

Policy Consideration: **Scenic Resource Protection Program**
Status: **For Consideration by the Highlands Council at**
September 14, 2006 Work session
Date: **September 12, 2006**

I. STAFF POLICY RECOMMENDATIONS

The following RMP policy strategies are proposed by staff in support of a Scenic Resource Protection Program:

- 1) **Scenic Resource Areas** will be included in the Regional Master Plan (RMP) to protect the scenic resources of the Highlands Region and to protect and maintain the essential character of the Highlands. An inventory of Scenic Resource Areas shall be established and maintained.

Rationale: The Highlands Act includes specific goals to protect the natural, scenic, and other resources of the Highlands Region and protect and maintain the essential character of the Highlands. Sections 10.b.(3) and 10.c.(3). Section 11 of the Highlands Act requires a Resource Assessment in order to assess the “scenic, aesthetic, cultural, historic, open space, farmland, and outdoor recreation resources of the region, together with a determination of overall policies required to maintain and enhance such resources.” Section 11.a.(1)(b). To implement these goals and requirements, the Highlands Council should establish and maintain a Scenic Resource Area inventory for the Highlands Region. Scenic Resource Areas should be based on the definition provided in N.J.A.C. 7:38-3.12(c) and provide for the identification of additional scenic resources, focusing on resources that are regional in character or importance, especially the identification and designation of a system of scenic roads, byways, ridgelines, trails and waterways in the Highlands Region, and the viewsheds thereof. The Highlands Council should evaluate existing database resources as well as stakeholder suggestions. Database options to consider include:

- Municipal master plans
- County natural resource inventories and open space/recreation elements
- Farmland preserved with State, county, municipal or private preservation funds
- Historic sites listed on or eligible for inclusion on the National or State Register of Historic Places
- Rivers designated or eligible for designation as scenic or scenic byways under a recognized program, such as the National Wild and Scenic Rivers program
- Water bodies owned or managed by public or private entities for water supply and/or recreation purposes, such as reservoirs and their water supply feeder streams
- Federal, State, and/or county designated trails, including but not limited to the Appalachian Trail, Highlands Trail, Sussex Branch Trail, Columbia Trail, Patriots Path, and the Morris Canal walkways
- Roadways designated under State or National Scenic Byways Programs with funds administered by the Federal Highway Administration
- Transportation Enhancement projects approved by the New Jersey Department of Transportation
- Conservation agencies and non-profit organizations, such as the Highlands Coalition

2) Establish a Scenic Resource Area nomination process for the Highlands Region that permits the identification and delineation of Scenic Resource Protection Areas based upon intrinsic quality criteria which take into account foreground, middle-ground and background impacts.

Rationale: The adoption of a scenic resource nomination process for the Highlands Region allows for the development of a consistent and regionally supported program. A nomination process provides for stakeholder input.

- 3) The following Resource Protection Standards are recommended for the RMP in furtherance of the goals and requirements of the Highlands Act to protect and enhance Highlands resources, including:
- Restrict development activities and new land uses that impact or deter from Scenic Resource Protection Areas.
 - Require inclusion of Scenic Resource Area protection standards within municipal zoning and land use ordinances. Support scenic resource protection through land use regulations that prohibit billboards; limit height; address massing, setback, and orientation of structures; include measures to camouflage the appearance of utility towers in the landscape; require open space; and control tree removal.
 - Establish minimum requirements for incorporation of Scenic Resource Areas within municipal Master Plan Conservation Plan and Open Space Plan Elements and County Open Space Plans.

Rationale: Resource Protection Standards provide the ability to protect the Scenic Resource Areas in the Highlands Region. The Highlands Act requires a Resource Assessment to evaluate scenic resources and determine the “overall policies required to maintain and enhance such resources.” Section 11.a.(1)(b). The Act also requires the development of Land Use Capability Map and minimum standards based upon the Resource Assessment and Smart Growth Component. Sections 11.a.(1) , 11.a.(6) and 12.

- 4) The following Smart Design Standards are recommended for the RMP in furtherance of the goals and requirements of the Highlands Act to encourage appropriate conservation based design throughout the region, including:
- Develop standards related to the preservation and enhancement of Scenic Resource Areas such as a menu of acceptable building materials; a recommended color palette for structures; coordinated signage and street furnishing details; parking and loading location requisites; and landscape guidelines for locating and massing vegetation.

Rationale: Design standards provide a framework to enhance local scenic resource protection and understanding. The Highlands Act requires a Resource Assessment to evaluate scenic resources and determine the “overall policies required to maintain and enhance such resources.” Section 11.a.(1)(b). The Act also requires the development of Land Use Capability Map and minimum standards based upon the Resource Assessment and Smart Growth Component. Sections 11.a.(1) , 11.a.(6) and 12.

- 5) The following Pre-Conformance strategies are recommended in furtherance of the goals and requirements of the Highlands Act to ensure successful implementation of the RMP prior to the conformance period, including:
- Develop Scenic Resource Area nomination program protocols including identification criteria and map submission requirements.
 - Establish RMP scenic protection criteria for ordinances and design standards.
 - Gather existing regional, county and municipal inventories of existing Scenic Resource Areas.

Rationale: RMP Implementation Strategies support the necessity to determine what activities, data and programs will be required of both the Highlands Council and municipal and county stakeholders during the Plan Conformance process as well as what initiatives will require longer term planning goals. Sections 11.a.(3), 14 and 15. The RMP is a “living document” and will continue to be refined and developed in support of regional planning goals. In order to facilitate regional planning goals it is imperative that the RMP have State, County, and local support from all levels of government and the support of the stakeholders of the Highlands Region.

- 6) The following Conformance strategies are recommended in furtherance of the goals and requirements of the Highlands Act to ensure successful implementation of the RMP during the conformance period, including:
- Counties, municipalities, and stakeholders will nominate sites for scenic resource protection as part of the Plan Conformance process. This may be done in a number of ways including having the local governing body select potential sites for inclusion based on their local knowledge and/or engaging the assistance of local residents and visitors in a scenic resources questionnaire or visual preference survey.
 - Highlands Council Staff will assist constituent counties and municipalities by providing available information and sources for scenic resource data.

Rationale: RMP Implementation Strategies support the necessity to determine what activities, data and programs will be required of both the Council and municipal and county stakeholders during the Plan Conformance process as well as what initiatives will require longer term planning goals. Sections 11.a.(3), 14 and 15. The RMP is a “living document” and will continue to be refined and developed in support of regional planning goals. In order to facilitate regional planning goals it is imperative that the RMP have State, County, and local support from all levels of government and the support of the stakeholders of the Highlands Region.

- 7) The following 5-year Resource Protection and Planning Goals are recommended in furtherance of the goals and requirements of the Highlands Act to ensure continued refinement and development of the RMP, including:
- Continue the process of identifying areas in need of scenic resource protection consistent with the goals and strategies of the Highlands RMP.

Rationale: The Highlands Act requires the Highlands Council to periodically revise and update the RMP at least once every six years. Section 8.a. RMP Implementation Strategies

support the necessity to determine what activities, data and programs will be required of both the Council and municipal and county stakeholders during the Plan Conformance process as well as what initiatives will require longer term planning goals. The RMP is a “living document” and will continue to be refined and developed in support of regional planning goals. In order to facilitate regional planning goals it is imperative that the RMP have State, County, and local support from all levels of government and the support of the stakeholders of the Highlands Region. Sections 11.a.(3), 14 and 15.

- 8) The following Coordination and Consistency Considerations are recommended to promote active participation in the implementation of the RMP among state and federal agencies:
- Development of a region-wide Scenic Resource Area inventory to provide a consistent data base for use by all Highlands municipalities and counties, as well as a resource and a reference for federal agencies, State agencies, and local landowners as future land use decisions are considered.
 - Coordination with NJDEP to ensure that Highlands Preservation Area Approvals evaluate scenic resources and require appropriate mitigation measures to protect scenic resources and viewsheds within the Highlands. The Highlands Council’s inventory of Scenic Resource Areas in the Preservation Area shall constitute “Existing scenic attributes” pursuant to N.J.A.C. 7:38-3.12(c) and “other areas as identified by the Highlands Council.” The inventory will ensure that, in accordance with N.J.A.C. 7:38-3.12(d), the NJDEP shall not issue a permit in the Preservation Area unless “the proposed activity would result in the minimum practicable degradation to a unique or irreplaceable land type or existing scenic attributes on the site or within the immediate area of the proposed project.”
 - Coordination with land preservation initiatives to permit the purchase of land and/or conservation easements in support of scenic resource protection, including the Transfer of Development Rights program.

Rationale: As a means to coordinate and support scenic resource protection, land preservation and stewardship is required. There are few funding sources that specifically target scenic resource protection or enhancement activities for eligibility. However, numerous funding sources provide dollars for projects associated with the preservation and enhancement of land and improvements that are intrinsically connected to the preservation of scenic resources such as trails, historic sites and structures, farmland, and environmentally sensitive areas.

RMP Implementation Strategies support the necessity to determine what local, State, and federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the RMP. Sections 11.a.(4). The RMP is a “living document” and will continue to be refined and developed in support of regional planning goals. In order to facilitate regional planning goals it is imperative that the RMP have State, County, and local support from all levels of government and the support of the stakeholders of the Highlands Region.

- 9) The following Local Participation Considerations are recommended to promote the understanding and support for the RMP resource protection goals at the local level:

- Assist municipal and county entities to gather scenic resource information to update existing data sources or nominate new ones.
- Assist municipalities and counties that wish to conduct random or targeted community surveys to determine scenic resources that local residents and visitors feel warrant protection.
- Solicit tourism professionals for their opinions on potential sites of scenic resource significance in the Highlands in support of eco-tourism initiatives.
- Develop a coordinated interpretive system for scenic resources in the Highlands as an education tool that may include elements such as signage, brochures, self-tour guides, etc.

Rationale: RMP Implementation Strategies support the necessity to provide for the maximum feasible local government and public input into the Highlands Council's operations. Section 11.a.(3)(emphasis added). The RMP is a “living document” and will continue to be refined and developed in support of regional planning goals. In order to facilitate regional planning goals it is imperative that the RMP have State, County, and local support from all levels of government and the support of the stakeholders of the Highlands Region.

II. REQUIREMENTS OF THE HIGHLANDS ACT AND RMP GOALS RELATED TO SCENIC RESOURCE PROTECTION REQUIREMENTS:

Goals of the Highlands Act:

In accordance with Section 10 of the Highlands Act, the overarching goal of the Regional Master Plan “with respect to the entire Highlands Region shall be to protect and enhance the significant values of the resources thereof in a manner which is consistent with the purposes and provisions of this act.” Section 10.a.

The Highlands Act establishes specific goals relating to protection of scenic resources. Those goals with respect to the Preservation Area shall be to:

- preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state, thereby ensuring the continuation of a Highlands environment which contains the unique and significant natural, scenic, and other resources representative of the Highlands Region. Section 10.b.(2).
- protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat for fauna and flora. Section 10.b.(3).
- prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area. Section 10.b.(9).

In addition, the goals with relating to protection of scenic resources with respect to the Planning Area shall be to:

- preserve to the maximum extent possible any environmentally sensitive lands and other lands needed for recreation and conservation purposes. Section 10.c.(2).

- protect and maintain the essential character of the Highlands environment. Section 10.c.(3).

Requirements of the Highlands Act:

Resource Assessment

The Highlands Act includes specific requirements relating to protection of scenic resources requiring the development of a Resource Assessment for the Highlands Region which “(b) includes an assessment of **scenic**, aesthetic, cultural, historic, open space, farmland, and outdoor recreation resources of the region, together with a determination of overall policies required to maintain and enhance such resources.” Section 11.a.(1)(b)(emphasis added).

Smart Growth Component

The Highlands Act also includes specific requirements relating to protection of scenic resources requiring the development of a Smart Growth component that includes “an assessment, based upon the resource assessment prepared pursuant to paragraph (1) of subsection a. of this section, of opportunities for appropriate development, redevelopment, and economic growth, and a transfer of development rights program In preparing this component, the council shall:

- (a) prepare a **land use capability map**;
- (b) identify **existing developed areas** capable of sustaining redevelopment activities and investment;
- (c) identify **undeveloped areas** in the planning area, which are **not significantly constrained by environmental limitations** such as steep slopes, wetlands, or dense forests, are not prime agricultural areas, and are located near or adjacent to existing development and infrastructure, that could be developed;
- (g) identify **special critical environmental areas and other critical natural resource lands** where development should be limited. Section 11.a.(6)(emphasis added).

Preservation Area Assessment

For the Preservation Area, Section 12 of the Highlands Act requires “a **land use capability map** and a comprehensive statement of policies for planning and managing the development and use of land in the preservation area, which shall be based upon, comply with, and implement the **environmental standards**” adopted by NJDEP and the **Resource Assessment prepared the Highlands Council** under Section 11. Section 12.(emphasis added).

Section 12 specifically requires implementation “that will ensure the continued, uniform, and consistent protection of the Highlands Region in accordance with the goals, purposes, policies, and provisions of this act, and shall include:

- a. a preservation zone element that **identifies zones within 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 land acquisition and the transfer of development rights; and
- b. minimum standards governing municipal and county master planning, development regulations, and other regulations concerning the development and use of land in the preservation area, including, but not limited to, standards for minimum lot sizes and stream setbacks, construction on steep slopes, maximum appropriate population densities, and regulated or prohibited uses for specific portions of the preservation area. Section 12.(emphasis added).

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Preservation Area Requirements

The NJDEP's rules at N.J.A.C. 7:38-3.12 provides protection for unique or irreplaceable land types. In accordance with N.J.A.C. 7:38-3.12(d), NJDEP shall not issue a permit in the Preservation Area unless "the proposed activity would result in the minimum practicable degradation to a unique or irreplaceable land type or existing scenic attributes on the site or within the immediate area of the proposed project." This section defines "Existing scenic attributes" as "any State, county or municipal parks, forests, wildlife management areas and natural areas, any areas acquired for recreation and conservation purposes with Green Acres funding, program or a non-profit conservation organization, any lands preserved as open space by a non-profit conservation organization **and other areas as identified by the Highlands Council.**" N.J.A.C. 7:38-3.12(c)(emphasis added).

This rule implements the Highlands Act's protection requirements in the Preservation Area pursuant to Section 36.a(6) to ensure "minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding area."

Local Participation Component

A component to provide for the maximum feasible local government and public input into the council's operations, which shall include a framework for developing policies for the planning area in conjunction with those local government units in the planning area who choose to conform to the regional master plan. Section 11.a.(3)(emphasis added).

Coordination and Consistency Component

A coordination and consistency component which details the ways in which local, State, and federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the regional master plan, and which details how land, water, and structures managed by governmental or nongovernmental entities in the public interest within the Highlands Region may be integrated into the regional master plan. Section 11.a.(4)(emphasis added).

III. TECHNICAL BASIS AND JUSTIFICATION FOR STAFF RECOMMENDATIONS

In furtherance of the requirements and goals of the Highlands Act as summarized above, the Scenic Resource Protection Program component of the Resource Assessment element of the RMP is intended to further the protect the scenic resources of the Highlands Region. Identifying **Scenic Resources in the Highlands** is not a simple task because there is no single database including such information. Additionally, the physical limits of scenic resources are not easily defined, as is the case with many viewsheds where different vantage points can provide a variety of scenic vistas with aesthetic value.

The Resource Assessment associated with protecting scenic resources is to maintain the visual integrity and scenic beauty of noteworthy viewsheds and natural and cultural features of significance in the Highlands Region. In order to assess the scenic resources of the Highlands Region it is necessary to establish a protocol by which these resources are nominated and

evaluated. Although conservation groups, local communities, counties or state programs may support scenic resource protection, there is no existing unifying protocol or inventory established at a state or local level that may serve to support the Highlands Region. Therefore, it is important for the Council to adopt a policy for scenic resources that allows for the nomination, evaluation, and development of scenic resource management and protection measures at a regional scale. Those areas identified by the Highlands Council will be identified as **Scenic Resource Protection Areas** and will be subject to appropriate RMP policies and standards.

IV. GLOSSARY

This section defines the terms that are used to develop the approach and methods that informed the proposed policy actions for this RMP element. Topic specific glossaries will contribute to the general RMP glossary of terms.

Scenic Resource Areas - Scenic areas in the Highlands Region specifically identified by the Highland Council including sites and landscapes may be identified based on attributes such as prominent ridgelines, mountainsides or hillsides exhibiting significant topographic relief, scenic corridors containing important natural or cultural elements (i.e. trails and/or roadways), key scenic viewing locations, panoramic landscape vistas, historic structures and sites, agrarian character, any Federal, State, county or municipal parks, forests, wildlife management areas and natural areas, any areas acquired for recreation and conservation purposes with Green Acres funding, and any lands preserved as open space by a non-profit conservation organization. *N.J.A.C. 7:38-3.12(c)*.

Scenic Resource Protection Areas – Those areas identified by the Highlands Council as Scenic Resource Areas and other lands specifically identified by the Highland Council that are necessary for protection in order to maintain and enhance the designated Scenic Resource Areas resources.