

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

Introduction

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

RESPONSE: The Council acknowledges the comment.

Purpose and Scope

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

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

Regionally Significant Scenic Resources

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

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

Third Party Nominations

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

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

**DRAFT – FOR CONSIDERATION AT THE SEPTEMBER 18, 2008
MEETING OF THE HIGHLANDS COUNCIL**

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

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

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

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

Notification of Property Owners

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

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

Support for Scenic Resource Inventory Procedures

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

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

Scenic Design Advisory Board

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

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

Ridgeline Protection

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

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

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

Public Vantage Point

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

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

Scenic Resource Analysis and Management Plan

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

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

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

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

Non-conforming Municipalities

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

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

Outdoor Recreation Resources

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

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

Water Features

**DRAFT – FOR CONSIDERATION AT THE SEPTEMBER 18, 2008
MEETING OF THE HIGHLANDS COUNCIL**

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

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

Natural Features

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

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

Scenic Resource Evaluations

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

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

Consequences of Nomination

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

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

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

General Comments

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

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

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

**DRAFT – FOR CONSIDERATION AT THE SEPTEMBER 18, 2008
MEETING OF THE HIGHLANDS COUNCIL**

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

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

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

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

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

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

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