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*Governor*

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*Lt. Governor*

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**CARL J. RICHKO**  
*Chairperson*

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

**MEETING AGENDA**  
**Thursday, September 27, 2018 at 4pm**

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT STATEMENT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF HIGHLANDS COUNCIL MINUTES – August 16, 2018
6. CHAIR’S REPORT (and Council Member Reports)
7. EXECUTIVE DIRECTOR’S REPORT
8. BUDGET & FINANCE COMMITTEE
9. REGIONAL MASTER PLAN (RMP) AMENDMENT COMMITTEE

CONSIDERATION OF RESOLUTION – Adoption Of The “RMP Addendum 2018-1 Procedure For Considering Proposals To Amend The Highlands Regional Master Plan” As An Amendment Of, And Addendum To, The Highlands Regional Master Plan *(voting matter with public comment)*

10. PUBLIC COMMENTS *(to ensure ample time for all members of the public to comment, we will respectfully limit comments to three (3) minutes. Questions raised in this period may not be responded to at this time but, where feasible, will be followed up by the Council and its staff.)*
11. EXECUTIVE SESSION, *if deemed necessary*
12. ADJOURN



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## MEMORANDUM

**To:** Budget & Finance Committee

**From:** Lisa J. Plevin, Executive Director *LJP*

**Subject:** Committee Meeting Minutes – September 7, 2018

**Date:** September 18, 2018

A Budget and Finance (B&F) Committee meeting was held on Thursday, September 7 at 11:00am. Committee Members present: Council Chair Richko, Committee Chair Holtaway, Members Visioli, and James (via phone).

Staff Members present: Lisa J. Plevin, James Humphries, Keri Green, and Annette Tagliareni

### Lake Management Plan – Greenwood Lake Commission, Passaic County

Council Chair Richko recused himself from any decisions made on the Lake Management Plan for Greenwood Lake Commission because he lives on the lake.

Ms. Green reported that the Lake Management Plan for Greenwood Lake Commission is similar to the Lake Management Plan the committee reviewed for the Lake Hopatcong Commission. The FY2018 grant funding Council approved last October included funding for Lake Management Planning (\$200,000). Lake Hopatcong Commission was approved for \$109,000. The balance of which is \$91,000.

The proposed scope of work for Greenwood Lake was provided to the committee members. Greenwood Lake Commission is requesting \$90,000 for a restoration plan for the Greenwood Lake Watershed. This grant funding would be used for the Water Implementation Plan (which then would enable access to USEPA and NJDEP grant funding).

Update on Lake Hopatcong Commission – Lake Management Plan

Ms. Green reported that the water quality testing has begun for Lake Hopatcong. Drone surveys are being used for stormwater events, and to identify any issues.

Committee Member James asked if there is sampling done in various areas of the lake. Ms. Green responded that the water quality monitoring locations are well established, and are located across the lake. Water quality data has been collected from these sampling sites for many years, for continuity.

*Committee Member James made a motion to approve the Lake Management Planning grant of \$90,000 for Greenwood Lake Commission. Committee Chair Holtaway seconded the motion. All were in favor.*

*The committee meeting adjourned at 11:15am.*

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

**PRESENT**

CARL J. RICHKO	)	CHAIR
KURT ALSTEDE	)	VICE CHAIR
TIMOTHY P. DOUGHERTY	)	COUNCIL MEMBERS
MICHAEL FRANCIS	)	
MICHAEL SEBETICH	)	
RICHARD VOHDEN	)	

**VIA TELECONFERENCE**

ROBERT HOLTAWAY	)
BRUCE JAMES	)
MICHAEL R. DRESSLER	)

**ABSENT**

TRACY CARLUCCIO	)
JAMES VISIOLI	)
ROBERT G. WALTON	)

**CALL TO ORDER** 163<sup>RD</sup> meeting of the New Jersey Highlands Water Protection and Planning Council called to order at 4:01pm.

**ROLL CALL**

Roll call was taken. Members Carluccio, Visioli, and Walton were absent. Members Dressler, Holtaway, and James were present via teleconference. All other Council Members were present. *The following staff members were present: Lisa J. Plevin, John Maher, James Humphries, Maryjude Haddock-Weiler, Judy Thornton, Corey Piasecki, Keri Green, Christina Petagna, Carole Ann Dicton, and Tom Tagliareni. Also present were Brian Wilton Senior Counsel, Governor's Authorities Unit (via teleconference), and Jennifer Moriarty, Deputy Attorney General.*

**OPEN PUBLIC MEETINGS ACT**

Ms. Tagliareni announced that the meeting was being held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The Highlands Council sent written notice of the time, date, and location of this meeting to pertinent newspapers of circulation throughout the State and posted notice on the Highlands Council website.

**PLEDGE OF ALLEGIANCE** was then recited.

**APPROVAL OF HIGHLANDS COUNCIL MINUTES OF AUGUST 16, 2018**

Chair Richko asked for a motion on the Minutes of August 16, 2018.

*Member Vohden made a motion to approve the Minutes of August 16, 2018. Member Dougherty seconded it.*

*A roll call vote was taken. The Minutes of August 16, 2018 were APPROVED 9-0.*

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

## **CHAIRMAN'S REPORT**

Chairman Richko asked Vice Chair Alstede and former Executive Director Margaret Nordstrom to join him as he presented a plaque to former Chairman Jim Rilee in recognition of his dedication and service to the Highlands Council over the past 7 years. Vice Chair Alstede and former Executive Director Margaret Nordstrom congratulated Mr. Rilee and highlighted some of his accomplishments during his tenure.

*At this time, there was applause.*

Mr. Rilee thanked the Council for their recognition.

*At this time, there was applause.*

Chairman Richko continued with his report and added that last month the Highlands staff gave a "Highlands 101" presentation to the New Jersey Department of Environmental Protection (NJDEP) staff members. Chairman Richko reported that it was a standing room only and he thanked and congratulated the staff on this presentation. Chairman Richko noted that a condensed version of the presentation would be provided to future Council members.

## **EXECUTIVE DIRECTOR'S REPORT**

Ms. Plevin highlighted the following staff activities:

### **Plan Conformance Update**

#### Outreach Activities

Outreach letters were mailed to all municipalities and counties in the Highlands Region announcing the new leadership at the Council. Council staff has met with the following municipalities.

- Independence Township, Warren County
- Netcong Borough, Morris County
- Peapack Gladstone Borough, Somerset County
- Washington Borough, Warren County
- Town of Boonton, Morris County
- Franklin Borough, Sussex County

#### Upcoming meetings scheduled

- Wanaque Borough, Passaic County
- Washington Borough, Warren County, Council Meeting
- Franklin Borough Council Meeting
- Hanover Township
- Dover Town
- Parsippany-Troy Hills Township
- Warren County

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

- Pompton Lakes Borough

**Municipal and County Implementation Activities** – the following received municipal and Council staff approval

- Kinnelon Borough, Morris County - Highlands Environmental Resource Inventory
- High Bridge Borough, Hunterdon County - Housing Element and Fair Share Plan
- Lopatcong Township, Warren County - Highlands Center Planning Study
- Holland Township, Hunterdon County - Stormwater Ordinance and Mitigation Plan

**Municipally Issued Exemptions**

Since the prior report, the Highlands Council has been notified of the following municipally issued exemptions.

- Jefferson Township, Morris County issued 1 Exemption #5 and 1 Exemption #4.
- Mahwah Township, Bergen County issued 1 Exemption #2.
- Montville Township, Morris County issued 3 Exemption #5's.
- Ringwood Borough, Passaic County issued 1 Exemption #4.
- West Milford Township, Passaic County issued 1 Exemption #4 and 18 Exemption #5's.

*Training Update* – A certification training session has been scheduled for Thursday, October 4, 2018 from 10 a.m. to 12 noon at the Highlands Council office. Invitations were sent to mayors and clerks for municipalities with approved petitions who have not yet been certified. Ten confirmed attendees so far.

**Project Review Update**

Planning Area Exemption - Clinton Town was seeking an Exemption #11 to replace multiple sections of water main. Highlands Council staff determination: Exempt

**Open Space Partnership Funding Program Update**

Transaction Closings

- Closed on Dark Moon Farm (Pittenger) – Frelinghuysen Township, Warren County – We partnered with Frelinghuysen Township and the SADC, to preserve a 94-acre tract which will be protected through an agricultural easement. Council contribution was almost \$165,000.

**TDR/HDC Update**

Since the prior report, 102 acres have been permanently protected through the HDC program. The HDC bank purchased 20.5 credits, providing \$328,000 to two property owners. An additional 26.25 credits were certified, but remain unpurchased.

HDC Bank Purchases – include tracts in:

- Bedminster Township, Somerset County
- Harmony Township, Warren County

Certified Credits (not purchased)

- Lopatcong Township, Warren County

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

Since the last Executive Director's Report dated August 10, 2018, some noteworthy meetings and events that staff attended include:

9/14/18	Economic Development organizations from Hunterdon & Morris Counties
8/21/18	Highlands 101 Training – over 100 attended, standing room only, DEP asked us to give follow up presentation for Green Acres in October – excellent job by staff!
9/9/18	Musconetcong Watershed Association Film Festival
9/15/18	Warren County Preservation Day
8/22/18	Combe Fill South Landfill Cleanup Public Hearing

Personnel updates: Christine LaRocca selected as Senior Council, replaces Kim Kaiser who retired. Christine has been serving on part-time basis as Staff Attorney, focusing on HDC and Open Space closings. Christine's start date is this Monday, October 1.

Ms. Plevin closed her report by announcing that Council's next meeting is scheduled on October 18, 2018.

Vice Chair Alstede asked for clarification regarding the Open Space Matching Grant closing.

### **Budget & Finance Committee**

Committee Chair Holtaway reported that the committee met on September 7, 2018 and reviewed the lake management funding for Greenwood Lake Commission, Passaic County. Committee Chair Holtaway noted that this funding is similar to the Lake Management Plan funding approved for Lake Hopatcong Commission (\$109,000). Mr. Humphries noted that Council approved in their FY2018 budget grant funding for Lake Management Planning (\$200,000). Greenwood Lake Commission requested \$90,000 for their restoration plan.

### **Regional Master Plan (RMP) Amendment Committee**

Committee Chair Alstede reported that the "Draft RMP Addendum 2018-1 Procedure for Considering Proposals to Amend the Highlands Regional Master Plan" (the "Procedure" document) is something we have worked on for some time. Committee Chair Alstede noted some nuances that were adjusted to the Procedure document which include:

- At Council's discretion, an additional public hearing outside of the Highlands Region may be held based on potential impacts on stakeholders outside the Region.
- Submission of written public comments will be accepted for not less than sixty (60) days, instead of 30-90 days as previously noted. At Council's discretion, the timeline could be extended, but would never be less than sixty (60) days.

Committee Chair Alstede added that the committee met today and unanimously voted to move the Amendment document to the full Council for consideration.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

**Resolution – Adoption of the “RMP Addendum 2018-1 Procedure for Considering Proposals to Amend the Highlands Regional Master Plan” As an Amendment Of, And Addendum To, the Highlands Regional Master Plan**

Chairman Richko asked for a motion on the resolution.

*Member Francis made a motion. Member Vobden second it.*

There was no Council discussion.

**Public Comment**

**Deborah Post, Chester Township** – Ms. Post asked Council to allow the stakeholders of the Highlands Region to have input regarding Regional Master Plan (RMP) Amendments. Ms. Post submitted comments for the record.

**Julia Somers, New Jersey Highlands Coalition** – Ms. Somers commented that she is pleased with the language changes in the Amendment document that amends the RMP.

**Hank Klumpp, Tewksbury, NJ** – Mr. Klumpp asked Council to allow stakeholders in the Highlands Region to have input regarding amendments to the RMP. Mr. Klumpp also asked where the funding is for landowners.

**David Shope, Lebanon Township, NJ** – Mr. Shope asked Council to take comments from the stakeholders in the Highlands Region and provide a Highlands literacy test for the stakeholders outside the region.

**Council Comment**

Member Dougherty asked for a copy of Ms. Post’s comments submitted.

*A roll call vote was taken. The resolution was APPROVED 9-0.*

Committee Chair Alstede noted that the final draft Monitoring Program Recommendation Report (MPRR) has been posted to Council’s website for everyone to review. Council will consider this document at its October meeting.

Chair Richko opened the meeting to the public for any other comments.

**Public Comment**

**Hank Klumpp, Tewksbury, NJ** – Mr. Klumpp commented that he has been standing in front of the Council for 14 years asking Council to be compensated for his lost property values. Mr. Klumpp submitted his comments for the record.

**Deborah Post, Chester Township** – Ms. Post commented on the 75% discount of the HDC valuation. Ms. Post urged the Council to change the current HDC credit value.



NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MEETING MINUTES OF SEPTEMBER 27, 2018

**Julia Somers, New Jersey Highlands Coalition** – Ms. Somers commented on the current outreach to municipalities.

**David Shope, Lebanon Township, NJ** – Mr. Shope urged Council to reconsider reports that have been submitted over the past years (i.e., North District Water Supply, Forestry, USDA Census).

Member Dougherty asked that Chairman Richko direct the Executive Director to print out Ms. Post comments regarding the HDC valuation (which Chairman Richko requested Ms. Post to provide), forward these comments to the full Council with a report prepared by staff on Ms. Post's comments on HDC valuation.

*Member Francis made a motion to adjourn the meeting. Member Vohden seconded it. All were in favor. The meeting was adjourned at 4:50pm.*

**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: 10-18-18

Name: Annette Tagliareni  
Annette Tagliareni, Executive Assistant

**Vote on the Approval of  
The Minutes**

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Carluccio					✓	
Councilmember Dougherty			✓			
Councilmember Dressler			✓			
Councilmember Francis			✓			
Councilmember Holtaway	✓		✓			
Councilmember James			✓			
Councilmember Sebetich						✓
Councilmember Visioli			✓			
Councilmember Vohden		✓	✓			
Councilmember Walton						✓
Chairman Richko			✓			



# New Jersey Highlands Council

[Home](#)[About the Council](#)[Highlands Act](#)[Regional Master Plan  
\(RMP\)](#)[RMP Adoption Archive](#)[RMP Monitoring Program](#)[RMP Amendments](#)[Project Review](#)[Plan Conformance](#)[Grant Programs](#)[Rules and Permits](#)[News](#)[Highlands Development  
Credits \(TDR Program\)](#)[Interactive Maps & GIS  
Data](#)[Home](#) > [Regional Master Plan \(RMP\)](#) > [RMP Amendments](#)

## RMP Amendments

Updates and additions to the 2008 Highlands RMP are cataloged on this page.

### Pending: Procedure for Amending the RMP

- **Current Redlined Version:** [Procedure for Considering Proposals to Amend the Highlands Regional Master Plan](#) (pdf)
- Supporting Materials:
  - [Public Comments and Highlands Council Responses](#) (pdf)
  - [Written Public Comments Submitted](#) (pdf) - *Does not include testimony from public hearings. See audio links below.*
  - [Public Notice Announcing Public Hearing Schedule](#) (pdf)

### Public Hearings

The Highlands Council held six public hearings to solicit public comment on the draft Procedure.

#### September 14, 2017 (AM)

Highlands Council Office  
Chester, NJ

Audio: [mp3](#) | [wma](#)

#### September 14, 2017 (PM)

Highlands Council Office  
Chester, NJ

Audio: [mp3](#) | [wma](#)

#### September 20, 2017

Silas Condict County Park  
Kinnelon, NJ

Audio: [mp3](#) | [wma](#)

#### September 20, 2017

Department of Land Preservation  
County of Warren  
Oxford, NJ

Audio: [mp3](#) | [wma](#)

#### September 25, 2017

New Jersey Department of  
Environmental Protection  
Trenton, NJ

Audio: [mp3](#) | [wma](#)

#### September 26, 2017

Hopatcong Municipal Building  
Hopatcong, NJ

Audio: [mp3](#) | [wma](#)

### January 2011: Addendum A - Acreage Update

Amends Table 1.1 of the RMP (p 20-22) "Acreage of the Highlands Region in Municipalities and Counties."

- [Addendum A, January 2011](#) (pdf)



PUBLIC COMMENTS SUBMITTED AT HIGHLANDS  
COUNCIL MEETING ON SEPTEMBER 27, 2018

## COMMENT POINTS FOR DISCUSSION

### RMP Improvements

1. Honest Intent.
2. Reject blind to the line.
3. Promote and protect agritourism.
4. Preserve Integra Resources work.
5. Revalue the HDC.
6. Strip the TDR.
7. Minimize restrictions in the deed of easement.
8. Implement N.J.S.A. 13:8C-39(l)(1).
9. Revisit constraints.
10. Embrace the Highlands currency.

### OUTREACH

1. Appoint a Landowner Advocate.
2. Provide landowners grant access.
3. Exemption allocations.
4. Show respect.
5. Intellectual integrity of all analyses.

### DATA MONITORING

1. Disclose the total just compensation need.
2. Disclose all Highlands waivers/exemptions issued.
3. Track Highlands land sales with intellectual integrity.
4. Beware of ratables.
5. Why 2006 and not 2004?

### ACCESS

1. Stop denying open public record requests for Council activities.  
Embrace transparency.

### TAC RECOMMENDATIONS

To: Highlands Council  
Re: Comments for Impacted Landowner Stakeholder Meeting  
From: Deborah Post  
Date: December 10, 2014

Per the Council provided agenda for the Impacted Landowner Stakeholder Meeting, the following are my comments:

## **RMP IMPROVEMENTS**

1. Honest intent. The 2008 RMP Chapter 5 on Programs includes a very brief six pages outlining a tdr program. However, Chapter 6 on Plan Implementation is devoid of any mention of just compensation or implementation of any landowner equity program. There was and is no sincere intent to compensate the harmed Highlands property owners. This is a serious problem and represents the factual foundation for the landowners having no trust in the Council.
2. Reject blind to the line. The RMP's "blind to the line" determination of its three Zones violates the clear words and intent of the Highlands Act. The Planning Area is where the legislature intended development to happen and the boundaries of the Planning Area are statutory. The legislature never intended the conformance process to be distorted into turning the entire Highlands region into the Preservation Area. Blind to the line harmed many additional landowners who were not harmed by the Act itself, and has significantly increased the dollar requirement of just compensation unnecessarily.
3. Promote and protect agritourism. The 2008 RMP touts tourism as the economic salvation of the Highlands. Yet agritourism is under attack and the Council does not act.

Last summer the legislature passed a farmland special events bill A837 unanimously, shy only one vote. The SADC, who is adamantly opposed to agritourism, convinced the governor to veto the bill. When the bill was repassed Section 6 which had added "agritourist activities" to those activities protected by right to farm was deleted. If there is to be a prayer for economic growth in the Highlands, landowners must be allowed to operate businesses on the land that actually make money.

The RMP must not only embrace but actively promote and protect all types of businesses, agritourist businesses included, which bring people to the Highlands to enjoy the land. All deed restrictions in the Highlands, including those from constitutionally dedicated monies, must specifically state that agritourism (and ecotourism?) is allowed.

4. Preserve Integra Resources work. Integra Resources work product may be the only competent work product of the 2008 RMP. The HDC allocation formula appears fair and balanced. The municipal average data, while on the lower end of the range, is within a

fair and honest range of lot values prior to the Highlands Act's devastation of property values. Importantly, the municipal average data is as of the time of the Act's regulatory taking, as it should be. The factual foundation of values around the time of the Act's passage does not change, it is an historical fact.

The Council has made a point of embracing the dual appraisal methodology which is laudable in its positive message, however a bit misguided in application. Section 13 h1 clearly states: "The Council shall establish the initial value of the development right considering the DEP rules and regulations the day before the day of enactment of this Act". The 2004 date is permanently embedded in the law in connection with actions of this Council. The dual appraisal methodology was an instruction to agencies other than this Council to recognize the Act's regulatory taking back in 2004 when using constitutionally dedicated monies.

The Integra work product renders the need for appraisals typically moot. Landowners may challenge their HDC allocations based on lost lot determination and constraints. The only time new appraisals should come into play is at a landowner's specific request or for a complex specific situation where Integra's work is not applicable.

Adjustments for the time value of money since the Highlands taking should be by inclusion of a reasonable accrued interest.

5. Revalue the HDC. Section 13 h(1) states "The Council shall set the initial value of the development right." Note the word is value, not price. Price and value are different concepts. Prices are sometimes discounted<sup>1</sup>, values are measurements of fact.

The only bona fide factual foundation for the setting of the tdr value is Integra's pre-discounting \$92,000<sup>2</sup> appraised value. The HDC must be allowed to float free in the marketplace as demand rises and falls. The Council and Bank should play no role whatsoever in price control.

Valuing the HDC at 17% of appraised value has no factual foundation and represents the essence of arbitrary and capricious.

The TDR Technical Report for the 2008 RMP page 35 implies falsely that 50% discounts were used to set prices in the Pinelands and LI Pine Barrens tdr programs. This 50% discount "factual foundation" is not true and represents a gross distortion/misrepresentation of true fact as it relates to setting tdr value.

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<sup>1</sup> Initial pricing of capital market securities often includes a slight discount of a few percentage points to encourage market participation. An excessive ipo price discount in the financial world is considered a serious error that unnecessarily harms the issuing entity. Firms that repeatedly err on ipo pricing see their reputation's harmed and business decline.

<sup>2</sup> TDR Technical Report page 35 with elimination of 30% soft cost discount. While a 30% soft cost for a large tract development may be appropriate, it is too high for an existing roadside lot or two.

6. Strip the TDR. The lion's share of harmed Highlands landowners were the elderly. Those elderly are now ten years older. Many retirement and relocation plans have been put on hold pending the implementation of a bona fide just compensation program which has never happened. Harmed elderly landowners are hostages to the Highlands Act faced with the ransom of walking away from their lost property values or staying where they can no longer manage.

The TDR is a derivative and, as a derivative, should be strippable from its primary asset. Landowners need to be able to sell their property, put their HDCs in their safe deposit box (& will), and get on with their lives.

Properties that have had their tdrs stripped should not be deed restricted if the tdr is still held by the original property owner (or descendants) and has not been monetized or retired. The subject property's deed should note that an easement sale is not allowed and a deed restriction may be applied in the future, if and when the tdrs are monetized or retired. A right of first refusal of the subsequent property owners to repurchase the tdrs might be contemplated as this would enhance property resale values and possibly create an incremental tdr marketplace.

7. Minimize restrictions in the deed of easement. The Council currently has two "draft" deed restrictions which past Council counsel Borden dishonestly represented as "negotiable" with an evil twinkle in his eye. There should be one deed restriction, equal for all, and it should be minimalist. The thought that a harmed landowner in need of just compensation has any power to "negotiate" the deed restriction is both laughable and malicious. Please, put some integrity into the process.

The deed restriction should refer back to restrictions of the Highlands Act itself and nothing more.<sup>3</sup> The value being paid to the landowner is only the value of the lost development right. A contract cannot overreach that for which is being paid. The landowner is not being paid one red cent for "resource protection".<sup>4</sup> Ditto for privacy. The deed restriction must not allow any additional access to private property not otherwise provided by law.

The deed restriction must not deny economically viable businesses that rely on non-development land use including, but not limited to, agritourism.

It is a fool's venture to restrict agriculture. First, we need safe non-imported food. Second, well managed farm fields tended by someone with a strong vested interest in that

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<sup>3</sup> Attaching a sample deed restriction.

<sup>4</sup> If highly restrictive deed of easements are desired, a separate program should be instituted that property owners can voluntarily choose to enter with a separate and distinct deed restriction from the HDC. Funding might come from conservation groups.

land's care is the best defense against the most serious cancer faced by the environment, that is invasive species.<sup>5</sup>

The environmentalists approach to invasive species control is to shoot the hapless nurseryman which only sows distrust. A better approach would be to recognize which lands are well cared for and to enable, not punish, those who care for the land. The battle against invasives is extremely expensive, very hard work and, at times, dangerous enough to require suiting up like an ebola worker.

8. Implement N.J.S.A. 13:8C-39(l)(1) The Highlands Act instructed the Council to provide recommendations to the State Agricultural Development Committee concerning farmland preservation strategies and priorities. Such recommendations must include the requirement that the Council's municipal averages be considered in all appraisals pursuant to N.J.S.A. 4:1C-31 for all Highlands Preservation Area properties if the property owner so requests.

Other recommendations might include Council input into Highlands appropriate appraiser choices and consideration of data from the above recommended Council data base. Simply, the Council should be a check and balance on manipulation of appraisal results that seek to underpay already harmed Highland property owners.

The Council is also instructed to provide recommendations to the SADC regarding priority. An area of concern is that the SADC is using scarce funds to preserve Planning Area properties colored yellow and designated "community developable" in the RMP at high prices apparently reflecting the properties special developable designation by the Council.<sup>6</sup> Farmland preserving properties that are clearly appropriate receiving areas (without receiving area mitigation designations elsewhere) is a serious distortion of intent and misuse of funds.

9. Revisit Constraints. The "factual foundations" of the constraints in the allocator tool should be reviewed and revised. Too many landowners complain that the constraints identified are grossly inaccurate. Also, allocating zero HDCs for constrained land flies in the face of the land equity Committee's stated goal to prioritize sensitive lands.
10. Embrace the Highlands Currency. The HDC is complex and widely misunderstood. The HDC should be presented as the "Highlands currency", simply a unit of measure. The currency is to represent an accurate measurement of value with uniform applicability.

The marketplace for the Highlands currency must be broadened beyond "voluntary" receiving areas which have not happened and are unlikely to happen. Demand must be created from many diverse uses of the currency. Recommendations for marketplace broadening should be the focus of the landowner equity TAC.

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<sup>5</sup> I recently visited Kauai, an island that barred agriculture from its conservation lands. Today those conservation lands have been 100% overtaken by invasive growth with hardly a native flora remaining. Kauai is helpless to fix this problem. It's simply too late.

<sup>6</sup> For example, Block 6801 Lots 10 in Mt Olive Township, Planning Area and Community Zoned.



## **OUTREACH/COMMUNICATION**

1. **Appoint a Landowner Advocate.** I receive cold calls from harmed Highlands landowners who have read one of my editorials and are reaching out to a stranger who just might have a grasp of the Highlands Act complexity. They all want help in understanding their own personal Highlands Act mess. I help them the best I can but my own time is limited. Many tell me that I know more about the Highlands Act than anyone else to whom they've spoken.

The truth is that the number of lawyers who truly know the details of the very complex Highlands law can be counted on two hands, and they are very expensive. I cringe when I hear the Council chastise a landowner who has come before them seeking help with the advice "Get a new lawyer".

The Landowner Advocate should not be part of the staff. Simply, no one trusts the staff not to be negotiating from the other side of the table. Like it or not, that's the truth. The Landowner Advocate should be an independent person with both financial and legal knowledge of the Act who is called upon on an "as need" basis when a landowner so requests.

The Landowner Advocate might also play a role in coordination with the SADC for specific Preservation Area applications.

It is my opinion that resolutions exist for the specifics of many properties which, ultimately, would reduce the aggregate dollar amount of just compensation need as well as provide closure to the Highlands Act overhang on property owners' lives.

2. **Provide Landowners Grant Access.** Provide landowners with access to grant monies, possibly via their municipality, to study their specific property situation and to fund excessive application costs related to Highlands requirements.
3. **Exemption Allocations.** The tdr allocator tool should be revised to include a footnote regarding the number of additional HDCs that would be allocated if exemptions were foregone. Some landowners are confused regarding their low allocation of HDCs without a clear understanding that the tool considers their exemptions as a substitute for HDCs.
4. **Show Respect.** Landowners who comment before the Council are not treated respectfully. Landowners are rudely cut off mid-sentence making it clear no one was listening anyway. Council members leave as landowners speak making it clear no one is sincerely interested in the harmed landowners. A landowner who had the floor with time to spare was even arrested for the audacity of objecting to a Council member's description of farmers as dirty polluters. Commenting before the Council is a demeaning and painful experience. Consequently few landowners actually attend insuring no

communication at all. It is as if this is the Council's goal: when there are no landowners left in their face, just compensation is no longer due.

5. Intellectual integrity of all analysis. No junk science and no manipulated valuation data.

## DATA/MONITORING

1. Disclose the total just compensation need. In a decade, the Council has failed to calculate and disclose the total dollar amount required to make all harmed landowners whole. An honest and fair disclosure of the total just compensation need is step one in the design of any program sincerely intended to compensate the harmed landowners.
2. Disclose all Highlands waivers/exemptions issued. This data base would greatly assist others. Equal protection of all landowners.
3. Track Highlands land sales with intellectual integrity. A publicly available "comps" data base analyzing all historical sales of open space properties in the Highlands would be useful. The data base should include downloadable supporting documentation and/or links for fact checking.

This data base must remove all non-land components of value (e.g. structures and remaining build rights such as exception areas and exemptions) prior to calculating the value per acre of non-developable open space Highlands land. It is critical that such a data base be prepared with intellectual integrity absent all intent to obfuscate or distort.<sup>7 8</sup>

4. Beware ratables. An analysis of ratables may be useful in monitoring the Highlands Act impact on municipal financial health.

However, analyses of ratables are not relevant to open space land values and the financial harm inflicted on Highlands landowners. Virtually all Highlands open space is farmland assessed and appears in ratables at the acreage values determined annually by the Farmland Evaluation Advisory Committee. Farmland assessments are statistically invisible in aggregate ratables which largely reflect the value of existing residences (and a smaller component of commercials).

In a conscious campaign of disinformation selected environmental lobbyists<sup>9</sup> are arguing that because ratables and home prices<sup>10</sup> have recovered, therefore Highlands owners of open space have not been harmed. Beware the fallacious ratables spiel.

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<sup>7</sup> Morris County posts an analysis of preserved properties sold that includes the value of McMansions, existing residences and structures in its "per acre" value resulting in a gross misrepresentation of restricted land values. Appraisers routinely fail to adequately adjust for structures and build rights in their comparable sales analyses in order to provide their government clients' with the low valuations desired.

<sup>8</sup> Attaching a sample recommended analyses.

<sup>9</sup> For example, the submissions and writings of George Stafford of the Highlands Coalition.

<sup>10</sup> Home prices would be expected to rise in a market with strong demand but where new supply has been stifled, even absent the current real estate recovery.

5. Why 2006 and not 2004? The Council's direction to consultants is to analyze from 2006 to present. The Highlands Act was passed in 2004 and harm began to leak into the market place a few months earlier. To begin impact analyses in 2006 when the marketplaces were already reflecting what would become a serious downturn biases the analyses to show upward trends. Any honest and fair analysis of the harm to landowners must begin in 2004 when the market was robust.

## **ACCESS**

1. Stop denying open public record requests for Council activities. Transparency of process is critical.

## **TAC RECOMMENDATIONS**

The following recommendations represent solely my personal opinion without the prior review or agreement of the individuals named. Landowners should be represented on the TACs.

Agriculture – Hank Klumpp, Bob Frey  
Water Resource Protection – Pat Moffit  
Future Land Use – David Shope, Pat Moffit  
Economic Development – Jerry Kern, Jack Fera  
Water and Wastewater Utilities – David Shope  
Implementation – Sam Race  
Land Owner Equity – Deborah Post (writer herein)

See Post letter to Chairman Rilee dated September 18 , 2014 with attachment.

## **ATTACHMENTS**

Sample deed restriction.

Sample open space land sale analysis

Plan Implementation Contents

My name is Hank Klumpp. I own 150 acres in the Highlands Preservation Area.

I have been standing before the Highlands Council for 14 years now asking to be compensated for lost property values. Nothing has been resolved - even though it has been promised. I realize that you are probably hoping that I'll shut up about this injustice soon - when I'm too old to stand here any more.

Mrs. Lois Drysdale, from Chester, actually hoped we all would live long enough to see positive results

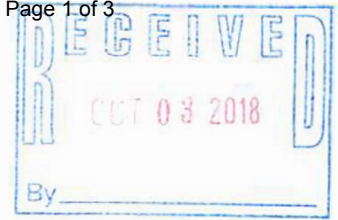
for all of us caught up in this unjust theft, but, unfortunately, she has passed while we all wait. Let's bow our heads and have a moment of silence for her - Out of respect.

Everyone who has put finding a solution and compensation for us on the back burner for 14 years should be ashamed of themselves. The Highlands Council keeps changing with new members - a revolving door - while we are the same people standing here month after month and year after year waiting for

some kind of justice.

Hank Klumpp

24 Longview Rd.  
Lebanon, NJ 08833



Comments to Highlands Council – September 27, 2018  
(written post-comments from notes per request of Chairman Richko)

My name is Deborah Post (commenting on behalf of myself and 80+ harmed Highlands landowners whose proxies I hold).

The landowners have made many recommendations for changes to the RMP, all ignored to date. Likely the most important of these requests is to reconsider and reprice the HDC. Currently the Council has priced the HDC at a 75% discount to appraised value. *This must be changed.*

It was recently suggested to me that I speak on the pricing again, and in more detail, to educate a bit. So I will do that today.

The Highlands Act directs the Council to determine the “initial value” of the HDC. [NJS 13:20-13h(1).] The Highlands Act directs that the “initial value” utilize pre-Act environmental rules and regs, but provides no additional guidance on the HDC pricing. In essence the Act directs the Council to analyze and set the IPO price of the HDC, as is general practice when a new security is introduced to a marketplace.

Page 35 of the TDR Technical Report, a supporting document to the RMP, details the HDC pricing. The Council’s financial advisors determined that the HDC appraised value, after a 30% adjustment for development soft costs, was \$64,000. Do note that this calculation arithmetically means that the appraised value before soft costs is \$92,000. (Actual soft costs typically vary widely by property characteristics.)

The Council then applied an arbitrary 75% discount to the \$64,000 adjusted appraised value for purposes of setting the “initial value” at \$16,000. (Also note that \$16,000 is a mere 17% of the full \$92,000 appraised value.)

*There is no financial universe where a 75% discount for initial pricing is appropriate or found.* The excessive and large discount has no reasonable basis. It is egregious, capricious and mean-spirited.

Typically small discounts (maybe 3% to 5%) are applied to valuations in IPOs with the purpose being to catalyze interest, jumpstart trading, and create a smooth and functioning market for the security. In all cases, the market then takes over pricing. Initial means initial, often a few minutes, not a decade.

Here, the “initial value” of the HDC arbitrarily determined by the Council has been used for over a decade to underpay landowners. The “initial value” was never intended to be the just compensation value. The Act makes it clear that the Council was to develop a tdr program with an active marketplace for the buying and selling of HDCs between willing buyers and willing sellers. That never happened.

The worst is that nobody knows the truth of the 75% discount. The detail is found only in the middle of a complex and arcane technical report. The truth is buried, hidden and opaque. The “initial value” is routinely represented by the Council’s staff as the real and appropriate compensation value, when it is not.

The 75% discount to appraised value is not found in the Highlands Act, it is not statutory. The discount was set as a resolution of the Council when it adopted the RMP. *Therefore it can be changed.* The Council has complete authority to reprice the HDC. And it should do so.

Rumor has it that “fairness” is one of our new governor’s hot buttons and concerns. Surely nothing could be more fair than to compensate those who have cared for and maintained the precious environment at (or close to) the actual value of what they lost.

Attached: Page 35 of TDR Technical Report of the RMP.



64.6 ÷ 70% = \$92k

unadjusted appraised value

## Highlands Transferable Development Rights Technical Report

then sought to predict the marginal value of a lot where density is increased from four units per acre to five units per acre. The basis for selecting this density interval is that the incentives for establishing a Receiving Zone under the Highlands Act are not triggered until the Receiving Zone has a minimum residential density of five units per acre for the residential portion of the Receiving Zone.

After plotting these data, four separate mathematical functions were used to predict the marginal value of the fifth unit per acre. The results of this work are represented in Appendix F titled "Marginal Lot Value Analysis." The results of each function were evaluated based upon mean absolute error and a subjective determination of what functions visually yielded the "best fit."

Using this information, the Highlands Council selected the lowest lot value in a municipality with the best fit. The reason for selecting the lowest lot value is to prevent HDC values from being too high at the outset of the program and undermining any potential demand for the HDCs. The selected lot values are reflected in the column labeled "Lowest Value w/ Best Fit" of Appendix F. The Highlands Council then reduced these values by 30% as these values reflect lots that are in an approved and improved condition. The reduced lot values were then averaged for the entire Highlands Region resulting in an average lot value of \$64,657.25.

Finally, the Highlands Council applied a deduction for a measure known as a "developer's willingness to pay." This measure was developed by Dr. James Nicholas, economics professor at the University of Florida, to reflect the fact that a developer's willingness to purchase a TDR credit is the result of examining the economics between raw land costs, lot selling prices, and the cost/availability of infrastructure in the various receiving areas. When these three cost variables are significant developers have little money left over to purchase TDRs.

In assisting in the development of the Pinelands Development Credit program in the early 1980s, Dr. Nicholas applied a 50% reduction to the marginal values resulting from his analysis. A similar 50% reduction as been applied in other TDR programs including the Long Island Pine Barrens credit program.

In establishing the initial HDC target price, the Highlands Council applied a 75% reduction to the regional average lot value. This was done to reflect the fact that Receiving Zones under the Highlands Program are voluntary. In the case of those programs where a 50% reduction was applied, there are mandatory Receiving Zones. The resulting target HDC price is \$16,164.31, which the Council has rounded down to \$16,000 for simplicity.

Two further circumstances must be considered when determining the initial HDC price. First, in addition to the cost of an HDC, a developer may also be required to pay impact fees of up to \$15,000 per unit, provided that the municipality in which a Receiving Zone is located has met the Highlands Act's minimum requirements for assessing impact fees and has adopted an impact fee ordinance. The cost of potential impact fees and HDC price relative to per unit approval and construction costs must be such that a developer still realizes a sufficient per unit profit.

Second, the Highlands Development Credit Bank, when established, will determine what amount it will pay per HDC to alleviate unique and extenuating financial circumstances. Importantly, the State TDR Act provisions under which the Highlands Development Credit Bank will operate do not place a limitation on the amount that the bank may pay to acquire HDCs. That said, the Highlands Development Credit Bank should be careful not to impair the operation of a private market by establishing a HDC price that is too high at the outset of the program. It is likely that the price paid by the Highlands Development Credit Bank after initial capitalization will establish a floor on HDC prices.

## HIGHLANDS TDR PROGRAM IMPACT FEES

Assuming that a municipally-designated Receiving Zone satisfies the minimum residential density threshold, the Highlands Act authorizes a municipality to impose up to a \$15,000 per unit impact fee on new development within a Receiving Zone to offset the costs of capital improvements or facility



PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

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CARL J. RICHKO  
*Chairperson*

LISA J. PLEVIN  
*Executive Director*

## MEMORANDUM

**To:** RMP Amendment Committee

**From:** Lisa J. Plevin, Executive Director *LJP*

**Subject:** RMP Amendment Committee Meeting Minutes - August 16, 2018

**Date:** August 28, 2018

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The RMP Amendment Committee met on Thursday, August 16, 2018 at 3:30pm at the Highlands Council office in Chester.

RMP Amendment Committee Members present: Council Chair Richko, Committee Chair Alstede, Members Holtaway, and Sebetich.

Highlands Council Staff Members present: Lisa Plevin, John Maher, James Humphries, Corey Piasecki, and Annette Tagliareni

Also, present: Brian Wilton, Senior Counsel, Governor's Authorities Unit (GAU)

### RMP Addendum 2018-1 Procedure For Considering Proposals to Amend the Highlands Regional Master Plan (the "Procedure" document)

Committee Chair Alstede noted that a conference call was held between Council Chair Richko, Lisa Plevin, and himself in regards to a memorandum received by the New Jersey Conservation Foundation suggesting some edits to the Procedure document. There were three (3) suggestions made regarding the following topics:

- Public comment period
- RMP Amendment committee meetings
- Public hearings

Committee Chair Alstede also noted that an RMP Amendment Committee meeting would be scheduled and noticed to the public. During this public committee meeting, the three (3) suggested edits would be discussed by the committee members and the committee would make a recommendation to the full Council at the Council's next meeting to adopt the Procedure document with any edits deemed appropriate.

Council Chair Richko added that the resolution being considered at today's Council meeting to adopt the Procedure document will be pulled from the agenda. Council Chair Richko is hopeful that the Procedure document will be considered at Council's next meeting.

It is anticipated that the RMP Amendment Committee meeting will be scheduled on September 27 at 3:30pm. This meeting will be noticed in the newspapers and the public may attend.

It is also anticipated that the RMP Amendment Committee will make a recommendation to the full Council at its next meeting and the Council will consider a resolution to adopt the Procedures with any edits approved during the Committee meeting.

#### Report out to Council

At Council's meeting this afternoon, Committee Chair Alstede will update the full Council on the Procedure document and its status.

*The RMP Amendment Committee adjourned at 3:55pm.*