State of New Jersey

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Highlands Council
New Jersey

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Executive Director

March 15, 2010

The Honorable Greg Glazer
Bethlehem Township
405 Mine Road
Asbury, NJ 08802

Subject: RMP Update and Map Adjustment Request

Dear Mayor Glazer:

This letter is to advise you that the Highlands Council has reviewed your requests for RMP Updates and Map Adjustments submitted through your initial Municipal Petition for Plan Conformance.

RMP Updates pertain to factual discrepancies regarding existing land conditions, the correction of which may, but will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. The data used for the development of the LUCM Zones are from 2002 (for land use/land cover) or approximately 2005 (for utility service areas) and the current conditions may be different from the original period. The RMP Updates Program is designed to identify such changes and to incorporate the current information in the Highlands spatial database.

Map Adjustments are requests for a policy change in the LUCM Zone or Sub-Zone based on local planning considerations, regardless of the correctness of existing land condition. It is an appropriate means to address the requirements of a planned development or redevelopment activity that cannot be accomplished through a Highlands Act Exemption in accordance with N.J.S.A 13:20-28, a Public Health and Safety Waiver, an RMP Update, or a Highlands Redevelopment Area designation.

Finally, a qualifying area may be proposed for designation as a Highlands Center, which may incorporate a combination of RMP Updates, Map Adjustments, Highlands Redevelopment Area designations and other means of achieving a Center-based community that meets the policies and objectives of the RMP.

The municipality requested six RMP Updates or Map Adjustments. The enclosed responses provide details on the results of the Highlands Council's review.

For five of the requests, the information provided on current and existing land conditions is consistent with that of the Highlands Council. These requests do not constitute an RMP Update. The municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including for example the Map Adjustment program or, for qualifying areas, a Highlands Center designation.

One request requires additional supporting information for the Highlands Council to appropriately review this request as an RMP Update, more. In some cases the request will be better addressed through Map Adjustments or Highlands Center designations. Instructions are provided in the attached responses regarding completion and submittal of an RMP Update Form or Map Adjustment and Highlands Center Designation Inquiry Forms available through the NJ Highlands Council Website.

In addition to the detailed responses, we have enclosed a Summary of Findings which addresses common issues regarding requests for RMP Updates or Map Adjustments. We ask that the municipality consider this Summary of Findings prior to submitting RMP Updates or Map Adjustments as it provides guidance on how requests are reviewed and alternative methods for policy changes to the existing LUCM Zone or Sub-Zone.

If the Municipality wishes to continue to pursue these or additional RMP Updates, Map Adjustments or a Highlands Center designation, please complete and submit the appropriate form available through the NJ Highlands Council Website:

http://www.highlands.state.nj.us/njhighlands/planconformance/

If you need further assistance on updates and/or adjustments please contact Roger Keren, Director of GIS at (908) 879-6737 or email at roger.keren@highlands.state.nj.us.

The Highlands Council looks forward to continued collaboration with you as we continue Plan Conformance with the RMP. Should you have any questions or concerns with the foregoing, please contact me at (908) 879-6737.

Yours Sincerely,

Eileen Swan
Executive Director

Encl. Detailed Responses
Summary of Findings

c: Lisa Specca, Planner

Municipality: Bethlehem Twp **Date:** March 12, 2010

RMP UPDATES/MAP ADJUSTMENTS

MUNICIPAL RMP UPDATE REVIEW

1. **Municipal Request:** The C-1 stream buffers have not been identified as an environmental constraint. The Sub-Zone should be amended to become Conservation Zone-Environmentally Constrained.

   Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Protection of Highlands Resources, in this case Open Water Stream Buffers, apply across all LUCM Zones (Planning and Preservation Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations (See F above). A modification of LUCM Zone is therefore not necessary to achieve this protection.

2. **Municipal Request:** This small residential area of Bethlehem Township adjacent to Bloomsbury Borough is different in character, zoning, infrastructure, and size from the adjacent existing community in Bloomsbury. This area is not an extension of a regional network of existing development and should be re-designated as Protection Zone to indicate consistency with the development patterns in Bethlehem.

   Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program, (see A above) or Highlands Area Land Use Ordinance or Local Municipal Ordinance, (see B above). The area met the thresholds of development character necessary to be considered Existing Community Zone. The existing land condition was identified by NJDEP 2002 Land Use Land Cover as Residential Single Unit (Code: 1140)[1] and is adjacent to areas with regionally significant concentrated development. In addition, the area does not include significant agricultural land uses or high resource value lands that would have justified inclusion in the Conservation or Protection Zone.

3. **Municipal Request:** This small residential area of Bethlehem Township adjacent to Hampton Borough is different in character, zoning, infrastructure, and size from the adjacent existing community in Hampton. This area is not an extension of a regional network of existing development and should be re-designated as Protection Zone to indicate consistency with the development patterns in Bethlehem.

   Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program, (see A above) or Highlands Area Land

[1] NJDEP Modified Anderson System 2002. Derived From: A Land Use and Land Cover Classification System for Use with Remote Sensor Data, U. S. Geological Survey Professional Paper 964, 1976; edited by NJDEP, OIRM, BGIA, 1998, 2000, 2001, 2002, 2005, 2007. (http://www.state.nj.us/dep/gis/digidownload/metadata/lulc02/anderson2002.html)

Use Ordinance or Local Municipal Ordinance, (see B above). The area met the thresholds of development character necessary to be considered Existing Community Zone. The existing land condition was identified by NJDEP 2002 Land Use Land Cover as Residential Single Unit (Code: 1140)[1] and is adjacent to areas with regionally significant concentrated development. In addition, the area does not include significant agricultural land uses or high resource value lands that would have justified inclusion in the Conservation or Protection Zone.

4. **Municipal Request:** Proposed Forest Integrity Indicators by HUC 14 Map. The medium forest integrity area indicated to the south of the Musconetcong River is actually cleared agricultural land. Other areas labeled as high integrity forest which are either agricultural lands or developed areas should be removed from the high integrity forested areas.

   Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Forest Integrity Values are not subject to RMP Updates, as they reflect more than site-specific conditions. The criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report. Forest Integrity Indicators were developed on a HUC14 Subwatershed basis and apply to the entire subwatershed. Relevant RMP policies and objectives would only apply to forested areas within the subwatershed, not to non-forested areas. The municipality may wish to consider additions or modifications to the Highlands Area Land Use Ordinance or to the underlying municipal Zoning Ordinance to address such aims as enhancing environmental protection in one or more LUCM Zones or municipal zoning district, (See B above).

5. **Municipal Request:** Proposed Forest Integrity Indicators by HUC 14 Map. The forested area generally located to the south and east of the Planning Area in Bethlehem is part of the larger contiguous forest area. Aerial photography, Highlands's resource mapping, and local knowledge indicate this area should be designated as high integrity forest.

   Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Forest Integrity Values are not subject to RMP Updates, as they reflect more than site-specific conditions. The criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report. Forest Integrity Indicators were developed on a HUC14 Subwatershed basis and apply to the entire subwatershed. Relevant RMP policies and objectives would only apply to forested areas within the subwatershed, not to non-forested areas. The municipality may wish to consider additions or modifications to the Highlands Area Land Use Ordinance or to the underlying municipal Zoning Ordinance to address such aims as enhancing environmental protection in one or more LUCM Zones or municipal zoning district, (see B above).

6. **Municipal Request:** Proposed Riparian Area Map. There is a general riparian mapping error which indicates a connection between tributaries of the Musconetcong and the Spruce Run in the vicinity of Block 15 Lots 3, 4, 4.01, 4.02. There is no such connection existing.

   Findings: In order for the Highlands Council to appropriately review this request as an RMP Update, more supporting information is required. Please complete and submit an RMP Update Form available through the NJ Highlands Council Website listed above. While the municipality characterizes this request as a general riparian area mapping error, it appears that the request more

accurately identifies the lack of tributary connection. The "NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition" indicates that tributaries exist in this location, (See K above).

New Jersey Highlands Council RMP Update/Map Adjustment Review

Municipal Petition for Plan Conformance

SUMMARY OF FINDINGS

RMP UPDATES/MAP ADJUSTMENTS

Please be advised that RMP Updates pertain to factual discrepancies regarding existing land conditions, the correction of which may, but will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. The data used for the development of the LUCM Zones are from 2002 (for land use/land cover) or approximately 2005 (for utility service areas) and the current conditions may be different from the original period. The RMP Updates Program is designed to identify such changes and to incorporate the current information in the Highlands spatial database. In addition, municipalities should recognize that some requirements for the protection of Highlands Resources (e.g., steep slopes, undisturbed Highlands Open Water buffers) apply across all LUCM Zones.

Map Adjustments are requests for a policy change in the LUCM Zone or Sub-Zone based on local planning considerations, regardless of the correctness of existing land condition. This process is discussed further under Responses, below. Finally, a qualifying area may be proposed for designation as a Highlands Center, which may incorporate a combination of RMP Updates, Map Adjustments, Highlands Redevelopment Area designations and other means of achieving a Center-based community that meets the policies and objectives of the RMP.

Inquiry forms for RMP Updates and for Map Adjustments and Highlands Center Designations are available through the NJ Highlands Council Website: www.highlands.state.nj.us/njhighlands/planconformance/.

The Highlands Council staff has reviewed all Plan Conformance submittals to determine whether the municipality identified potential changes to Highlands spatial databases or LUCM Zones. This response explains whether, based on information provided, the proposed change:

- **Request is an RMP Update:** Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted.

- **Request is not an RMP Update:** Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program or, for qualifying areas, a Highlands Center designation, as discussed above.

- **Request for an RMP Update requires more information:** In order for the Highlands Council to appropriately review this request as an RMP Update, more supporting information is required. Please complete and submit an RMP Update Form available through the NJ Highlands Council Website listed above.

SUBMISSION FORMAT

Information concerning submission requirements is available through the NJ Highlands Council Website listed above. The Highlands Council GIS Department is also available to take questions concerning RMP Updates. Please contact Roger Keren, Director of Geographic Information Systems, best by e-mail at roger.keren@highlands.state.nj.us or by telephone at (908) 879-6737, x 123.

GENERAL RESPONSES

Based on the various proposals received from municipalities, the Highlands Council has prepared the following general responses. These general responses are then cited within the specific response to each request, to help provide municipalities with a clear basis for the Highlands Council's conclusion, how the Map Adjustment might be applicable, or how a municipality may achieve the intent of their request without a modification to the RMP or LUCM Zone. Not all of these general responses may apply to the requests from any one municipality, but may assist municipalities in the generation of later RMP Update requests.

A. **Map Adjustment:** A Map Adjustment request may be more relevant for this site. Map Adjustments constitute requests to effect a policy change in the LUCM Zone or Sub-Zone based on local planning considerations, regardless of the correctness of existing land condition. Map Adjustments allow for focused policy changes to the LUCM Zone or Sub-Zone based on local planning factors, compliance with the intent and purpose of the Highlands Act and the RMP, and no net loss of resources or resource values, among other factors. In order to receive approval of a Map Adjustment the applicable RMP criteria must be met (please see RMP Map Adjustment Program, Regional Master Plan, p.377). The Municipality must first submit a completed Map Adjustments Inquiry Form available through the NJ Highlands Council Website listed above.

B. **Highlands Area Land Use Ordinance or Local Municipal Ordinance**: The municipality may wish to consider additions or modifications to the Highlands Area Land Use Ordinance or to the underlying municipal Zoning Ordinance to address such aims as enhancing environmental protection in one or more LUCM Zones or municipal zoning district. The Highlands Act specifically authorizes municipalities to adopt more stringent ordinances than provided for in the RMP. Highlands Protection Zone requirements, for example, could be applied to any underlying municipal zoning district, as the municipality wishes. All such amendments will be considered and, upon Highlands Council approval as a component of Plan Conformance, would be entitled to the same level of legal protection as other regulatory changes that are required for Plan Conformance pursuant to the Highlands Act.

C. **Highlands Preservation Area**: The intent of the municipal request may already be achieved by Preservation Area requirements. Properties or portions of properties within the Highlands Preservation Areas are subject to New Jersey Department of Environmental Protection (NJDEP) Highlands Water Protection and Planning Act Rules [N.J.A.C. 7:38], which provide environmental standards and procedures by which NJDEP shall review any application for the Preservation Area, pursuant to the Act, for the following:

- Major Highlands development;
- Waiver from any requirement for a Highlands Preservation Area Approval;
- Resource or applicability determination or exemption from the Act; and
- Permit or plan reviewed by the NJDEP in the Highlands Region.

D. **Highlands Exemption:** The property may be eligible for a determination that the project is exempt from the Highlands Act. The Highlands Act provides for 17 exemptions from the provisions of the Act (N.J.S.A. 13:20-28). If a project or activity falls within one of these 17 exemptions, the project or activity is exempt from the Highlands Act, the Highlands Preservation Area rules adopted by the NJDEP, the Regional Master Plan, and any municipal master plan or development regulations that are revised to conform to the Regional Master Plan.

E. **Redevelopment Area:** The municipality may wish to consider proposing a Highlands Redevelopment Area designation for this property if the proposed redevelopment is not consistent

with the current RMP LUCZ. Highlands Redevelopment Areas may be proposed for NJDEP-designated brownfields and for previously developed sites that meet minimum criteria. To pursue a formal request, please review the Highlands Redevelopment Area designation information and discussion provided within the model Master Plan Highlands Element (Land Use Plan section), and the designation criteria and procedures provided on the Highlands Council website at http://www.highlands.state.nj.us/njhighlands/implementation/redevelopment_procedures_103008_final.pdf. The website document is directly applicable to the Preservation Area, but similar procedures are required for the Planning Area, other than the requirement for 70% impervious surface. The Highlands Council will need the following information in accordance with the details as listed within the procedural documents provided through the website:

a. Description or illustration of requested Highlands Redevelopment Area Designation
b. Information, justification, evidence in support of request

F. **Protection of Highlands Resources (e.g., steep slopes, undisturbed Highlands Open Water buffers) apply across all LUCM Zones (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations:**

a. **Highlands Open Waters Buffers:** Regardless of LUCM Zone, proposed development in Highlands Open Waters buffers (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with the buffer requirements of the RMP and various NJDEP regulations such as N.J.A.C. 7:8 (Stormwater Management Rules), N.J.A.C 7:13 (Flood Hazard Area Rules), and N.J.A.C. 7:7 (Freshwater Wetland Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules). For this reason, the presence of Highlands Open Water Protection Areas is not an indicator used in the development of the LUCM Zones under the RMP. Please refer to the 2008 Land Use Capability Zone Map Technical Report for a complete listing of indicators.

b. **Flood Plains:** Likewise, regardless of LUCM Zone, proposed development in Floodplains (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations such as N.J.A.C. 7:8 (Stormwater Management Rules), N.J.A.C 7:13 (Flood Hazard Area Rules), and N.J.A.C. 7:7 (Freshwater Wetland Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules). For this reason, Highlands Floodplains alone are not indicators used in the development of the LUCM Zones under the RMP. Please refer to the 2008 Land Use Capability Zone Map Technical Report for a complete listing of indicators.

c. **Steep Slopes:** Regardless of LUCM Zone, proposed development on steep slopes (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations, specifically including, for major Highlands development within the Preservation Area, the Preservation Area rules at N.J.A.C. 7:38-3.8.

G. **Area is currently developed:** Portions of the parcel are developed and those portions are adjacent to areas with regionally significant concentrated development. Such areas are therefore included in the adjacent Existing Community Zone.

H. **Area is characterized as Suburban Fringe:** The area met the thresholds of development character necessary to be considered Existing Community Zone. The existing land condition was

identified by NJDEP 2002 Land Use Land Cover as Residential Single Unit (Code: 1140)[1] and is adjacent to areas with regionally significant concentrated development. In addition, the area does not include significant agricultural land uses or high resource value lands. Where desired, in place of a LUCM Zone change, additional resource protections may be applied locally through the use of Municipal zoning ordinance and Municipal Land Use Law (see also General Response B).

I. **Area is below minimum Zone size threshold:** Developed portions of the parcel are consistent with the Highlands Council spatial data and due to the presence of non-developed lands or other surrounding land uses that were not Existing Community Zone, it did not meet the 75 acre minimum threshold for the Existing Community Zone. Where desired, in place of a LUCM Zone change, additional resource protections may be applied locally through the use of municipal zoning ordinance and Municipal Land Use Law (see also General Response B).

J. **Forest Integrity Indicators:** Forest Integrity Values are not subject to RMP Updates, as they reflect more than site-specific conditions. The development criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report. Forest Integrity Indicators were developed on a HUC14 Subwatershed basis and apply to the entire subwatershed. Relevant RMP policies and objectives would only apply to forested areas within the subwatershed, not to non-forested areas.

K. **Streams:** The "NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition" indicates that tributaries exist in this location. The terminus of tributaries in each subwatershed may be very close and result in mapping that infers a connection that does not exist. Alternatively, contiguous wetlands or seep areas may in fact drain in both directions through intermittent streams. In addition, waters are considered to be the path or channel that water takes, regardless of whether it is a perennial stream course. The definition of channel in N.J.A.C. 7:13–1.2 provides guidance about the geomorphic features that NJDEP would potentially consider a stream. The municipality may submit a completed RMP Update Form and supporting documents available through the NJ Highlands Council Website listed above, and include a demonstration that the feature does **not** meet the definition of regulated waters in N.J.A.C. 7:13–2.2., a digital delineation, a NJDEP Letter of Interpretation or Highlands Resource Area Determination. However, municipalities should note that the locations of Highlands streams are subject to site-specific verification for any development regulated under the Highlands Land Use Ordinance, which shall serve as a rebuttal to any Highlands maps.

L. **Riparian Soils:** Current and existing NRCS soils surveys indicate presence of hydric soils, which are not subject to an RMP Update. The presence of riparian soils can be addressed through development applications, digital delineation and Wetland Delineation 3 Parameter Approach Soils Investigation. It should be noted that hydric soils, as a component of riparian area mapping, can bridge between two watershed areas.

M. **Carbonate Rock:** Current and existing NJ Geological Survey surficial bedrock delineations indicate the presence of carbonate rock, which are not subject to an RMP Update. The presence of carbonate rock requires under the Highlands Land Use Ordinance that development applications provide a Phase I Geotechnical Investigation to determine the presence of karst features and necessary development design and construction controls. The presence of carbonate rocks was not used as an indicator for LUCM Zones.

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[1] NJDEP Modified Anderson System 2002. Derived From: A Land Use and Land Cover Classification System for Use with Remote Sensor Data, U. S. Geological Survey Professional Paper 964, 1976; edited by NJDEP, OIRM, BGIA, 1998, 2000, 2001, 2002, 2005, 2007. (http://www.state.nj.us/dep/gis/digidownload/metadata/lulc02/anderson2002.html)

N. **Lake Community Sub-Zone:** The Lake Community Sub-Zone consists of patterns of community development (Existing Community Zone) within 1,000 feet around lakes. If an RMP Update indicates that the area should not be classified as Existing Community Zone, the Lake Community Sub-Zone classification will automatically be modified as well. The Highlands Council will also consider an RMP Update for Lake Community Sub-Zones where the water body in question is not serving as a lake associated with the Existing Community Zone (e.g., where a private quarry is located next to an area of Existing Community Zone). The municipality may submit a completed RMP Update Form and supporting documents available through the NJ Highlands Council Website listed above, including information documenting that the water body is not a lake. In such cases, the LUCM Zone will be modified from Lake Community Sub-Zone to Existing Community Zone (or Existing Community Environmentally-Constrained Sub-Zone where appropriate). Where desired, in place of a LUCM Zone change, additional resource protections may be applied locally through the use of municipal zoning ordinance and Municipal Land Use Law as discussed in General Response #2.

O. **Potential TDR Receiving Area:** The identification of Potential Areas for Voluntary HDC Receiving Zones by the Highlands Council is advisory only, and the formal designation of TDR Receiving Zones is at the discretion of the municipality. Potential TDR Receiving Areas are not subject to RMP Updates for this reason.

P. **Parcel subdivisions or lot line adjustments:** The Highland Council does not process parcel subdivisions or parcel lot line adjustments as an RMP Update. Parcel subdivisions and lot line adjustments must be addressed through local development approvals and coordinated with local and County Planning Departments.

Q. **Right-of-Ways:** In general, the LUCM Zone designations of Highlands Right-of-ways reflect the lands around them. However, the Highlands Act includes several critical exemptions (#9, 10, 11 and 12) for Highlands Right-of-ways which apply in both the Preservation and Planning Areas, as follows (N.J.S.A. 13:20-28):

"(9) the routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of this act and does not result in the construction of any new through-capacity travel lanes;

(10) the construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit, provided that the activity does not result in the construction of any new through-capacity travel lanes;

(11) the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act;

(12) the reactivation of rail lines and rail beds existing on the date of enactment of this act;"

These exemptions apply to proposed activities affecting <u>existing</u> Highlands Right-of-ways regardless of LUCM Zone. It should be noted that proposed development resulting in the <u>change</u> of a Highlands Right-of-way to another developed land use would not qualify for such exemptions, and therefore must conform to the RMP through local development review. Development activity that <u>creates</u> a Highlands Right-of-way other than as exempt by the Highlands Act must also conform to the RMP, and where it qualifies as a Major Highlands development in the Preservation Area, must demonstrate to NJDEP through a HPAA that it meets the requirements of the Highlands Rules at N.J.A.C. 7:38.