plans, which define the maximum sewer service area and wastewater facility capacity allowable (both of which may be further constrained by the RMP), as modified to address Preservation Area restrictions;</li> <li>○ Total Maximum Daily Loads, which may limit additional discharges of an existing wastewater treatment facility to a water body, or may require facility upgrades;</li> <li>○ Other direct limits on wastewater treatment facility capacity, such as court orders or the USEPA limit of 12 MGD on the Rockaway Valley Regional Sewerage Authority facility to protect safe yield in the Jersey City Reservoir System from upstream water withdrawals.</li> </ul> </li> </ul> <p>Under any of these scenarios, the resource capacity, rather than the utility facility capacity, may become the limiting factor. In most cases, with the notable exception of Net Water Availability, changes to the resource limitations must first be approved by the relevant agency (usually NJDEP or USEPA), and then provided to the Highlands Council as an RMP Update.</p>
<p><b>Identification of Additional Constraints on Utility Capacity</b></p>	<p>In some instances, franchise agreements or other contractual tools may directly limit utility capacity. Where such constraints exist, they should be identified as part of the local planning process and incorporated into the Utility Services Element of the municipal master plan.</p>
<p><b>Protection of Environmental</b></p>	<p>Proposed service areas, including Existing Areas Served, must be defined and regulated to ensure that sensitive environmental resources are protected from</p>

<p><b>Resources Within Service Areas</b></p>	<p>development that relies on water and wastewater service. Contiguous areas of sensitive environmental resources using the thresholds for Land Use Capability Zone designation under the RMP must be excluded from the service areas unless proof is provided through the RMP Update process that the basis for the resource mapping is incorrect. Smaller areas may also be excluded from the service areas at the discretion of the municipality. Where the smaller areas are included in the service areas, they must be protected from proposed development through municipal ordinances and local development review that meets all relevant RMP standards, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Preservation Area restrictions in accordance with N.J.A.C. 7:38</li> <li>• Agricultural Resource Areas and agricultural lands of such Areas</li> <li>• Forest Resource Areas and the forested portion of such Areas</li> <li>• Conservation and Protection Zones of the Planning Area</li> <li>• Environmentally-constrained Sub-Zones of the Conservation and Existing Community Zones of the Planning Area</li> <li>• Highlands Open Water buffer areas, Riparian Areas, Steep Slopes, Karst Topography, Prime Ground Water Recharge Areas, Wellhead Protection Areas and Critical Habitat Areas</li> </ul> <p>Stringent limitations exist on utility service areas in the Preservation Area, regardless of LUCM Zone, including the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.3 regarding restrictions on the extension of water supply utility service, and N.J.A.C. 7:38-2.6 regarding the revocation of sewer service areas. These requirements are not applicable to exempt activities, and the requirements may be modified through a HPAA with a waiver in accordance with N.J.A.C. 7:38. Cluster development in the Preservation Area is not eligible for infrastructure waivers, and therefore will use septic systems where it occurs at all. In general, the creation or extension of water supply and wastewater infrastructure in the Preservation Area will be extremely limited.</p> <p>The RMP includes exceptions to serve certain kinds of cluster development, to address a documented threat to public health and safety where no alternative is feasible, and to provide for minimum practical use in the absence of any alternative. Permission for these exceptions where applicable occurs by issuance of a HPAA with a waiver in the Preservation Area or by approval of the Highlands Council in the Planning Area. In all cases, the extent of the exception is limited to maximize the protection of sensitive environmental resources. Clustering and known public health and safety issues may be planned for and included in Plan Conformance, but most often these exceptions will be addressed through specific RMP Plan Adjustments and Highlands Project Reviews. It should be noted that the “minimum practical use” exception will very rarely require the extension of public water or wastewater services, but this may occur in limited situations where lots are highly constrained (i.e., unable to support on-site water and wastewater systems) and adjacent to existing utility services.</p>
<p><b>Build Out Analysis for the Existing Area Served in the</b></p>	<p>Once the available capacity of the utility <u>facility</u> has been verified or modified and the impacts of resource, regulatory, and other constraints have been applied, a complete picture will be available of the ability of a water supply or wastewater utility to serve additional development – the net utility capacity. Where zero or</p>

<p><b>Highlands, and Non-Highlands Approved Service Areas</b></p>	<p>negative, no additional services should be provided until management efforts (e.g., water conservation, service line rehabilitation, facility changes) result in a positive net utility capacity. Potential development drawing upon net utility capacity may consist of infill, rehabilitation, redevelopment, cluster development or general greenfields development.</p> <p>The first step is to determine how much capacity is likely to be demanded by development in the Existing Area Served in the Highlands Region (reflecting, among other issues, restrictions on service areas in the Preservation Area imposed by the Highlands Act and implemented through the NJDEP Preservation Area rules at N.J.A.C. 7:38), and by development outside the Highlands Region in approved service areas. The analyses should include:</p> <ul style="list-style-type: none"> <li>• Estimated needs within the Existing Area Served for available sewer system capacity to address documented threats to public health from failing septic systems, or for water supply capacity to address a public health threat due to water supply contamination. These have the highest priority for capacity.</li> <li>• Estimated needs within the Existing Area Served for available sewer system capacity and water supply capacity to address TDR Receiving Areas, which shall be the second highest priority for capacity.</li> <li>• Estimated needs of redevelopment within the Existing Areas Served based on either Highlands Council regional analyses or more detailed local analyses.</li> <li>• Estimated needs of infill development within the Existing Areas Served, providing capacity to lots that have not previously been developed or are currently vacant and would be developed at zoning capacity.</li> <li>• Estimated needs for existing development based on anticipated trends in per capita and commercial needs, known shifts in water use and wastewater generation patterns from industrial development, potential for increased or decreased demands based on infrastructure aging and maintenance, etc.</li> <li>• Estimated needs for portions of the service areas that are outside of the Highlands Region. The RMP analyses are based on a pro rata allocation of demands based on service area both inside and outside the Highlands Region. Corrections to this allocation may be provided as RMP Updates.</li> </ul> <p>The results of this analysis must then be compared to the net utility capacity. Where available capacity is insufficient, expectations for new development must be constrained or utility capacity must be enhanced to meet the identified needs. In the absence of capacity, an <u>expansion</u> of the service areas in the Highlands Region would not be allowed under the RMP.</p>
<p><b>Proposed Service Areas, Infrastructure Needs and Densities in Highlands Existing Community Zones</b></p>	<p>Growth is not a mandatory aspect of the RMP. Rather, the RMP clearly specifies that growth is at the discretion of municipalities. However, where a municipality <u>chooses</u> growth supported by utilities, the RMP provides certain standards to ensure that the growth is well planned, protective of environmental resources, and cost-efficient.</p> <p>RMP density standards (but <u>not</u> environmental protection standards, as discussed above) are discretionary within current Existing Areas Served. All RMP standards must be met where a municipality proposes the creation or extension of public water supply or wastewater systems for new service areas. New residential development in such areas must have a density of at least two dwelling</p>

	<p>units per acre (2 DU/acre) in developed portions of the property. Differential densities may be required where a municipality is voluntarily seeking a designated center or is seeking to be eligible for the additional incentives for Highlands TDR Receiving Zones. For commercial development, the intensity standard is a floor area ratio (FAR) of 0.84 for the developed portion of the property. It is important to note that these thresholds do not apply to existing developed areas, and that “the developed portion of the property” is defined to exclude environmentally constrained areas, agriculture and similar open space. Where a municipality does not wish to meet these standards, development on septic systems and on-site wells must be proposed at densities appropriate for such development, as defined by the RMP.</p> <p>The purpose of these standards is to ensure that development based on utilities has sufficient density to make cost-effective use of utility lines, minimizing the costs per unit development of construction, operation, maintenance and reconstruction. Part of the cost of development is driven by the efficiency of land use and utility provision. The length of utility lines per unit development is a critical metric. Higher densities (for the developed portion of a property) can both help reduce housing costs and reduce land consumption (helping to protect natural resources). The combined policies on water and wastewater infrastructure and septic system densities will result in development patterns consistent with the principles of Smart Growth, with a clear distinction in development intensities – more concentrated development where utilities are used, and low density growth where utilities are absent.</p>
<p><b>Build-out Analysis for Proposed Service Areas in Highlands Existing Community Zones</b></p>	<p>A mandatory component of municipal Plan Conformance is the analysis of build out conditions in the municipality (see <i>Regional Master Plan Conformance, Consistency and Coordination, Part 1, Plan Conformance</i>). This build out analysis must incorporate an evaluation of proposed water supply and wastewater utility services, incorporating the factors discussed above. The results of this analysis are used to estimate the anticipated utility demands, first within the Existing Areas Served (as discussed above) and then in new service areas proposed for the Existing Community Zone (ECZ). These proposed ECZ demands must then be compared to the net utility capacity to determine whether sufficient capacity exists. If so, <u>and</u> if all resource protection policies and objectives of the RMP are met within the proposed ECZ service area, then the area may be included in the utility plan and service area. If not, then the area must be excluded from public water or wastewater service. Where the answers are different for the two utilities, a municipality may propose public sewerage with on-site water supply (if safe supplies can be assured), but may not propose public water supply with on-site septic systems as the septic system densities would be far too high. A municipality may also propose taking action to increase utility capacity, if feasible within the policies and objectives of the RMP.</p> <p>In some cases, utility facility capacity from a regional system may be available to more than one municipality. In such instances, utility capacity shall be directed to potential new service areas in the following manner:</p> <ol style="list-style-type: none"> <li>1. If a specific contractual obligation exists between a utility and a municipality regarding remaining capacity, that municipality may allocate that capacity to new service areas that meet RMP requirements and local needs. If the resulting service areas are insufficient to use the remaining</li> </ol>

	<p>contractual obligation, even with consideration of the potential for TDR receiving zones and redevelopment within the Existing Area Served, then the municipality may negotiate with any other municipality served by the utility for the sale of the remaining contractual obligation, which may then be allocated to areas that meet RMP requirements and local needs.</p> <p>2. If no contractual obligation exists for service to individual municipalities (i.e., the utility uses “first come, first served” allocations), then the utility capacity shall be allocated to the first municipality that achieves Plan Conformance, and to each municipality that subsequently achieves Plan Conformance, until the net utility capacity is fully allocated. In each municipality, the priorities for new sewerage shall be in accordance with the RMP policies discussed above.</p>
<p><b>Proposed Service Areas, Infrastructure Needs and Densities in Highlands Protection and Conservation Zones</b></p>	<p>Nearly all new water supply and wastewater infrastructure in the Protection and Conservation Zones will address existing public health problems or the creation of clusters, both of which are constrained in terms of the allowable service areas as discussed below. In addition, RMP policies restrict the development yield of clusters as discussed in the <i>Cluster Development Program</i> and summarized below. An exception to the Centers density standard (but <u>not</u> the 2 DU/acre threshold) applies in the Protection and Conservation Zones; utility service in such Centers shall be at densities appropriate to the Zone, the community character and the use of public water and wastewater systems.</p>
<p><b>Potential Service Areas for Clusters, Redevelopment Areas, Exempt Parcels and Public Health Exemptions</b></p>	<p>If net utility capacity still exists after consideration of all factors previously discussed, or if on-site community systems are proposed to be built (e.g., for clustered development in areas non-adjacent to Existing Areas Served, or to adjacent areas where no utility capacity exists), the municipality may propose service areas to address the needs for clustering, exempt development, or public health and redevelopment site waivers where these needs can be identified, planned for, and incorporated in full compliance with RMP policies and objectives including consideration of net water availability and sensitive environmental land features.</p> <p>Cluster development must meet the requirements of the RMP regarding the extension of services from an adjacent Existing Area Served, or for the creation of new utility facilities elsewhere. Cluster development yields where wastewater utility services are provided must meet RMP requirements as discussed in the <i>Cluster Development Program</i>, including the protection of at least 90% of the property associated with the project (as differentiated from the 80% requirement for clusters on septic systems). As discussed in that program, the RMP encourages municipalities to plan ahead for clustering, for example, to minimize the potential for scattered, uncoordinated cluster development that does not maximize the protection of environmental and agricultural resources and rural community character.</p> <p>Likewise, planning ahead for exempt development can reduce the need for multiple extensions, uncoordinated action, etc. Planning for redevelopment is somewhat more problematic, as some sites may be readily apparent while others may not. Municipalities should not attempt to plan for “takings waivers” as these cannot be anticipated and will rarely require the extension of public water or wastewater infrastructure.</p>

	<p>The public health exemption requires that a documented health threat exist, caused by a pattern of septic system failures, where the failing systems cannot reasonably be addressed through rehabilitation or replacement. Factors to be considered include but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Documented health threat: Is the existence of failing systems widespread or spotty? Has an inventory of failing systems documented a broader issue? Note that the area need not show that a large number of systems are currently failing at any one time; rather, the area must show that a pattern of failure is longstanding, pervasive and anticipated to continue.</li> <li>2. Geology and soils: Do the soils and local geology pose major constraints on septic system function, such that standard septic systems cannot be expected to function properly?</li> <li>3. Lot size and environmental constraints: Are the lots so small or constrained by slopes, wetlands, floodplains, etc., that installing a replacement system would be environmentally damaging or pose a continuing threat to on-site or neighboring wells?</li> <li>4. Development density: Is the overall development density such that the average nitrate loadings for the developed portion exceed the cluster development limitation of 10 mg/L? Is the density in excess of or close to the 2 DU/acre minimum density for new sewerage?</li> <li>5. Development pattern: Does the pattern of existing development provide an opportunity for cost-effective sewerage, with minimal potential for secondary impacts such as sewerage for infill lots?</li> <li>6. Service area constraints: Does the proposed service area align tightly with the area of documented public health threats, and include provisions to ensure that undeveloped lots proximate to the new service area or along any resulting wastewater lines cannot connect in violation of RMP requirements for the affected Zone?</li> <li>7. Treatment system constraints: Where a new community system is proposed, does the capacity match the intended service area with no provision for additional customers?</li> </ol>
<p><b>Utility Services Element</b></p>	<p>The net result of the planning and analysis discussed in this program will be the water and wastewater utility components of a Utility Services Element for a municipal master plan. The Element should include a summary of each step of the analysis, supported by a basis and background document that fully documents all aspects of the planning methodology. The Element must specifically include:</p> <ul style="list-style-type: none"> <li>• A list of RMP Updates submitted for Highlands Council validation and incorporation into the RMP.</li> <li>• A list and description of proposed RMP Adjustments submitted for Highlands Council consideration.</li> </ul> <p>Where a County Wastewater Management Plan has been approved by NJDEP that includes the necessary information for part or all of the municipal Plan Conformance requirement, it may be incorporated by reference.</p>
<p><b>Project Review Standards</b></p>	<p>The Highlands Council shall prepare, and municipalities shall adopt by reference through Plan Conformance, Highlands and local project review standards regarding water and wastewater utility capacity, service areas, service densities,</p>

	environmental protection requirements and other relevant issues.
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## **DRAFT FOR REVIEW BY THE HIGHLANDS COUNCIL**

### **Highlands Regional Master Plan Municipal Plan Conformance**

#### **FREQUENTLY ASKED QUESTIONS**

**What is “Plan Conformance?”** A municipality achieves Plan Conformance by aligning all relevant aspects of its local planning program with the Highlands Regional Master Plan (RMP). While the specifics will vary for each municipality, Plan Conformance will typically require amendments to the local Master Plan, Plan Maps, Land Use Regulations, Zoning Ordinances, and Zoning Map. Plan Conformance automatically provides a “legal shield” to the municipalities, whereby the Highlands Council is required to defend certain decisions made under Plan Conformance and courts are required to give extraordinary deference to plans and ordinances adopted under the process.

**Is Plan Conformance required?** Municipal Plan Conformance is required for any land area within the Highlands Preservation Area but is voluntary with respect to any land located in the Highlands Planning Area. In both cases, the Highlands Council is required to provide grants covering the reasonable expenses of Plan Conformance for any municipality, from a special fund established by the Act. After July 1, 2008, the Highlands Protection Fund will have over \$20 million dollars that can be used for municipal and county Plan Conformance.

**Is there a deadline?** Within nine (9) to fifteen (15) months after adoption of the RMP, any municipality having land in the Preservation Area must be deemed by the Highlands Council to have achieved Plan Conformance for that area. The Highlands Council will notify all effected municipalities of this requirement upon adoption of the RMP. t. Petitioners may at the same time seek Plan Conformance for any land in the Planning Area; however, this is not required. No deadlines apply to Plan Conformance Petitions for land in the Planning Area.

**How can municipalities file petitions within such a short time?** The Highlands Council recognizes that 9-15 months is a very limited timeframe and does not expect or require that municipalities complete the comprehensive planning process necessary to achieve Plan Conformance with every aspect of the RMP during that time. Instead, the Council will provide assistance to municipalities to meet “Basic Conformance.” Basic Conformance will involve completion of a set of immediately-required tasks, with a commitment to completing the remaining long-term tasks in accordance with a realistic implementation schedule and accompanying grant funding. The Council will provide a package of Basic Conformance

documents for municipal use in adopting the immediately-required components of municipal Master Plans, Land Use Regulations, and Environmental Resource Inventories. An Action Plan and Implementation Schedule will govern the completion and timing of remaining obligations.

**How will Plan Conformance affect future development?** The primary focus of Basic Conformance is to ensure immediate protection of critical Highlands resources from future development, while the municipality works toward full Plan Conformance. To provide a full understanding of how conformance with the RMP will affect future development and redevelopment within a municipality, the full “Plan Conformance” process begins with a comprehensive analysis of the locality’s environmental resources, developable land inventory, and infrastructure capacity. The analysis will focus heavily on water availability and wastewater treatment capacity, including anticipated septic system yields. These are dependent in large part on location in Highlands areas, zones and subzones. In addition, information on sensitive Highlands Resources such as stream buffers, steep slopes and critical habitat will be assessed. Using maps, technical data and a build-out analysis tool provided by the Highlands Council, the municipality will gain an understanding of the constraints to and/or the opportunities for development in the various parts of its community. This information will ultimately determine the municipality’s maximum potential for development and/or redevelopment, as constrained by Highlands regulatory provisions.

The most significant potential impacts on future municipal development in those areas without wastewater utilities will likely derive from constraints on both water availability and septic system capacity. Where residential housing is supported by individual septic systems, for example, the RMP will require density limitations based on nitrate dilution analysis. Actual septic system yields will vary by subwatershed based on estimated subwatershed recharge. **Is it mandatory that a conforming municipality accept growth?** The Highlands Act does not require that any municipality accept growth beyond the limits of its zoning regulations and in many ways may further restrict growth based on resource or utility constraints. The RMP specifically includes a policy indicating that growth is discretionary. Where a municipality voluntarily decides to grow (for example, by extending public sewers), the RMP includes Smart Growth principles to ensure that utility capacity and available land are used in an efficient, environmentally sustainable manner. Municipalities may decide to voluntarily designate regional Transfer of Development Rights receiving zones so long as this growth is consistent with the RMP and the municipality has done a resource assessment and infrastructure capacity study to prove the feasibility of the proposal.

**How will Plan Conformance affect the local planning program?** The results of the preceding analyses will inform the local planning effort, revealing areas in which capacity may be insufficient to support intended patterns of development, and/or in which capacity is underutilized and could offer potential for alternate development (or preservation) strategies. The municipality will assess the type and degree of changes needed to align its planning program with the study findings, while at the same time considering the many other needs and interests of the community. These changes will likely involve the Master Plan, Plan Maps, Land Use/Development Regulations, Environmental Resource Inventory, Zoning Ordinances, and Zoning Map.

**What will a conforming municipal Master Plan achieve?** A conforming municipal Master Plan will provide the framework for a resource-centered, capacity-based planning program that protects and preserves Highlands resources at the local level. While it will continue to promote the general purposes of zoning and the specific goals and objectives of the municipality, it will place these within the context of the Highlands regional environment and the legislative mandate requiring its protection. It will adopt mandatory goals, policies, and objectives of the RMP and will lay the groundwork for a series of land use regulations governing water and wastewater, special resources, and all Highland Resource Areas located within the municipality.

**Specifically, what must be done to conform?** The mandatory elements for inclusion in a conforming Master Plan and Land Use regulatory program are detailed in the Highlands Council, Plan Conformance Requirements papers. The Highlands Council will provide more detailed information as part of the Plan Conformance process.



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## MEMORANDUM

**To:** Highlands Council Members

**From:** Eileen Swan, Executive Director  
Dan Van Abs, Senior Director for Planning & Science  
Judith Thornton, Principal Planner

**Date:** April 4, 2008

**Subject:** Plan Conformance Summaries

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The Highlands Council has committed funds to help initial municipal efforts to understand the Regional Master Plan (RMP) and Plan Conformance as it applies to their municipality, and to develop work plans for achieving Plan Conformance. A grant package regarding Interim Municipal Assessment Grants will be released immediately after the Council reviews the following Plan Conformance overview documents.

To help municipalities understand the implications of Plan Conformance, three documents have been developed:

1. **“Frequently Asked Questions.”** A document that will help all elected and appointed officials and the general public understand municipal Plan Conformance.
2. **“Basic Plan Conformance for Municipalities.”** A summary of the requirements to achieve mandatory conformance within the 9-15 month deadline after adoption of the RMP.
3. **“Plan Conformance for Municipalities.”** A summary of the requirements for full Plan Conformance.

These documents are intended to provide a quick overview of Plan Conformance requirements for municipalities. All Plan Conformance requirements are taken directly from the RMP; the documents are summaries, not new policy. Please note that these documents are general in nature, and will be followed by detailed Plan Conformance procedures, standards and guidelines, which are currently under development. In addition, some of the terminology used in these summaries differs slightly from the RMP. Staff will be recommending GPO and Program changes to conform to the new

April 5, 2008

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terms, for clarity regarding the Plan Conformance steps and requirements, but these changes are not substantive.

Basic Plan Conformance is intended primarily to assist Preservation Area municipalities in achieving mandatory conformance within the 9-15 month deadline after adoption of the RMP. Its major aim is to ensure immediate protection of Highlands resources during review of land development applications. Basic Plan Conformance does not relieve a municipality from the obligation to achieve full Plan Conformance, but simplifies pertinent upfront requirements and commits the municipality to fulfillment of the remainder in accordance with a detailed Action Plan and Implementation Schedule. The process of Basic Plan Conformance also applies to the Planning Area, but has no statutory deadline and is not mandatory.



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**DRAFT FOR REVIEW BY THE HIGHLANDS COUNCIL**  
**PLAN CONFORMANCE FOR MUNICIPALITIES**  
**KEY REQUIREMENTS**

Under Plan Conformance, the municipal planning program will reflect all elements of the Highlands Regional Master Plan (RMP) as well as the results of specific environmental and planning analyses at the local level. The applicable components of the municipal Master Plan and Land Development Ordinances/Regulations, along with a number of supplemental resource management programs will regulate all non-exempt development in the municipality whether in the Preservation or Planning Area. Plan Conformance also addresses issues beyond development regulation that will protect, enhance and restore Highlands resources and community character. This document provides a summary of what must be accomplished to achieve Plan Conformance with the RMP.

**ENVIRONMENTAL/INFRASTRUCTURE CAPACITY ANALYSES**

1. **Environmental Resource Inventory.** Complete and adopt (or update, as needed) a comprehensive Environmental Resource Inventory (ERI) that incorporates, and if new or supplemental information is available, builds on Highlands data, maps, and resource information, indicating where new data may be more recent, accurate or reliable than Highlands information.
2. **RMP Update Analysis.** Conduct full analysis of RMP maps and data applicable to municipality to determine need for RMP Updates. If applicable, submit request to Highlands Council listing proposed RMP Updates if any, along with justification for each. A web-based program will be made available by the Highlands Council for submission and processing of RMP Updates.
3. **Land Use Capability Analysis.** Using RMP maps, data, and technical information including the Highlands Council Local Build-Out Model, determine the capacity for future development and redevelopment within the community. This determination will derive from detailed analyses of the municipality's existing land-based capacity, resource-based capacity, and utility-based capacity. Areas of study will include but not be limited to: developed lands, vacant lands, agricultural lands, environmentally constrained lands, contaminated sites, potential redevelopment/infill opportunities, HUC14 water availability, septic system yield, and water and sewer infrastructure.
4. **"Limiting Factor" Analysis.** The preceding analyses will clearly indicate the most significant capacity constraints and their general locations within the community. If desired, the municipality may examine various alternatives to create additional capacity where it is found insufficient to support intended development/redevelopment areas (such as extension of public sewerage infrastructure). Such expansions may only occur within the constraints of the RMP and NJDEP regulations. The municipality may coordinate its efforts with adjoining communities sharing the same HUC14 subwatershed, as well, to reallocate capacity in accordance with a mutually

agreeable formula. In any case, the resultant capacity determinations will represent the maximum development and redevelopment potential for the municipality.

5. **Build-Out Analysis.** Based on maximum potential, and using the Highlands Council Local Build-Out Model, consider potential scenarios for future development and/or redevelopment within the community.

## **PLANNING ANALYSES**

Evaluate the municipal planning program, in consideration of the environmental/infrastructure analyses, capacity limitations, and municipal goals and objectives regarding future growth, development and redevelopment. Identify areas of the community in which capacity constraints and maximum yields will not support future development under current land use regulations. Consider whether capacity can or should be expanded to accommodate it. Identify areas in which available capacity would be underutilized under current planning regulations. Consider whether it is suitable for an alternate type of development, a higher density/intensity allowance, or should simply be reserved in consideration of unanticipated future needs.

Determine the type and degree of change needed to appropriately allocate and manage growth, development and redevelopment in accordance with the full range of relevant planning considerations, including but not limited to: a) capacity constraints; b) natural resource protection; c) open space and farmland preservation; d) optimizing use of public infrastructure; e) transportation constraints and opportunities; f) economic sustainability; g) community needs and desires; and h) principles of equity, overall sustainability, and smart growth.

While the municipality may find that this evaluation affects numerous aspects of its planning program, it must be emphasized that the Highlands Act, the NJDEP Rules, and the RMP do not apply to specific developments and/or activities that are deemed exempt from the Highlands Act pursuant to N.J.S.A. 13:30-28 and N.J.A.C. 7:38-2.3. The Highlands Act does authorize a municipality to alter its planning program to be more stringent (within the constraints of applicable law and regulatory requirements), than the changes (i.e., to zoning, development, and/or resource regulations) required for Plan Conformance, however.

Based on the foregoing considerations, develop a preliminary Land Use Plan (as an update or overlay to the existing) that includes, at minimum: 1) a land use plan map depicting the proposed allocation of municipal land use classifications; and 2) a description of the land use classifications, including permitted types of uses, densities, and intensities of development.

## **MUNICIPAL SELF-ASSESSMENT & IMPLEMENTATION SCHEDULE**

**Complete Municipal Self-Assessment (MSA) and prepare MSA Report.** MSA Report should list and discuss all changes to the municipal planning program that remain necessary from the time of filing a petition, to achieving Plan Conformance. MSA Report must also include proposed Implementation Schedule, indicating timeframe for anticipated completion of individual items and overall program.

## MASTER PLAN & DEVELOPMENT REGULATIONS

The municipality may choose to merge the “Highlands” sections of its Master Plan and Zoning/Development Regulations with the base portion of each, or retain them as separate sections (as described in Basic Plan Conformance) in order to delineate Highlands applicability. In either case, the conforming municipal Master Plan and Zoning/Development Regulations must include and/or accomplish each of the items listed in the respective sections below.

*Note: **Boldface** type in the sections that follow brings attention to items that differ from Basic Plan Conformance.*

### MASTER PLAN

1. ***Policies, Goals, Objectives.*** Adopt all broad-based, municipally-relevant Goals, Policies, and Objectives (GPO’s) of the Highlands Regional Master Plan (RMP), modified to apply at the local level. In all cases, here and below, where GPO’s are modified to apply to the local level, the resulting policies and objectives must be no less stringent than those of the RMP. (Where GPO’s are discretionary, the municipality may choose which to incorporate, if any.)
2. ***Land Use Plan.*** Adopt applicable Highlands Land Use categories, including Areas, Zones, and Sub-Zones. Adopt Land Use Capability Map (LUCM) series, upon verification of accuracy of factual information, to limits of municipal boundary lines. Adopt Highlands water and wastewater utility provisions as basis for maximum density/intensity of development. Provide basis for cluster development and where required (i.e., Conservation Zone), lot-size averaging. Adopt an up-to-date developed land inventory map (unless an existing map remains current).

**Adopt an updated or overlay land use plan map that allocates municipal land use classifications (themselves updated, as needed to provide for appropriate uses, densities, intensities) over areas suited in size and location to ensure that future development and redevelopment will achieve municipal intent while fulfilling RMP GPO’s and staying within the maximum build-out capacity. Provide a discussion on the relationship of the Land Use Plan to the policies, goals, and objectives of the Municipal Master Plan.**

3. ***Housing Plan.*** Adopt a **Housing Element and Fair Share Plan that: a) addresses the municipality’s constitutional obligation to provide for affordable housing; b) does so in accordance with revised Land Use Plan (above) and applicable RMP GPO’s; and c) employs affordable housing options that minimize land disturbance and environmental impacts.**
4. ***Conservation Plan.*** Adopt the **Environmental Resource Inventory (ERI) as the underlying basis for the Conservation Plan Element.** Adopt Highlands Resource Area Maps, as applicable, to limits of municipal boundary lines. Adopt Highlands Resource categories as defined in RMP, along with specific applicable GPO’s, as modified to apply at the local level. Recognize and provide cross-reference to any other applicable municipal resource maps, data, studies, environmental inventories, etc., that supplement, enhance, or refine Highlands resource information. **Provide detailed discussion of each of the resource areas to be protected by regulations and the rationale for their protection.** Incorporate basis for requiring Low Impact Development and use of Best Management Practices throughout resource areas.
5. ***Utilities Plan.*** Adopt applicable RMP GPO’s, modified to apply to local level. Recognize adherence to adopted Highlands water and wastewater technical guidance documents.

Emphasize that existing water and sewer service utilities will not be extended: 1) in the Preservation Area unless approved through a Highlands Preservation Area Approval (HPAA) pursuant to N.J.A.C. 7:38 or deemed exempt from the Highlands Act, or 2) in the Protection and Conservation Zones unless it complies with RMP wastewater utility provisions.

- a) **Adopt water deficit management plan (if applicable);**
  - b) **Adopt ground water recharge protection and mitigation plan;**
  - c) **Adopt wellhead protection plan;**
  - d) **Adopt septic system management/maintenance plan (if applicable); and**
  - e) **Adopt stormwater management plan.**
6. ***Circulation Plan.*** Adopt applicable RMP GPO's, modified to apply to local level. **Fully develop Circulation Plan to reflect RMP GPO's and principles of smart growth. Provide mandatory study criteria for consideration in relation to any growth-inducing municipal project.**
  7. ***Open Space Plan.*** Adopt applicable RMP GPO's, modified to apply to local level. **Create or update Open Space & Recreation Plan in keeping with municipal and RMP GPO's and revised municipal Land Use Plan. Incorporate parameters to ensure use of proper land stewardship techniques.** Adopt an up-to-date, mapped Recreation and Open Space Inventory (unless an existing inventory remains current).
  8. ***Agriculture Retention/Farmland Preservation Plan (if applicable).*** Adopt applicable RMP GPO's, modified to apply to local level. **Fully develop Agriculture Retention/Farmland Preservation Plan in keeping with municipal and RMP GPO's and revised municipal Land Use Plan.** Incorporate commitment to Right to Farm Act and if applicable and desired, promotion and protection of farm labor housing. Adopt an up-to-date, mapped inventory of preserved farmland (unless an existing inventory map remains current).
  9. ***Community Facilities Plan.*** Adopt applicable RMP GPO's, modified to apply to local level. **Fully develop Community Facilities Plan to reflect RMP GPO's and principles of smart growth.**
  10. ***Sustainable Economic Development Plan.*** Adopt applicable RMP GPO's, modified to apply to local level. **Fully develop Economic Development Plan to reflect RMP GPO's and to promote economic sustainability.**
  11. ***Historic Preservation Plan (if applicable).*** Adopt applicable RMP GPO's, modified to apply to local level. **Fully develop Historic Preservation Plan to reflect RMP GPO's and protect municipal interests.**
  12. ***Development Transfer Plan (if applicable).*** Adopt applicable RMP GPO's, modified to apply to local level. **Provide public purposes for Transfer of Development, intended locations of sending and receiving zones (if any), and technical details of the Development Transfer program consistent with the RMP.**

13. ***Relationship of Master Plan to other Plans including RMP.*** In required policy statement, indicate that proposed development and/or redevelopment of the municipality as set forth the municipal Master Plan, is consistent with the Highlands RMP.

## LAND USE ORDINANCES/DEVELOPMENT REGULATIONS

Adopt a “Highlands Regulations” section as supplement to the municipal Zoning/Land Development Ordinances.

1. ***Definitions.*** Adopt definitions of “Highlands Council,” Highlands RMP “areas,” “zones,” and “sub-zones,” and other terms specific to the Highlands RMP, as required.
2. ***Zone Districts and District Regulations.*** Adopt caveat applicable to existing municipal zone districts and district regulations **proposed to remain**, indicating that NJDEP Preservation Area Rules and Highlands RMP provisions will apply with respect to non-exempt development. Water and/or wastewater treatment availability and limitations on utility extensions may affect lot size and lot coverage requirements. **Adopt any revisions to zone districts and/or regulations necessary to effectuate the revised Land Use Plan Element (whether as updates or overlay zoning). Adopt cluster development regulations and where required (i.e., Conservation Zone), lot-averaging provisions. Adopt provisions regarding open space design. Optional: Provide for farm labor housing as permitted accessory use to agricultural uses (if applicable), and for home-based business as a permitted accessory use to specific residential uses.**
3. ***Application Submission Checklists.*** Amend application submission checklists to require for any Application for Development (as defined by the MLUL at N.J.S.A. 40:55D-3), inclusion of the following:
  - a. For Preservation Area applicants claiming an exemption from the Highlands Act, a Highlands Applicability Determination from the NJDEP pursuant to N.J.A.C. 7:38-2.3 for specific exemptions;
  - b. For Planning Area applicants claiming an exemption from the Highlands Act, a Highlands Planning Area Exemption Determination from the Highlands Council, pursuant to N.J.S.A. 13:30-28 for specific exemptions;
  - c. For non-exempt development applications in the Preservation Area, a Highlands Preservation Area Approval (HPAA) or HPAA with waiver from the NJDEP pursuant to N.J.A.C. 7:38 et seq.;
  - d. For all non-exempt development applications, a Highlands Consistency Determination from the Highlands Council indicating that the proposal is consistent with the RMP, or can be revised to achieve consistency via specific changes outlined therein; and
  - e. For non-exempt development applications having received a Consistency Determination indicating that specific revisions are required to achieve consistency, a certification from the applicant’s professional(s) affirming that the plans have been revised to specifically address the inconsistencies identified by the Highlands Council and that to the best of his/her professional knowledge, they have achieved consistency.

4. **Notice Requirements.** Require that for any non-exempt Application for Development, the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that such applications be deemed complete prior to scheduling, and that a copy of the complete application be sent to the Highlands Council along with such notice. Require that the applicant provide copies of any subsequent revisions to such applications to Highlands Council at the same time these are provided to the reviewing Board.
5. **Highlands Council Review.** Require that in the case of any non-exempt Application for Development, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption.
6. **Resource Area and Supporting Regulations. Adopt fully-developed ordinances regulating water and wastewater, special resources, and all Highland Resource Areas located within the municipality.** To the extent that any applicable municipal ordinance already exists that is as, or more restrictive than the provisions of a model ordinance, it will satisfy this requirement provided that definitions and other details are, or can be made consistent. Resource regulations must require that development applications include maps and plans identifying and delineating Highlands resources, and that application approvals be conditioned upon imposition of conservation easements to protect them, to the extent that the reviewing board's final decision does not approve their disturbance. Resource area regulations must cover the following, wherever applicable (or potentially applicable) to the municipality:
  - a. Steep Slopes
  - b. Forest Areas
  - c. Open Water and Riparian Areas
  - d. Ground Water Recharge Management
  - e. Wellhead Protection
  - f. Stormwater Management
  - g. Right to Farm
  - h. Critical Habitat
  - i. Carbonate Rock Areas
  - j. Agricultural Resources
  - k. Lake Management
  - l. Low Impact Development
  - m. Scenic Resources
  - n. Historic/Cultural
7. **Application Procedures.** Adopt procedural requirements applicable to resource area applications and review thereof. Prepare municipal application forms (as needed) and fee/escrow ordinance amendments (as appropriate), and determine and assign responsibility for review of application packages pertinent to these areas by the qualified individual(s).

## REDEVELOPMENT PLANS

**Provide full information (maps, plans, details) regarding any proposed redevelopment plans and demonstrate their consistency with the RMP. Such areas are not limited to plans under the Redevelopment and Housing Law, but should include the full range of private, public, and joint redevelopment activities addressing brownfields, grayfields, Highlands Contaminated Sites, and active sites.**

## PROPOSED MAP ADJUSTMENTS

Provide narrative discussion on proposed Map Adjustments and/or major revisions to the RMP and/or RMP maps, tables, and/or data resources, if any, along with justification for each.