PUBLIC COMMENTS SUBMITTED AT HIGHLANDS
COUNCIL MEETING ON DECEMBER 6, 2018

Comments to Highlands Council, December 6, 2018

Deborah Post, Chester Township, holder of four score proxies of harmed Highlands landowners.

Today I will again address NJSA 4:1C-31, the statute that allows this Council's municipal averages [found in the RMP's TDR Technical Report] to be used in lieu of two appraisals in connection with valuing Preservation Area landowners just compensation need for the Highlands taking when State Funds are utilized.

During October public comment I asked this Council to pass a resolution providing landowners with the option to have the municipal averages used – or even just considered – in the determination of development potential value for easement sale purposes. I reiterate my request today.

Your counsel advises that, because the verb is "may" in the statute, that the Council can and should just ignore my request as has the SADC.

Ruling against the over-empowered US Fish and Wildlife Service, the US Supreme Court recently took the opportunity to opine that the word "may" does not confer the discretion to ignore or exclude. While the word "may" does confer discretion, it does not segregate that discretionary decision from considering all the factors involved in the decision. I quote:

"Weyerhaeuser's claim— that the agency did not appropriately consider all the relevant statutory factors meant to guide the agency in the exercise of its discretion—is the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision as an abuse of discretion. The Court of Appeals should consider in the first instance the question whether the Service's assessment of the costs and benefits of designation and resulting decision not to exclude Unit 1 was arbitrary, capricious, or an abuse of discretion."

The clear understanding of this court's admonition is that an agency may not just ignore and avoid a direction that includes the word "may". You must consider the question at hand.

Here the question is whether the $6 billion of property losses burdened on Highlands property owners doesn't advise this Council that those property owners deserve – in fairness and in equity – to have this Council's municipal average analysis considered in the determination of their just compensation.

I am attaching a copy of my October comments for your recollection.

Please cease ignoring the continuing harm done to Highlands landowners and act by passing the resolution requested.

Syllabus

"may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of" designation. The word "may" certainly confers discretion on the Secretary, but it does not segregate his discretionary decision not to exclude from the mandated procedure to consider the economic and other impacts of designation when making his exclusion decisions. The statute is, therefore, not "drawn so that a court would have no meaningful standard against which to judge the [Secretary's] exercise of [his] discretion" not to exclude. *Lincoln*, 508 U. S., at 191. Weyerhaeuser's claim—that the agency did not appropriately consider all the relevant statutory factors meant to guide the agency in the exercise of its discretion—is the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision as an abuse of discretion. The Court of Appeals should consider in the first instance the question whether the Service's assessment of the costs and benefits of designation and resulting decision not to exclude Unit 1 was arbitrary, capricious, or an abuse of discretion. Pp. 10–15.

827 F. 3d 452, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except KAVANAUGH, J., who took no part in the consideration or decision of the case.

Comments to the Highlands Council – October 18, 2018

Deborah Post, Chester Township harmed Highlands landowner.

Section 6 little n of theHighlands Act speaks to the Council's need to recognize "the need to provide just compensation to the owners of [the Highlands lands}... whether through acquisition, transfer of development rights programs, or other means or strategies" The legislature intended there be multiple avenues for just compensation, one of which is farmland preservation.

The Highlands Act edited the Agricultural Retention and Development Act by adding to NJSA 4:1C-31 the thought that, if the Highlands Council had developed a tdr bank that the "municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement" in farmland preservation transactions. The language reads that this Council's municipal average analysis contained in this Council's TDR Technical Report adopted with the Regional Master Plan could be used in lieu of two appraisals.

The sections of the Act that I have just cited are positive indications that the legislature wanted landowners to be treated fairly, wanted them compensated, and surely did not want them to be additionally harmed. But none of this language and intention has been implemented. Indeed the opposite has happened. This can be fixed by the will of this Council.

The use of the municipal average in lieu of appraisals has been repeatedly denied to landowners.

The appraisals for farmland preservation are now being rigged to utilize depressed non-developable Highlands land comparable sales to value the taken and lost development easement.

Think about this for a minute. The Highlands Act strips all development value from the land causing land values to drop precipitously. Then those depressed values of non-developable land are used to determine the development potential of property for just compensation purposes. This is a wicked and evil catch 22. Does anyone on this Council believe this is what the legislature intended and what you were mandated to oversee?

The municipal averages contained in the TDR Technical Report, determined by this Council, provide an easy and obvious fix to the problem of appraisals rigged to underpay.

This Council must pass a resolution providing landowners with the option to have the municipal averages used – or even just considered – in the determination of development potential value for easement sale purposes. Please do not tell me that you don't have standing or authority or some other ducking spin. A resolution of this Council demanding fairness to landowners would go a long long way toward seeing such fairness become a reality.

4:1C-31. Offer to sell developmental easement; price; evaluation of suitability of land; appraisal

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c. 86 (C.40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c. 2 (C.40:55D-158) **or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L.2004, c. 120 (C.13:20-13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used** by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

(1)

12/6/18

I'm Hank Klumpp - I own 150 acres in the Highland Preservation Area — but not by choice.

In the New Jersey Farm Bureau news, November 30, 2018, Open Space Funding is a topic. The Senate Environment Committee is considering a bill that establishes the funding dedicated revenues in the states' open space programs of 2020 and the years there after. The corporate business tax revenue increases by 2% in 2020 and the 31% farmland preservation share will now yield an estimated $45 million or

more per year. What about the compensation that was promised to people whose land values were stolen from them by the Highlands Act - leaving them with no equity? My farmland has been in forced preservation for fourteen years now, and I have not seen a penny. Council members - whether you are a Democrat or a Republican, you were appointed by someone in high places - why are you doing nothing to question them as to why every program under the sun is

somehow finding funding - but not the Highlands' victims — You know WE ARE VICTIMS. I will never understand this — Over so many years — and so many Council members in and out - You would think that at least one of you would have come up with a dedicated source and a solution.

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