

DRAFT – FOR CONSIDERATION AT THE JUNE 5, 2008
MEETING OF THE HIGHLANDS COUNCIL

Land Preservation

Issue Overview

Public and private investment in land preservation over the years has protected nearly a third of the Highlands Region as perpetual open space. Maintaining the land in a natural condition is necessary to preserve ecosystem integrity and protect drinking water supplies. The Highlands Act contemplates preservation of additional open space resources in order to protect and enhance ecosystem function, protect drinking water resources, and preserve natural and recreational lands.

The Highlands Region contains some of the most important forests in the state. These forests are vitally important to every element of the Highlands Region, including the natural and the built environment. Forests provide essential ecosystem functions, including surface water filtration, which is important to protecting essential drinking water supplies for the Highlands Region and for the state as a whole. Forests serve as habitat for plants and animals and are critically important to the maintenance of biodiversity in one of the most populous states in the nation. When managed for sustainable use, forests can be as source of renewable wood products. Forests are a defining visible and functional feature of the Highlands and constitute a majority of critical habitat in the Region.

Agriculture is another important part of the essential character of the Highlands Region's culture, landscape, and economy. It provides important economic benefits to the Highlands Region in the form of agricultural production and agri-tourism, provides food to area residents using less energy than would be required to import produce from other regions and helps maintain the Highland's rural character.

Programs specifically addressing Agriculture, Forestry, and Historic, Cultural, Archaeological, and Scenic resources as economic landscapes are outlined in the *Sustainable Agriculture Program*, the *Forest Resource Management and Sustainability Program*, and the *Historic, Cultural, Archaeological, and Scenic Program*. This program addresses land preservation in the Highlands Region holistically.

Program Summary

One of the fundamental aspects of the Highlands Act is the emphasis on land preservation to ensure that public funds and other resources are focused on protection of critical Highlands resources. In order to accomplish this purpose, the case for land preservation and critical issues surrounding preservation must be addressed by the Highlands Council. The Council must create the criteria for the identification of critical lands, the priorities for land preservation, implementation strategies for land preservation and stewardship, and a process to ensure that sufficient financial and institutional resources are available for land preservation and stewardship.

Successful land preservation requires four basic ingredients—targeting of land acquisition priorities based on a sound rationale, buyers with funding or other incentives, sellers willing to accept a buyer's offer, and stewardship of the acquired open space. (Management of working farms and forests are addressed in the *Sustainable Agriculture Program* and *Forest Resource Management and Sustainability Program*.) Additionally, a federal, State, and county interagency working group will aid in coordinating land acquisition activities, identification of high priority lands,

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**RMP Policies and
Objectives Addressed**

stewardship initiatives, and funding needs.

Policy 1A1. To meet the goal for the Preservation Area to “preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state,” and to “protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests.”

Policy 1A2. To limit human development in the Forest Resource Area in the Preservation Area in order to protect and enhance forest resources, critical habitat and the quantity and quality of water resources.

Objective 1A2b. Implementation of regulations through Plan Conformance which limit permissible uses within the Forest Resource Area to maintenance of pre-existing uses and restoration of impaired forest areas, where relief from strict adherence to these standards shall be permitted only upon approval of a forest

Objective 1A2c. To prohibit through local development review and Highlands Project Review the deforestation of lands within the Forest Resource Area of the Preservation Area for human development except where authorized as an exemption by the Highlands Act.

Policy 1A3. To promote the priority use of available funding to acquire forested lands within the Forest Resource Area.

Policy 1A4. To assign land within the Forest Resource Area a high priority for fee simple and easement acquisition.

Policy 1H1. To identify and maintain an inventory of private and public open space land holdings and conservation easements in the Highlands Region.

Objective 1H1a. Create a coordinated and continually updated open space database that includes preserved lands and stewardship activities by municipal, county, state, and federal agencies, non-profit organization, and individuals.

Policy 1H2. To serve as a regional clearing house for information regarding preservation programs and funding sources for land acquisition, restoration, and enhancement; technical assistance; and long-term stewardship of preserved lands, for public and private organization in order to maximize land preservation efforts in the Highlands Region.

Objective 1H2a. Promote the coordination by appropriate federal, state, county, and municipal land preservation agencies of open space acquisition activities under new or existing programs, including identification of high priority lands for preservation, land stewardship initiatives, and funding needs.

Objective 1H2b. Create a landowner assistance program to provide technical assistance and guidance with regard to land preservation options and the Highlands Development Credit Program to owners of that which should not be developed in order to protect water resources and environmentally sensitive resources.

Objective 1H2c. Implement and support the implementation of new, innovative, and alternative methods and programs of land preservation that are deemed most appropriate for the Highlands Region.

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Policy 1H3. To develop and maintain a confidential inventory of open space lands and farmland within the Conservation Priority Areas and Agricultural Priority Areas which should be preserved.

Objective 1H3a. Include within the confidential inventory, those lands which are 5 and 10 year priorities for land acquisition in the Highlands Region in order to determine the cost of implementing the RMP.

Objective 1H3b. Coordinate Highlands Region priority open space preservation and stewardship activities with the NJDEP Green Acres Program and the State Agriculture Development Committee with regard to land acquisition and preservation priorities in the Highlands Region.

Objective 1H3c. Coordinate with NJDEP, the review of applications for Green Acres diversions for consistency with the RMP.

Policy 1H4. To advocate for the establishment of dedicated sources of funding for the preservation and stewardship of open space lands in the Highlands Region including, but not limited to:

1. Dedicated sources of State revenue to be used for open space preservation in the Highlands Region, such as coordination with the NJDEP Green Acres Program for reauthorization of the Garden State Preservation Trust Fund, including a dedicated fund for the anticipated acquisition needs of the Highlands Region, and enactment of a water user fee.
2. Dedicated sources of State revenue for a reserve fund to capitalize the Highlands Development Credit Bank.
3. An on-going program to secure significant federal funding in support of land acquisition and stewardship efforts in the Highlands Region including, but not limited to, additional appropriations under the Federal Highlands Conservation Act.
4. An on-going program to seek funding for land acquisition and stewardship from unique sources of funding such as gifts, endowments, and donations, and federal and state court-imposed fines for natural resource damages.
5. A dedicated source of revenue for the preservation and stewardship of open space through a surcharge on public water supply system rates for any system that directly or indirectly relies on Highlands water resources for more than 5 percent of their annual needs.
6. A Highlands Conservation Trust to secure monies from alternate sources of funding to assist in land acquisition and stewardship.

Policy 1H5. To encourage municipalities and counties to establish and fund open space acquisition and stewardship programs or to expand existing open space and stewardship programs.

Policy 1H6. To support legislation to extend the dual appraisal methodology used by the Garden State Preservation Trust for lands in the Highlands Region beyond the June 30, 2009 expiration date to a minimum of five years beyond the

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adoption of the RMP.

Policy 1H7. To identify and designate a Special Environmental Zone in the Preservation Area where development shall not occur in order to protect water resources and environmentally sensitive lands and which shall be permanently preserved through use of a variety of tools including, but not limited to, fee simple acquisition, easement acquisition, transfer of development rights programs, and development regulations.

Objective 1H7a. Create and maintain a Special Environmental Zone based upon RMP Conservation Priority Area rank and indicators designed to identify lands with the highest water resource and environmental integrity.

Objective 1H7b. Adopt and enforce development regulations which prohibit the development of those portions of a parcel of land which are located within a Special Environmental Zone.

Objective 1H7c. Require through Plan Conformance, local development review, Highlands Project Review, and NJDEP review under N.J.A.C. 7:38 that development shall not occur within a Special Environmental Zone. In any Special Environmental Zone, any exemption or waiver issued under the Highlands Act shall be conditioned upon a determination that the State or local government unit has exhausted all means for the permanent preservation of these lands through use of preservation tools including, but not limited to, fee simple acquisition, easement acquisition, and transfer of development rights.

Objective 1H7d. Prepare and deliver documents to appropriate land preservation/acquisition agencies identifying parcels of land wholly or partially within a Special Environmental Zone.

Objective 1H7e. Implement the Highlands Development Credit Program as a means of permanently preserving land in a Special Environmental Zone.

Policy 1J1. To promote the creation of a Forest Preservation Easement Program for the Highlands Region, eligible for use through the State Agriculture Development Committee or the Green Acres Program.

Objective 1J1a. Achieve maximum preservation of working forests through the Forest Preservation Easement Program.

Policy 3A4. To promote farmland preservation and limit non-agricultural uses within the Agricultural Resource Areas and accord priority to the preservation of agricultural lands within Agricultural Priority Areas, through fee simple acquisition, easement acquisition, Transfer of Development Rights (TDR) and other agricultural land conservation techniques.

Objective 3A5a. Implement regulations requiring that cluster or conservation proposed within an Agricultural Resource Area support the preservation avoid conflicts with agriculture, maintain and enhance the sustainability viability of the agricultural industry, protect Important Farmland resource management and protection requirements of the RMP.

**Identification of Critical
Lands**

An important factor in protecting environmentally critical areas is identifying existing preserved lands in the Highlands Region and the resources that are already protected. A total of 274,675 acres of the Highlands Region are primarily

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preserved open space or preserved farmland in a combination of federal, State, county municipal, nonprofit and private ownership. These lands represent a diverse catalog of the public and private land and water areas available for recreation or presently protected as open space. Developing a comprehensive open space dataset throughout the Highlands Region is a highly complex undertaking. There are over a dozen agencies and organizations which contribute to open space identification and each has its own structure for recording open space data to meet its business model. Time, accuracy, precision and completeness differences all play a role in making the assemblage a difficult and imprecise product. The Highland Council has acquired available data and will work with all agencies and organizations who contribute to open space recordkeeping to develop a data standard which meets each agencies' or organizations' individual needs while at the same time improving open space inventories at a regional scale. The figure *Conservation Priority Area* displays the relative value of the important critical resources in order to provide a prioritization mechanism for the future land preservation activities in the Highlands Region.

**Establishment of Land
Preservation Priorities
and a Special
Environmental Zone**

In order to protect the important critical resources of the Highlands Region, preservation of the lands in which these resources are located must be encouraged and funded. However, since funds are not limitless, the resource values of lands must be ranked in terms of their importance and long-term viability. In order to determine high priority areas in the Highlands Region for preservation, the Council used the results of the Resource Assessment to identify and prioritize those lands within the Highlands Region which have the highest water and ecological resource values. These values are based on a combination of indicators using methodologies discussed elsewhere in the RMP which measure the quantity and quality of regional resources such as: watershed conditions, open waters, riparian areas, prime ground water recharge areas, forests, critical habitat, and steep slopes. Moreover, existing protected lands, showing the historic pattern of land preservation activities in the Region, will be identified and integrated with the ecological resource value to identify priority areas for conservation. This prioritization process will enable the Council to identify a confidential inventory of open space lands and farmland within the *Conservation Priority Area* and the *Agricultural Priority Area* and a Special Environmental Zone in the Preservation Area to respond to Section 12.a of the Highlands Act, which are areas that should not be developed due to their importance for water resource and ecological protection. The Highlands Council used its identification of *Conservation Priority Area* and other data to identify the Special Environmental Zone. Preservation of the Special Environmental Zone will occur through a variety of regulatory and preservation programs, including coordination with NJDEP regarding both. The figure *Special Environmental Zone* displays the approximately 19,000 acres within the Special Environmental Zone as identified by the Highlands Council.

**Implementation of
Strategies for Land
Preservation by
Maximizing Current**

One of the fundamental aspects of the Highlands Act is the emphasis on land preservation to ensure that public funds and other resources are focused on protection of critical Highlands resources. The *Land Preservation and Stewardship Technical Report* identifies 10 federal, State, county, municipal, and nonprofit land

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**Land Preservation
Funding Programs**

preservation funding programs. The Highlands Council will collaborate and coordinate with agencies (in particular the NJDEP Green Acres Program, the NJ Department of Agriculture, and State Agriculture Development Committee), local governments, and local organizations to target and preserve natural and agricultural spaces in support of the RMP.

**Implementation of
Strategies for Land
Stewardship by
Maximizing Current
Land Stewardship
Funding Programs**

The *Land Preservation and Stewardship Technical Report* also identifies 23 federal, State, county, municipal, and nonprofit conservation and stewardship funding programs. The Highlands Council will collaborate and coordinate with agencies (in particular the NJDEP Green Acres Program, the NJ Department of Agriculture, and State Agriculture Development Committee), governments, and local organizations to properly manage the preserved natural and agricultural spaces in support of the RMP. This effort is necessary to ensure that the natural resources targeted for acquisition are not later lost through insufficient stewardship.

**Establishment of
New/Alternative/
Innovative Land
Preservation Programs**

The Highlands Council will examine and assess for use in the Highlands Region a broad range of options and programs developed by other states to create incentives for landowners to keep their properties in agriculture, working forests, or natural condition, voluntarily. The following are examples of some of the programs for review by the Council. This list is not exhaustive but is the basis for future research.

- Conservation Tax Credits
- Installment purchase Options/Agreements
- Property Tax Relief
- Next Generation Farmland Acquisition Program
- Statewide or Regional Local Land Trust/Fee Simple
- Term Conservation Easements
- Land Preservation Tontines
- Agricultural Conservation Pension
- Mandatory Source Water Protection Programs for Water Purveyors

Additionally, the Highlands Council will collaborate with NJDEP and SADC to develop an adequate method to preserve forested lands through easements to allow them to remain in private ownership and properly maintained through woodland management, in addition to the Transfer of Development Rights mechanism established through the Highlands Act. Given the fact that the Highlands Region is over 50% forested and maintaining forest land is important to protecting water quality, a program specifically for purchasing forest land easements should be available.

All of these programs are further detailed in the *Land Preservation and Stewardship Technical Report*.

**Establishment of
New/Alternative/Innovative
Stewardship
Programs**

For long-term sustainability of the natural and agriculture resources in the Highlands Region, there must be proactive management of deer populations and other non-native species, reduction in the rate of forest fragmentation and the creation of incentives for landowners to retain property in its natural or agricultural state. The Highlands Council will collaborate with the NJDEP and the NJDA to develop these management techniques and incentives. Additionally,

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Development of Open Space/ Conservation Design Standards

intrinsic values for forests and agriculture (including water quality and water supply protection) should be established to enhance the justification for preservation of such lands.

Not all lands that are considered critical can be preserved because of limited funds and other factors. As a result, techniques and systems that enable limited growth and the preservation of open lands are needed. The Highlands Council will develop Open Space/Conservation Design development layout standards that support the RMP and which take advantage of, but are not limited to, techniques such as clustering and lot-size averaging.

Identification of Willing Sellers

The Garden State Preservation Trust legislation requires that direct acquisitions by Green Acres and the State Agricultural Development Committee be from willing sellers. The Highlands Council will develop an outreach and education program for Highlands landowners to help them take advantage of funding opportunities and incentives available for land preservation.

Establishment of a Land Preservation and Stewardship Technical Assistance Program

The Highlands Council will establish a technical assistance program for land preservation and stewardship. For example, 29 Highlands municipalities do not have open space trust funds and the municipalities and counties that do may not be maximizing their potential; the Council can provide assistance in creating or amending their open space trust funds. Additionally, land acquisition by fee purchase or by easement is a major tool to protect natural resources and agricultural lands. Guaranteeing that these resources remain intact and viable is an overarching responsibility of the preserved landowner and easement holder. The Highlands Council will establish a program to aid in the development of federal, State, municipal, nonprofit, and individual stewardship plans which will include, but not be limited to, baseline documentation, monitoring, landowner/user relations, and enforcement.

Establishment of Dedicated Sources of Funding for Land Preservation and Stewardship in the Highlands Region

The Highlands Council supports a dedicated, directed, and stable source of acquisition and stewardship funding. Additionally, the Council supports the reauthorization of the Garden State Preservation Trust Fund and efforts to create a statutory funding mechanism for water quality and watershed land acquisitions. In recognition of this support, the Highlands Council will explore, in addition to existing funding sources, securing other stable, dedicated sources of funding such as:

- a Highlands water user fee;
- a reserve fund to capitalize the Highlands TDR Program;
- a program to secure significant federal funding in support of land preservation and stewardship;
- a program to seek funding for preservation and stewardship from unique funding sources;
- a surcharge on public water supply systems rates that use Highlands water; and
- A Highlands Conservation Trust to secure funds from alternate funding sources.

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