



JON S. CORZINE
Governor

State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

October 7, 2008

RE: COUNTY PLAN CONFORMANCE

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), this letter addresses numerous issues concerning the implementation of the Highlands Water Protection and Planning Act, P.L.2004, c.120 (Highlands Act). First, it describes the process of providing the Highlands Council with notice of intent to conform to the Regional Master Plan. Second, it discusses the Highlands Council's authority under Section 17 of the Highlands Act to review local government actions taken with respect to development applications within the Highlands Region and the notice requirements relating thereto.

Notice of Intent to Conform

The Highlands Act specifies that conformance with the Regional Master Plan (Plan Conformance) requires revisions to municipal and county master plans and development regulations as applicable to the development and use of land to align them with the goals, requirements, and provisions of the Regional Master Plan. To assist municipalities and counties with Plan Conformance, the Highlands Council has adopted Plan Conformance Guidelines. These guidelines establish the requirements and process for achieving Plan Conformance. The Plan Conformance Guidelines were included on the CD provided to you recently, and may also be downloaded from the Highlands Council website at:

http://www.highlands.state.nj.us/njhighlands/master/highlands_plan_conformance_guidelines.pdf

As the first step in the Plan Conformance process, the Plan Conformance Guidelines require that municipalities and counties submit a Notice of Intent to conform to the Regional Master Plan to the Highlands Council. The Notice of Intent must be adopted by formal resolution of the applicable governing body at a duly-noticed public meeting. For jurisdictions split between Planning and Preservation Areas, the Notice of Intent must indicate whether it is the intent of the governing body to include the Planning Area in the petition. It is important to note that the Notice of Intent is not binding with respect to lands within the Planning Area. Its purpose is to provide the Highlands Council with formal notice which: 1) serves as justification for providing financial and technical assistance to municipalities and counties as they prepare Petitions for Plan Conformance, and 2) assists the Highlands Council in developing a Plan Conformance schedule to work with municipalities and counties.

Jurisdictions having lands in the Preservation Area must submit a Notice of Intent to conform (with respect to those lands, at minimum) to the Regional Master Plan as soon as practicable, but not later

than February 1, 2009. For lands located in the Planning Area, a Notice of Intent may be submitted at any time.

To assist with the Notice of Intent process, the Highlands Council is providing all jurisdictions with a sample resolution (copy enclosed herewith) which may be modified as necessary to satisfy this requirement for Plan Conformance as well as a list of Highlands municipalities and counties showing the distribution of lands in the Preservation Area and Planning Area indicating the timeline to submit a Notice of Intent (copy enclosed herewith).

Highlands Council Development Project Review

Section 17 of the Highlands Act authorizes the Highlands Council to review local government actions taken with respect to development applications within the Highlands Region. The Act draws distinctions in the Highlands Council's review authority between the Preservation Area and Planning Area and prior to and after conformance with the Regional Master Plan. The sections that follow are organized by those distinctions and explain the obligations of municipalities and counties with respect to Highlands Council review.

(a) Preservation Area

Under Section 17 of the Highlands Act, after adoption of the Regional Master Plan but prior to county or municipal conformance, the Highlands Council may review, within fifteen (15) calendar days after final local government approval, rejection, or approval with conditions, any application for development¹ in the Preservation Area. In accordance with the Highlands Act, the Highlands Council may not, under Section 17, review final local government action on a development application that the New Jersey Department of Environmental Protection (NJDEP) has determined is exempt from the Highlands Act pursuant to a Highlands Applicability Determination.

Where the Highlands Council chooses to exercise its review authority and after conducting a public hearing, the Council may approve, reject or approve with conditions any such application or decision. However, Section 17 states that the Highlands Council may not reject or conditionally approve an application unless it determines that "the development does not conform to the Regional Master Plan, as applicable to the local government unit wherein the development is located, or that the development could result in substantial impairment of the resources of the Highlands Region."

Once a Preservation Area municipality or county has conformed to the Regional Master Plan, the Highlands Council may only review local government action with respect to development applications that "provide for the ultimate disturbance of two (2) acres or more of land or a cumulative increase in impervious surface by one (1) acre or more."

¹ Please note that only those applications that meet the definition of "application for development" under the Highlands Act, which includes both municipal and county development applications, may be reviewed by the Highlands Council pursuant to Section 17.

In either case, to ensure that the Highlands Council has sufficient notice of a local government action on a development application, municipalities and counties in the Preservation Area are required to provide notice to the Highlands Council.

1. Notice of Applications for Development

In accordance with Section 17.b of the Highlands Act, “every person submitting an application for development in the preservation area shall be required to provide a notice of the application to the [Highlands] council ...” As such, please be advised that applications for development must not be deemed administratively complete or otherwise considered eligible for review by any board or designated subcommittee, until or unless the applicant has demonstrated that notice has been provided to the Highlands Council.

The content, form, timeframe, and procedures for notice to the Highlands Council regarding municipal applications for development shall be in accordance with the notice provisions of the Municipal Land Use Law (MLUL). Where notice is not required pursuant to the MLUL and/or local ordinances, applicants shall in any event provide notice to the Highlands Council. Such notice shall be given at least ten (10) days prior to the date of the meeting during which the application is scheduled for review. The content, form, and provision of such notice shall be consistent with that required under the MLUL for notice of a public hearing on an application for development.

Notice of county applications for development shall specify the location (including street address and municipal tax block and lot numbers) and nature of the proposed development project, the type of approval(s) sought, the county regulations identified as applicable to the project, and the date, time and place of the meeting during which the application is scheduled for review. The applicant shall provide such notice to the Highlands Council by personal service or certified mail at least ten (10) days prior to the meeting date.

2. Notice of Local Government Actions

With respect to municipal applications for development, the applicable municipal land use board shall provide a certified copy of the resolution memorializing its final decision with respect to any land development application, to the Highlands Council for the Council’s review under Section 17. For municipal resolutions, sample resolution language (copy enclosed herewith) has been provided and may be modified as necessary to address the requirements of Section 17. Such resolutions shall be provided within the same timeframe and in the same manner as set forth under the Municipal Land Use Law for providing them to applicants. In the case of county applications for development, county planning boards shall provide the Highlands Council with copies of its final reports concerning land development applications within the same timeframe and in the same manner as set forth under the County Planning Act for delivery of such reports to the applicable municipal agencies (see N.J.S.A. 40:27-6.7). For county reports, sample language (copy enclosed herewith) has been provided and may be modified as necessary to address the requirements of Section 17.

Upon receipt of the municipal resolution or county report, the Highlands Council will have fifteen (15) calendar days to decide whether or not to review the action taken by the local government unit. If the Highlands Council chooses to review the local government action, consistent with the

requirements of Section 17.a of the Highlands Act, it shall transmit, by certified mail, written notice of its decision to the applicant and the local government unit.

Consistent with the Initial Revisions provision of the Plan Conformance Guidelines, municipalities and counties will be required to revise their respective development review ordinances to require the provision of notice by the applicant to the Highlands Council for all applications for development for all lands within the Preservation Area. Please note that, the Plan Conformance Guidelines require that draft ordinances be submitted to the Highlands Council prior to formal consideration.

Lastly, for both notice of applications and notice of local government actions in the Preservation Area, Section 17 authorizes the Highlands Council to review actions subsequent to the adoption of the Highlands Regional Master Plan. Please take notice that the effective date of the Highlands Regional Master Plan is September 8, 2008. Notice of this effective date was published in the New Jersey Register on October 6, 2008 at 40 N.J.R. 5852(b).

(b) Planning Area

Prior to voluntary conformance with the Regional Master Plan, the Highlands Act does not provide the Highlands Council with the authority to approve, reject or approve with conditions final local government action on a development application within the Planning Area.² However, after voluntary conformance, the Highlands Act gives the Highlands Council discretion to review local government action where the development project provides for the ultimate disturbance of two (2) acres or more of land or a cumulative increase in impervious surface by one (1) acre or more.

In response to the numerous questions the Highlands Council has received, the following section addressed Executive Order 114 (EO 114) issued by Governor Corzine on September 5, 2008. Regardless of whether a Planning Area municipality or county voluntarily conforms to the Regional Master Plan, local government units may wish to advise certain applicants for development that EO 114 may have significant implications on proposed projects. Specifically, EO 114 may affect the issuance by the New Jersey Department of Environmental Protection (NJDEP) of water allocation permits or Water Quality Management Plan amendments for projects in the Protection Zone, Conservation Zone, or the Environmentally-Constrained Sub-Zones as delineated by the Highlands Council in the Regional Master Plan, particularly where the Regional Master Plan identifies the affected area as having a water availability deficit. The Highlands Council suggests that municipalities and counties consult with NJDEP regarding the scope of the provisions in EO 114 with respect to NJDEP permits. The full text of the Executive Order was published in the New Jersey Register on October 6, 2008 at 40 N.J.R. 5312(c).

Optional Actions for Development Review

To protect Highlands resources in the interim period between submission of a Notice of Intent to Petition for Plan Conformance, and adoption of the local regulations that would otherwise do so,

² Please note that, although the Highlands Council may not have review authority under Section 17 of the Highlands Act, it has authority under Section 6.r to “comment upon any application for development before a local government unit . . . which power shall be in addition to any other review, oversight or intervention powers of the council prescribed by this act.”

municipalities and counties may choose to take certain immediate actions. First, municipalities and counties with lands in the Planning Area should be aware that the Highlands Council will provide Highlands Consistency Determinations pertinent to any development application involving a non-exempt development project in the Highlands Region. For lands in the Preservation Area, NJDEP is presently issuing exemption determinations (Highlands Applicability Determinations or HADs) and Highlands Preservation Area Approvals (HPAAs) for major Highlands development. As such, local jurisdictions may consider requiring such determinations as a checklist submission requirement for non-exempt development applications. Further, the checklist ordinance could specify that for the Planning Area where a Highlands Consistency Determination indicates that an application is not consistent with the Regional Master Plan, it may be deemed complete only if the applicant: a) provides plans and other documentation demonstrating that all aspects deemed inconsistent have been revised to be consistent with the Plan, and b) provides a statement from the design professionals who prepared the plans affirming that all issues raised by the Highlands Council have been addressed.

These ordinance revisions are discussed in the Plan Conformance Guidelines under the section entitled "Initial Revisions" beginning on page 13. The specific requirements for these ordinances may be found at paragraphs (d) and (e). As discussed in the Plan Conformance Guidelines, the Highlands Council requires that all ordinances be submitted in draft form to the Council for review prior to formal consideration to ensure that the ordinance meets the requirements of the Regional Master Plan and the Plan Conformance Guidelines. After approval by the Highlands Council, such ordinances shall be entitled to "a strong presumption of validity" as set forth in Section 22 of the Highlands Act and as described in the Benefits of Conformance section of the Plan Conformance Guidelines (p.5).

Notice of Effect of the Permit Extension Act of 2008

Please take notice that the Highlands Council has issued a notice regarding the effect of the Permit Extension Act of 2008, P.L. 2008, c. 78, and this notice was published in the New Jersey Register on October 6, 2008 at 40 N.J.R. 5853(a). The notice specifies that no approvals in the entire Highlands Region, including all eighty-eight municipalities in the Preservation Area and Planning Area, are subject to P.L. 2008, c. 78 until such time as the Highlands Council designates growth areas in the Highlands Regional Master Plan. As adopted, the Highlands Regional Master Plan does not include any areas designated for growth but the notice specifies that should such areas be designated the Highlands Council will provide notice in the New Jersey Register.

Conclusion

In summary, the Highlands Council requires that local jurisdictions take certain actions and encourages action on other issues as follows:

(a) Required Actions

- For Preservation Area jurisdictions, submit a Notice of Intent to conform to the Highlands Council not later than February 1, 2009. A sample resolution for a Notice of Intent is attached as is the timeline for submitting a Notice of Intent;

- For Preservation Area jurisdictions, provide the Highlands Council with copies of the board resolutions or final county reports memorializing all final local government actions on development applications as set forth above. Sample conditions of final approval are attached; and
- Immediately require applicants to provide notice of their development application to the Highlands Council in the manner set forth above, for any proposed development in the Preservation Area as required by Section 17 of the Highlands Act.

(b) Discretionary Actions

- For Preservation and Planning Area jurisdictions, adopt a new or revised development review completeness checklist ordinance to include the provisions discussed above.

The Highlands Council looks forward to working with Highlands municipalities and counties during the Plan Conformance process. For further assistance regarding these issues please contact Paula Dees, my Executive Assistant at (908) 879-6737 or paula.dees@highlands.state.nj.us.

Respectfully,

Eileen Swan
Executive Director

enclosures: Sample Notice of Intent
Timeline For Notice of Intent
Sample Conditions of Approval for Municipal Resolutions and County Reports

cc: Municipal Clerk
Planning Board Chair
Zoning Board Chair
Municipal Planner
Municipal Attorney