

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF AUGUST 3, 2011

PRESENT

JIM RILEE) CHAIRMAN

KURT ALSTEDE) COUNCIL MEMBERS
TRACY CARLUCCIO)
TIMOTHY P. DOUGHERTY)
MICHAEL R. DRESSLER)
MICHAEL FRANCIS)
ROBERT HOLTAWAY)
BRUCE JAMES)
CARL RICHKO)
JAMES VISIOLI)
ROBERT G. WALTON)

ABSENT

JACK SCHRIER) VICE CHAIRMAN
JAMES MENGUCCI)

CALL TO ORDER

Chairman Rilee called the 106th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:06pm.

ROLL CALL

Roll call was taken. Vice Chairman Jack Schrier and Council Member James Mengucci were absent. All other Council Members were present.

OPEN PUBLIC MEETINGS ACT

Mr. Borden announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6. The Highlands Council sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

Chairman Rilee acknowledged special guests Senator Smith and Assemblyman McKeon and thanked them for coming. Senator Smith thanked Chairman Rilee for the courtesy to speak briefly on the 7th anniversary of the Highlands Act. He noted that he and Assemblyman McKeon were prime sponsors of the Highlands Act. Senator Smith congratulated the Highlands Council for the work that went into the adoption of the Highlands Regional Master Plan. He also expressed the pleasure that numerous towns have been approved and many other are seeking conformance. Senator Smith stated that Council is a great model for the United States of America on what a great regional planning agency could be. He also stressed the importance of the need to protect the water supply

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for 5.5 million people in New Jersey. Senator Smith further stated that Council's efforts are not unappreciated and he hopes to be back in another seven years to celebrate the 14th anniversary of the Highlands Act.

APPROVAL OF MINUTES OF JUNE 16, 2011

Mr. Visioli introduced a motion to approve the minutes and Ms. Carluccio seconded it. Messrs. Dougherty, Schrier and Mengucci were absent. Mr. Holtaway abstained. All other members present voted to approve. The minutes were APPROVED 9-0, with one abstention.

APPROVAL OF MINUTES OF HIGHLANDS DEVELOPMENT CREDIT BANK BOARD MEETING OF JULY 28, 2011

Ms. Swan gave a brief summary of the meeting of the HDC Bank and the process of the Highlands Council's approval of the minutes. The Highlands Act authorized the Council to create a bank to implement the Transfer of Development Rights (TDR) program. The Highlands Council created the HDC Bank and the Bank submits the meeting minutes to the Council for review. No action taken by the HDC Bank has effect until the Highlands Council's period of review has expired and the Governor's period of review for that Council's meeting minutes has expired pursuant to the Highlands Act.

Ms. Swan discussed that the HDC Bank created an Initial Purchase Program to acquire Highlands Development Credits from qualified applicants and to date has completed three rounds:

- First Round - 87 Highlands Development Credits on 109 acres acquired for \$1,392,000.
- Second Round - 54.50 Highlands Development Credits on 81 acres to be acquired for \$872,000.
- Third Round - 203 Highlands Development Credits on 130 acres to be acquired for \$3,248,000. (Five of the seven applications were approved at the July 28, 2011 meeting)

Of the \$10,000,000 in initial capital funding provided by Executive Order 114 (Corzine), the total offers made to date totals \$5,512,000 for 320 acres. To date, the Bank has closed on 174 acres permanently preserving these lands.

Ms. Swan noted that the offers issued by the HDC Bank are based upon five priority acquisition categories as follows:

1. Missed qualifying for Exemption #3 and have extenuating financial circumstances;
2. Suffer from extenuating financial circumstances;
3. Missed qualifying for Exemption #3;
4. Qualified for Exemption #3, but exemption expired; or
5. Property located in either Special Environmental Zone or High Value Agricultural Priority Area, and property owner previously offered property for preservation purposes.

After approving offer letters to the five applicants, the HDC Bank approved and scheduled a Fourth Round of acquisitions as follows:

- HDC Allocation Applications due to Highlands Council by November 3, 2011.
- HDC Certificate Applications due to HDC Bank by December 29, 2011.

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- HDC Bank to consider Fourth Round applications at February 2, 2012 meeting.

Ms. Swan further reported that the HDC Bank approved a resolution asking the Executive Branch and the Legislature to examine means of replenishing the HDC Bank's initial capitalization with an additional \$10,000,000. This additional funding will enable the HDC Bank to:

- 1) Continue its HDC acquisition program to ensure the continued protection of critical Highlands' natural and agricultural resources; and
- 2) Guarantee that landowner equity concerns continue to be addressed by the State through all the mechanisms afforded in the Highlands Act.

Ms. Swan stated that the next Bank Board Meeting is scheduled for Thursday, October 27, 2011 at 2:00pm.

Mr. Dougherty joined the meeting at 4:15pm.

Comments are attached to these minutes which were submitted by Deborah Post to correct misstatement she made at the July 28, 2011 Highlands Development Credit Bank Board meeting.

Mr. Visioli introduced a motion to approve the Highlands Development Credit Bank Board minutes and Mr. Holtaway seconded it. Messrs. Schrier and Mengucci were absent. All other members present voted to approve. The Bank Board minutes were APPROVED 11-0.

CHAIRMAN'S REPORT

Chairman Rilee reported that earlier in the day Governor Christie signed into law three bills that would allow for increased preservation of state land and natural resources making available \$157 million for Green Acres Projects statewide. Included in this is a \$15 million dedication of state-acquisition money to preserve lands in the Highlands Region.

Chairman Rilee expressed the need to clarify his position on the vote at the last meeting on Hackettstown's Petition for Plan Conformance. He explained that his lack of support for the Petition was based upon the fact that he had just been appointed to Chair the Council and he was not fully familiar with the Highlands Regional Master Plan. He also explained that his decision was not based upon Hackettstown's position with respect to TDR. He advised that he had a very constructive discussion with Mayor Lavery of Hackettstown.

Chairman Rilee thanked the Council Members who attended briefing sessions on July 21, 2011. Chairman Rilee stated that the sessions were very well done. Chairman Rilee thanked staff for their efforts.

Chairman Rilee announced that he has appointed Mr. Holtaway and Mr. Walton as two new members Board of Directors to the HDC Bank Board and that they have accepted the appointment. He understood that they would have five year terms and asked for confirmation of that issue. The HDC Bank Directors are appointed with five year terms.

Chairman Rilee advised Council Members that Hampton Farm LLC sought reconsideration of Resolution 2001-19 which authorized a feasibility grant to Hampton Borough.

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Council Member Walton, due to the fact that he was formerly the Mayor of Hampton, stepped aside during this discussion at 4:17pm.

Chairman Rilee noted that the Council unanimously approved the Resolution in May of 2011 and did not consider it appropriate to reconsider the matter. Chairman Rilee asked if any Council Members wished to make a motion on the reconsideration request but no Member made a motion. Chairman Rilee asked that Hampton Farm LLC be advised accordingly.

Council Member Walton returned at 4:18pm.

EXECUTIVE DIRECTOR'S REPORT

Chairman Rilee asked for Ms. Swan's Executive Director Report. Ms. Swan noted that this is the first meeting of the two new Council Members, Bruce James a Freeholder from Passaic County and Michael Dressler a Bergen County Surrogate Judge. Chairman Rilee welcomed the new Council Members.

Ms. Swan gave a brief summary update to the Council on Plan Conformance Petition reviews. To date 65 Petitions have been submitted from 60 Municipalities and 5 Counties). Of these, 55 have been deemed administratively complete and have been posted to the Highlands Council website (including 2 Counties). Of these 25 Petitions have been approved as follows: Townships – Bethlehem, Byram, Chester, Denville, Franklin (Warren), Green, Holland, Lopatcong, Mahwah, Mount Olive, Rockaway, Tewksbury, Washington (Morris) & West Milford; Boroughs – Bloomsbury, Bloomingdale, Califon, Glen Gardner, Hampton, High Bridge, Kinnelon & Lebanon; Towns – Clinton; and Counties - Passaic and Somerset.

At today's meeting, the Council will be considering Petitions for Alpha Borough, Town of Hackettstown, Pohatcong Township, Oxford Township and Wharton Borough. She noted that should the Council approve these five Petitions, the Council will have approved 28 of the 60 municipal Petitions. This represents 47% of the total Petitions and 55% of the complete Petitions. The 60 Petitions submitted to date result in 97 percent conformance in the Preservation Area (401,903 acres) and 35 percent conformance in the Planning Area (157,460 acres). Ms. Swan added that Oakland and Randolph have recently decided to include their Planning Area in the Petition for Plan Conformance and that has been a recent trend of numerous towns. Ms. Swan then noted, for upcoming meetings of the Highlands Council, that the Municipal Response Period Underway for three municipalities: Bedminster and Parsippany-Troy Hills Townships. Furthermore, the Municipal Response Period was been completed for four municipalities: Hardyston, Lebanon and Sparta Townships and Ringwood Borough.

Ms. Swan then showed a map which represented the Plan Conformance Status as of June 16, 2011. Ms. Swan noted that today's Petitions, if approved, will take effect after the Governor's review period of the Council's minutes and showed the map that would result from that action. Ms. Swan showed that the map reflected those municipalities with lands in the Preservation Area lands conformance is mandatory and in Planning Area it is voluntary.

Ms. Swan provided an update on the Plan Conformance Grant Program and showed the average amounts requested for reimbursement by participating municipalities. Ms. Swan advised the

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Highlands Council that on average the expenses of the seven Modules are very close to the projected base amounts, with certain exceptions, as set forth in the following chart.

<u>Towns</u>	<u>Base Amount</u>	<u>Average</u>	<u>Number</u>
Module 1	\$15,000	\$13,700	72
Module 2	\$10,000	\$ 6,778	71
Module 3	\$ 7,500	\$14,439	61
Module 4	\$ 2,000	\$ 3,128	63
Module 5	\$ 2,500	\$ 6,733	55
Module 6	\$ 5,000	\$ 4,383	52
<u>Module 7</u>	<u>\$ 8,000</u>	<u>\$ 7,226</u>	49
Module Subtotal	\$50,000	\$56,387	
<u>Municipal Response Costs</u>	<u>\$ 8,000</u>	<u>\$ 7,991</u>	17
Plan Conformance Cost	\$58,000	\$64,378	

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Pohatcong Township, Warren County

Chairman Rilee introduced the Resolution. It was noted that at Council's June 16, 2011 meeting, Council approved a motion to carry the public portion of the Public Hearing to the next meeting. Ms. Swan acknowledged Pohatcong Township's representatives present at the meeting, Marc Metzger, Land Use Board Chairman and Paul Gleitz, Planner.

Ms. Swan showed land ordinance maps prepared for Pohatcong showing the land use capability zones as well as existing infrastructure for water and sewer. Ms. Swan reported that the Highlands Council and Pohatcong Township collaborated to develop a Highlands Center for a portion of the Planning Area. The proposed Pohatcong Highlands Center includes mostly developed area north of Alpha Borough, between Route 122 and 22, and the partially developed area east of Alpha Borough that is south of Route 122 and north of Route 78, it consists of densely developed residential and retail areas, and the partially developed Industrial Zone area.

Ms. Swan also reported that Pohatcong Township's Petition includes a requests for a Map Adjustment for Block 93 Lots 4 and 5 (170 acres) known at the EAI site (Hamptons at Pohatcong). The project is in the Township's Affordable Housing zoning district, which is the product of prior round affordable housing litigation, and the project is in Township's approved Housing Element and Fair Share Plan presently under Court jurisdiction. The Highlands Council, on September 23, 2008, issued a Consistency Review of a proposed Water Quality Management Plan (WQMP) amendment finding numerous inconsistencies. The site is in the Conservation Zone (Environmentally-Constrained Sub-Zone) and the property is currently leased with mostly row-crop corn production.

Ms. Swan then showed a map of the 2008 local approval of Hamptons at Pohatcong. The 2008 preliminary subdivision and site plan approval allowed for 401 single-family lots, two apartment buildings containing a total of 44 low and moderate-income affordable units, and one lot for future retail use. The development as approved would result in 81% developed lands and 19% undeveloped lands and project would generate 152,550 gpd of wastewater.

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Ms. Swan reported that in response to the Council's WQMP findings of inconsistency, the applicant prepared a revised plan with 242 units (44 low/moderate income apartments, 122 single family homes, 76 town homes; and no future retail use). The revised plan included much more limited site disturbance with 26% developed lands and 74% undeveloped lands. Then on April 15, 2010, the Council work session conceptually endorsed a Map Adjustment for the revised plan with a condition that it includes a 125-acre deed restriction. The Consistency Report prepared for Pohatcong Township's Petition included a request by the Township to allow non-permanent development of wind, solar or photovoltaic energy facilities as part of the deed restriction. The Consistency Report clarifies this is not a cluster development under the RMP and that it is a Map Adjustment; the deed restriction would allow non-permanent development of wind, solar or photovoltaic energy facilities which will allow for future use of the land for agricultural or open space purposes; and that these interim uses are not considered "agricultural uses".

Ms. Swan then provided an overview of the Petition of Plan Conformance and the administrative record for Pohatcong Township has follows:

12/8/09	Petition for Plan Conformance Submitted, Full Municipality
3/16/10	Petition Deemed Administratively Complete
3/24/10	Petition Posted to Highlands Council Website
4/6/11	Draft Consistency Report Sent to Municipality
5/18/11	Final Draft Report Posted to Highlands Council Website
6/2/11	End of Public Comment Period (Start 5/18/11)
6/10/11	Final Report Posted to Highlands Council Website
8/2/11	Highlands Council Public Hearing

Ms. Swan reported that public comments were received from:

- Carl Bisgaier on behalf of Regency at Pohatcong
- Erica Van Auken, New Jersey Highlands Coalition
- Helen H. Heinrich, New Jersey Farm Bureau
- Laura Oltman and Michael Newman, Eco Action Initiatives of Warren County

She further noted that the Comment/Response Document included detailed responses to all public comments received and this response document was posted on the Council's website. The result of this process was that the recommendations to the Highlands Council did not change. Ms. Swan then provided an analysis of the consistency of the Petition as follows:

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	Highlands Center
Module 6 Land Use Ordinance	X	Highlands Center

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Module 7 Petition for Plan Conformance	X	Request for RMP Updates, Map Adjustment, Redevelopment Area, Highlands Center, and TDR evaluation.
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Ms. Swan then summarized the Staff Recommendations for Pohatcong's Township's Petition for Plan Conformance that it be approved with the following major conditions:

- Adoption of Planning Area Ordinance and Checklist Ordinance
- Adoption of Completed ERI, Highlands Master Plan Element and Highlands Land Use Ordinance
- Highlands Center Designation Planning (intra-municipal TDR)
- Map Adjustment Requirements
- Compliance with Fair Housing Act
- Wastewater Management Plan
- Agriculture Retention Plan
- Habitat Conservation and Management Plan
- Stream Corridor Protection & Restoration Plan
- Highlands Redevelopment Area Planning
- Sustainable Economic Development Plan
- Water Use & Conservation Management Plan

Council Comments

Mr. Walton wanted to know the cost of the TDR feasibility study for Pohatcong Township. Ms. Swan responded to say that the Highlands Council approved a grant program where up to \$25,000 is provided for an independent TDR feasibility study. However, Ms. Swan noted that Pohatcong's TDR analysis would be done as a subcomponent of the planning for the Highlands Center under two elements, the completion of Module 5 – Highlands Element (\$65,000) and Center Designation Planning (\$15,000).

Chairman Rilee responded that he is concerned that municipalities may consider TDR study and spend grant funding on something they may not want to do. Ms. Swan emphasized that Pohatcong made this request to prepare an intra-municipal study to support TDR to protect their agricultural lands with increased development to be planned in the Highlands Center. Ms. Swan further stated that the study is phased in so the municipality will first examine the capacity for additional density within the Highlands Center and if there is not sufficient capacity for increased density they do not move forward with the second phase of a TDR market analysis. She noted that this capacity analysis is a valuable planning exercise. Mr. Francis responded that it is smart for a municipality to look at intra-municipal TDR and he supports this planning analysis. Chairman Rilee noted that towns are not mandated by the Highlands Act to accept TDR receiving zones and he is concerned that municipalities may consider TDR to obtain the Highlands Council approval of their Petition for Plan Conformance.

Mr. Alstede asked about the Map Adjustment for the Hamptons site and questioned what percentage of the land is dedicated to solar. Ms. Swan noted that the municipal ordinance included a maximum of 80% open lands and Marc Metzger of Pohatcong concurred. Mr. Alstede does not think solar field is open space and is should instead be considered as development and does not

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think it should be considered deed restriction for open space or agriculture. Ms. Swan emphasized that it would not be considered deed restricted open space or agriculture as the deed restriction specifically allows for non-permanent solar and wind and after those non-permanent uses expire it would only be used for agricultural purposes or open space.

Mr. Alstede asked how solar is treated for tax purposes. Mr. Metzger, Land Use Board Chairman for Pohatcong Township stated he would have to confer with his tax assessor but stated that solar may be taxed. Mr. Metzger stated Pohatcong interest in this is because the township is under court order for over 15 years and they would like to put this project to rest. The proposed resolution would have less stress on services and sewers. Mr. Francis responded that commercial solar enterprise could be taxed but it is a gray area and is evolving throughout the State. Ms. Carluccio asked if solar arrays will be subject to best management practices for stormwater. Mr. Sterbenz responded that the solar arrays will be subject to local stormwater ordinances and fully reviewed by the Land Use Board.

Public Comments

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich commented that there is a section in the Land Use Ordinance where the staff has not answered her concern. She is concerned that Pohatcong is encouraged to continue to prohibit riding academies. Ms. Heinrich feels it is misleading that a plan will be done for agricultural retention if on the other hand the town goes ahead with this type of prohibition. Ms. Heinrich's solution is to get together with staff to resolve this conflict.

Ms. Swan informed Council that the Right to Farm Act is supported through the RMP and the activities and the agricultural retention will be done in coordination with the Department of Agriculture to encourage agricultural retention.

Monique Purcell, Department of Agriculture – Ms. Purcell supports Pohatcong's Petition for Plan Conformance and the idea of the feasibility TDR grant. Ms. Purcell also supports Mr. Francis' comment on solar on farms that it is a gray area on how commercial solar will be taxed and there is a need for specific criteria.

Martin Resnick – Mr. Resnick gave a history of the Regency project and the years of litigation. Mr. Resnick supports Pohatcong's Petition but requested that the Regency project be included. Mr. Resnick also added that 80% of Pohatcong is on limestone and that substantial engineering analysis was conducted on the Regency site.

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga made a suggestion to Chairman Rilee to allow general comments after the Pohatcong's public hearing from people who attended the rally since the Council has a full agenda. Chairman Rilee asked how much time was needed. Mr. Ruga stated about ten minutes.

David Shope, owns property in Lebanon Township – Mr. Shope commented that he asked Senator Smith and Assemblyman McKeon to stay to hear what the public had to say. Mr. Shope says the Act is hypocritical in promoting Highlands as a source of drinking water. Mr. Shope then

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showed pictures of children playing near open fire hydrants to cool off. Mr. Shope supports this application.

Jerry Kern – Mr. Kern commented on his dissatisfaction on the Highlands Act and how it has affected him as a land owner in Pohatcong Township. Mr. Kern's commented on a pending application and state that his phone call to Highlands was not returned. Ms. Swan assured him that the Council's policy was to return all phone calls but, in this case, apologized for the oversight. Mr. Kern stated that economically Pohatcong is starving for business. He supports land preservation but not the Highlands Act.

Hal Danielson, owns property in Hampton Borough – Mr. Danielson commented on the solar and wind systems. Mr. Danielson stated that Pohatcong area is not feasible for wind systems. The only viable areas for wind systems are along our coast. He added that the life span is 20 years. Mr. Danielson also commented that he wanted more definitive studies on the species on the site as he found no reference to them.

Laura Oltman – Ms. Oltman commented to previous comments that there are species on the Hamptons site and she does not understand why it is not on the landscape map as there was a public hearing by the NJDEP on the EAI site which was noted. Ms. Oltman supports Pohatcong's Petition for Plan Conformance.

Chairman Rilee closed the public hearing, asked if there were any additional comments from the Council Members and then requested a roll call. *At the June 16, 2011 Council Meeting, Mr. Holtaway made a motion on the Resolution for Pohatcong Township. Mr. Richko seconded it. All members present voted on the Resolution by roll call. The Resolution was APPROVED 11-0.*

At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding Plan Conformance to Marc Metzger, Land Use Board Chairman. Ms. Swan also recognized Highlands Council Staff Liaison and Principal Planner Chris Danis.

Chairman Rilee continued the meeting to recognize and hear comments on the Highlands Coalition's rally on the seventh year anniversary of the Highlands Act.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey acknowledged the seventh anniversary of the signing of the Highlands Act which was sponsored by Senator Smith and Assemblyman McKeon and it was a tremendous achievement and landmark victory. Ms. Frey commented that it is one of the most important pieces of environmental conservation in decades. The achievement was a 15 year effort of Highlands residents, citizens group, many studies and grassroots efforts.

Messers. Dougherty and Alstede temporarily left the meeting at 5:14pm. Mr. Alstede returned to the meeting at 5:15pm.

Elliot Ruga, New Jersey Coalition – Mr. Ruga commented that 30+ years of regional planning in the Pinelands has shown us the benefits of regional planning to protect sensitive natural areas while guiding growth and development, property taxes are lower in the Pinelands while property values are

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higher in the communities just outside the Pinelands. Developers want nothing more than predictability (know what can be developed and where) and in the process seventeen trillion gallons of clean water has been protected in the Pinelands. What works in the Pinelands is working in the Highlands unless the Highlands Council is stopped in its mission to protect the water supplies more than half of its residents. The Highlands Regional Master Plan is the most forward thinking planning tool which the State has ever produced. To date 23 of the 88 Highlands municipality have modified their master plans and land use ordinance in order to be consistent with the Highlands plan and all but a small handful of the remaining towns are working with the Highlands Council today to achieve this consistency. If we do not preserve the Highlands according to the State's own research it will cost an additional 50 billion dollars to treat the water that the Highlands watersheds provide for free. It is the world's largest Brita water filter that never needs replacing. Mr. Ruga thanks the Highlands Council for what they have done so far and hopes the Council is able to keep up the good work.

Mr. Dougherty returned to the meeting at 5:17pm.

Bill Kibler, Executive Director of South Branch Watershed Association - Mr. Kibler commented that it is a pleasure to be in front of a new Council. Mr. Kibler read a paragraph that he sent in a letter to some of the members of South Branch Watershed Association. The south branch starts in Mount Olive and is part of the head waters for the Raritan River and home to two of the largest reservoirs (Round Valley and Spruce Run) and the majority of the watershed is in the Highlands. There have been a lot of arguments for and against the Act, for and against the Council and the Regional Master Plan over the years. Mr. Kibler commented that one consistent complaint he hears is that the Act puts an unfair burden on people who live in the Highlands. Highlands water supply is essential to our State as are other important areas of our State that support transportation infrastructure, such as Elizabeth, Newark where residents have been affected by those issues. Mr. Kibler complimented the Highlands staff.

Chairman Rilee continued with the regular agenda.

Consideration of Resolution – Transfer of Development Rights Feasibility Grant, Town of Hackettstown, Warren County

Ms. Swan noted that the proposed Resolution would authorize an agreement with Town of Hackettstown for a TDR Receiving Zone Feasibility Grant. The TDR Receiving Zone Feasibility Grant would examine the feasibility for establishing voluntary receiving zones for commercial/retail development in the proposed Highlands Center in the amount of \$25,000. This Resolution is in response to the issues raised by Council Members at the last meeting. The Mayor of Hackettstown is pleased to undertake this feasibility study.

Mr. Francis made a motion on the Resolution for a TDR Feasibility Grant, Town of Hackettstown. Ms. Carluccio seconded it.

Council Comments

Chairman Rilee is concerned that the municipality is doing the TDR to get their Petition approved and he is concerned it will become a part of Council's operations. Mr. Walton commented that he is

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concerned about the grant funding in general. Mr. Walton feels Council is handing out grants like candy. Mr. Walton is concern about the money and a municipality that may not have a result. Mr. Walton stated that he will be voting no.

Mr. Alstede commented that as a regional center what are the benefits of the designation of a Highlands Center. Ms. Swan responded the Highlands Act requires that we look at both sides to consider smart growth where development should go and where resources should be protected. Ms. Swan commented that the mission of Council is to look at areas like Hackettstown to support redevelopment and potential development. She noted that the Highlands Act requires the Council to reimburse municipalities for the reasonable costs of Plan Conformance. Mr. Alstede responded that then what the town is getting to designate a Highlands Center is grant money. Ms. Swan responded that the town is also getting state agency coordination, such as assistance from DOT and EDA, as well as funding and technical assistance. Ms. Carluccio noted the importance of the data generated by this analysis and it can be used by the municipality to see what the municipality is able to do with their town.

Chairman Rilee acknowledged Deputy Mayor Maria DiGiovanni and asked if she would like to comment on the Resolution. Ms. DiGiovanni responded to say that Hackettstown supports this Resolution and is open to what the Council has to say. Ms. DiGiovanni stated the Hackettstown is essentially built-out at this point but they do want to examine commercial and retail TDR for redevelopment sites.

Mr. Dougherty stated that this would be a positive study and would create jobs. Mr. Visioli responded that the big difference in Hackettstown is that it is built-out and that the ability for a study for redevelopment will be funding well spent. Mr. Walton felt that getting government out of the way would create jobs. Mr. Holtaway commented that we have to consider that Hackettstown is an old industrial town and for them to update what is there a study would be beneficial. Mr. Francis commented that TDR analysis it is just good planning. Mr. Alstede asked what State Planning Commission area Hackettstown is. Ms. Swan could not confirm but suspected it might be Planning Area 2. Responding to another question on that designation Ms. Swan when on to say that the planning done by the Highlands Council was more detailed than State Planning Areas and recognized existing centers of growth such as Hackettstown. Mr. James stated that agricultural lands can contain numerous contaminants and be considered brownfields.

Chairman opened discussion to the public.

Public Comments

Sylvia Kovacs – Ms. Kovacs thanked the new members for serving on the Council. Ms. Kovacs stated that Bergen Tool site did go through planning to rezone and that there is plenty of housing being built or planned to be built. Ms. Kovacs fully supports the TDR feasibility grant for Hackettstown.

Deborah Post, owns property in Chester Township – Ms. Post commented that the Highlands Act is a feast for planners. Ms. Post felt the towns should pay for their own planners. She strongly opposed the TDR grants and proposes that landowners get assistance with grants for their losses.

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David Shope, owns property in Lebanon Township – Mr. Shope commented that he does not think Hackettstown has brownfields and to make a speculation is irresponsible. Mr. Shope stated that there is nothing in the Act that requires center designations that Hackettstown is requesting. Mr. Shope is not in support of this grant and just throwing more money away.

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga commented that what many towns in the Highlands do not have access to is good planning and feels this is money well spent.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey urges the Council to approve this grant and it is based on the RMP and a way to look at a more detailed way, calculations to determine if it is appropriate for the center. Hackettstown is not a incredibly wealthy town and everyone should get an equal opportunity to be assisted.

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich is always glad to see one more town look at TDR and come up with a positive reaction. Ms. Heinrich hopes that Hackettstown checks with the needs of the farmers and add commercial/retail that will help them.

Hal Danielson, owns property in Hampton Borough – Mr. Danielson commented about the species in Hackettstown. Chairman Rilee commented that the comments are on the TDR. Mr. Danielson commented on what Mr. James mentioned about the brownfields. Chairman Rilee asked Mr. Danielson to stop being adversarial and to stop insulting Council Members. The Chair asked Mr. Danielson to yield the floor. Mr. Danielson refused and the Chair asked him once again. Mr. Danielson again refused.

Chester Township police approached Mr. Danielson and when he refused to return to his seat he was removed from the meeting.

Chairman Rilee closed the public hearing, asked if there were any additional comments from the Council Members and then requested a roll call. *All members present voted affirmatively on the Resolution by roll call with the exception of Mr. Alstede and Mr. Walton. The Resolution was APPROVED 9-2.*

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Town of Hackettstown, Warren County

Ms. Swan recognized representatives from Town of Hackettstown including Deputy Mayor Maria DiGiovanni; William Conforti, Councilmember; Paul Sterbenz, Engineer; and Darlene Jay, Planner. Ms. Swan also recognized Maryjude Haddock-Weiler, Regional Planner and Highlands Staff Liaison for Hackettstown.

Mr. Holtaway temporarily left the meeting at 5.49pm.

Ms. Swan presented significant Highlands statistics as they pertain to Town of Hackettstown:

- Planning Area Lands: 2,171 acres – 91%
- Preservation Area Lands: 203 acres – 9%
- Existing Community Zone – 1,484 acres – 63% (Roads 10%)
- Protection Zone – 644 acres – 27%

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- Highlands Open Water Protection – 1,131 acres – 48%
- Forest Resource Area – 913 acres – 39%
- Conservation Priority Areas – 237 acres – 10%

Mr. Holtaway returned to the meeting at 5.51pm.

Ms. Swan then showed the land use ordinance maps for the Town. She noted that the Highlands Council and Hackettstown worked collaboratively to delineate the proposed Hackettstown Highlands Center to encompass:

- Central Business District
- Hackettstown Historic District
- Centenary College Campus
- Stiger Street Redevelopment Area
- Hackettstown Regional Medical Center & adjacent affordable housing
- M&M/Mars facilities
- Commercial/Residential development near border with Mansfield Twp

The total area of the proposed Highlands Center includes approximately 743 acres, all of which is in the Planning Area and is mostly served by both water and sewer service. Ms. Swan displayed a map as a visual for the above.

Ms. Swan then provided an overview of the Petition of Plan Conformance and the administrative record for Town of Hackettstown as follows:

12/7/09	Petition for Plan Conformance Submitted, Preservation Area
3/31/10	Petition Deemed Administratively Complete
4/9/10	Petition Posted to Highlands Council Website
1/26/11	Resolution by Town to Conform for Planning Area
5/16/11	Draft Consistency Report Sent to Municipality
5/20/11	Final Draft Report Posted to Highlands Council Website
6/6/11	End of Public Comment Period (Start 5/20/11)
6/10/11	Final Report Posted to Highlands Council Website
8/3/11	Highlands Council Public Hearing

Public comments were received from Erica Van Auken, Campaign and Grassroots Coordinator for Highlands Coalition. A Comment/Response Document posted on the website included detailed responses to all public comments received.

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource	X	

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Inventory		
Module 5 Highlands Element	X	Highlands Center
Module 6 Land Use Ordinance	X	Highlands Center
Module 7 Petition for Plan Conformance	X	Request for RMP Updates, Map Adjustment, Redevelopment Area, Highlands Center

Ms. Swan then summarized the Staff Recommendation for Town of Hackettstown's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Ordinance and Checklist Ordinance
- Adoption of Completed ERI, Highlands Master Plan Element and Highlands Land Use Ordinance
- Compliance with Fair Housing Act
- Highlands Center Designation Planning
- Historic Preservation Plan Element
- Wastewater Management Plan
- Stream Corridor Protection & Restoration Plan
- Highlands Redevelopment Area Planning
- Sustainable Economic Development Plan
- Water Use & Conservation Management Plan

Council Comments

Mr. Alstede asked if the change to Hackettstown's Petition was only on TDR for commercial development. Ms. Swan responded that from the last meeting lack of TDR was the only objection heard. The TDR study would examine commercial and retail such that residents could have additional employment opportunities if areas are redeveloped.

Mr. Richko added that from the proposed residential units being developed in Hackettstown it did not appear that the town has the infrastructure to support that much more. Mr. Richko apologized that Hackettstown had to come back for a second time.

Mr. Dressler asked for verification on the number of proposed residential development in Hackettstown. Mr. Sterbenz, Planner Engineer for Hackettstown, responded that approximately 583 units are either currently approved or will be approved in the near future. Mr. Sterbenz reported that the Hackettstown Planning Board adopted a Master Plan Amendment to approve 200 residential units adjacent to the hospital, 180 approved on site south of Hackettstown Mall (unfinished) and 20,000 square feet of retail space. On Route 57 there is development under construction for senior citizen apartments of 104 units and lastly the Bergen Tool brownfield site there is a plan for a mixed-used development of commercial and up to 99 residential units. Mr. Dressler asked if, in his professional opinion, he felt the residential concerns are being met in Hackettstown. Mr. Sterbenz declared that he did.

Mr. James asked if these residential units address Hackettstown's COAH obligations. Mr. Sterbenz responded that it will address Hackettstown's third round COAH obligation.

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Mr. Alstede asked what the current population is in Hackettstown and what the population would be with these developments. Mr. Sterbenz responded to say that the current population is approximately 9,900.

Ms. Carluccio stated that she supports this Petition and that Council heard an excellent presentation and also apologizes that Hackettstown had to come back a second time.

Mr. Walton asked what sewer capacity Hackettstown has for residential future growth. Mr. Sterbenz responded that Hackettstown has limited sewer capacity and is in a deficit area for water and that will be a major focus of the water conservation plan. The sewer system is not an exclusive system and is shared by other communities. Mr. Walton asked Mr. Sterbenz if the TDR for commercial is a lynch pin for Petition approval. Mr. Sterbenz commented that Hackettstown is committed to doing the TDR study on commercial to study what capacity the infrastructure has.

Mr. James made a motion to approve the Resolution for Town of Hackettstown. Ms. Carluccio seconded it.

Public Comments

Sylvia Kovacs, resident of Independence Township – Ms. Kovacs commented that she does all her shopping and banking in Hackettstown. Ms. Kovacs has served on her township's Land Use Board and supports Hackettstown Petition for Plan Conformance and the commercial TDR to revitalize the town.

Marion Harris, Chairman of Morris County Trust – Ms. Harris commented that it is a real reward for a town to come before the Council in order to revitalize their town and to protect the environment and the built environment. Ms. Harris spoke about the historic buildings in Hackettstown and commented that the project will be an excellent anchor for the downtown historic buildings.

David Shope, owns property in Lebanon Township – Mr. Shope commented about the projected growth of Hackettstown before Council approved the Petition.

Scott Olsen, Deputy of Byram Township – Mr. Olsen commented that he supports the Hackettstown Petition and stated that Hackettstown is a regional center and the Act recognizes regional planning. This Petition would be a great benefit to the town.

Keith Ryan, Long Valley resident – Mr. Ryan was a member of the MUA and fully supports this application and the focus on a TDR feasibility for commercial development. Mr. Ryan noted that Hackettstown is a regional center for some history but was developed under a 1970 framework. Mr. Ryan noted that Hackettstown has plenty of people. He added that commercial development/redevelopment would be less of burden on Hackettstown waste water capacity.

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Council Comments

Mr. Alstede commented that Council is charged with being a regional planning authority and asked where was the regional planning outlook. Mr. Alstede commented that towns need to consider TDR to support the TDR bank program. Mr. Alstede further stated that Regional Centers need to consider the potential for residential growth and Council needs to look at the applications on a larger scale. Mr. Alstede commented that he cannot support this type of application.

Chairman Rilee stated that there are many aspects of policy to be considered as a regional planning board. Chairman Rilee hopes to have a policy meeting with Council at the next meeting.

Mr. Walton commented that there is a fundamental flaw in the Act which does not provide the tools to locate growth. Mr. Walton commented that the Act was written to stop growth. Mr. Walton further stated that Council would have had the authority to mandate growth if the Act was written for smart growth.

Mr. Richko commented that the very first Petition approved by the Council was Byram Township which planned for substantial mixed-use development. He noted that this is not a regional committee looking to do away with development, but that the Council is looking for smart growth.

Ms. Carluccio stated that every single plan the Council has considered built in smart growth. Throughout the RMP smart growth is provided for Council. Instead of being a top down approach to planning it is bottom up and the municipalities make those decisions and it is a system that is working. Ms. Carluccio noted that mandating TDR in the Pinelands was not a winning decision, the State learned something from that. The Highlands Act was amended to authorize growth areas through TDR receiving zones anywhere in the State.

Chairman Rilee felt there was a lot of misleading going on and the TDR is part of the bigger problem and the law is clear that we do not force municipalities in TDR. He also wanted to discuss the policy issues regarding voluntary conformance in the Planning Area at a subsequent meeting

Mr. Francis commented that we should continue what we are doing to assist the towns with smart growth. The elected bodies know what is good for their town and ultimately their responsibility. He feels that the Council has a lot of value as a regional board, but it is the final decision of the elected officials.

All members present voted affirmatively on the Resolution by roll call with the exception of Mr. Alstede and Mr. Walton. The Resolution was approved by a vote of 9-2.

Chairman Rilee announced a break at 6:23pm. At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding Plan Conformance to Deputy Mayor, Maria DiGiovanni.

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Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Alpha Borough, Warren County

The meeting was reconvened at 6:41pm. Ms. Swan acknowledged Alpha Borough's representatives present at the meeting: Stan Schrek, Borough Engineer; and David Maski, Planner. Ms. Swan also recognized Highlands Council Staff Liaison and Principal Planner Chris Danis.

Ms. Swan presented significant Highlands statistics as they pertain to Alpha Borough:

- Planning Area Lands: 1,098 acres – 100%
- Conservation Zone – 468 acres – 43%
- Protection Zone – 105 acres – 10%
- Existing Community Zone – 413 acres – 38% (Roads 9%)
- Highlands Open Water Protection – 135 acres – 12%
- Agricultural Resource Area – 1,098 acres – 100%
- Agricultural Priority Areas – 396 acres – 36%

Mr. Francis left the meeting at 6:45pm.

Ms. Swan then showed land use ordinance maps for the Borough. The Highlands Council and Alpha Borough collaborated to develop a Highlands Center for a portion of the Planning Area. The proposed Alpha Borough Highlands Center encompasses the mostly developed area bordering Pohatcong Township on the eastern boundary along Edge Road. The Industrial Zone includes existing industrial and warehouse uses as well as the Alpha Quarry (Block 99, Lot 2) which is a municipally-owned brownfield site.

The Alpha Highlands Center represents 41% of the total lands within the Borough including the portion of the existing Industrial Zone north of Route 78 (including Alpha Quarry, a municipally-owned brownfield site) and a portion of the surrounding developed residential area. The Center provides for areas of infill development and redevelopment and cluster development. The Protection Zone lands in the Highlands Center includes redevelopment of the Alpha Quarry site, agriculture lands that are bordered by Route 78 and existing development in Pohatcong and Alpha Borough, and the Center has access to freight rail. The Protection and Conservation Zone resources in the Highlands Center are not identified as critical habitat and are adjacent to developed lands with utility and transportation infrastructure, as compared to the nature and extent of the Conservation Zone lands in the rest of the Borough. The Borough will examine the potential for a TDR Program based on the findings of initial Highlands Center planning.

Ms. Swan then provided an overview of the Petition of Plan Conformance and the administrative record for Alpha Borough as follows:

10/6/10	Petition for Plan Conformance Submitted, Full Municipality
10/26/10	Petition Deemed Administratively Complete
11/5/10	Petition Posted to Highlands Council Website
5/16/11	Draft Consistency Report Sent to Municipality
7/5/11	Final Draft Report Posted to Highlands Council Website
7/20/11	End of Public Comment Period (Start 7/5/11)
7/28/11	Final Report Posted to Highlands Council Website

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8/3/11 Highlands Council Public Hearing

Public comments were provided by the following individuals/entities:

- Erica Van Auken, New Jersey Highlands Coalition
- Helen H. Heinrich, New Jersey Farm Bureau

A Comment/Response Document included detailed responses to all public comments received and was posted on the website. Ms. Swan then reviewed the consistency of the Petition.

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	Highlands Center
Module 6 Land Use Ordinance	X	Highlands Center
Module 7 Petition for Plan Conformance	X	Request for RMP Updates and Highlands Center

Ms. Swan then summarized the Staff Recommendations for Alpha Borough's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Ordinance and Checklist Ordinance
- Adoption of Completed ERI, Highlands Master Plan Element and Highlands Land Use Ordinance
- Compliance with Fair Housing Act
- Highlands Center Designation Planning (TDR evaluation)
- Agriculture Retention / Farmland Preservation Plan
- Wastewater Management Plan
- Sustainable Economic Development Plan
- Water Use & Conservation Management Plan
- Habitat Conservation and Management Plan

Mr. Holtaway made a motion on the Resolution for Alpha Borough. Mr. Richko seconded it.

There were no Council Comments.

Public Comments

Erika Van Auken, New Jersey Highlands Coalition – Ms. Van Auken supports the Petition for Alpha Borough and on the condition that the plan is developed to not put stress on the environment.

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Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich commented that she is concerned with the advice given to the towns and the discretion that the town has on agriculture development.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey supports Alpha's Petition but specific care needs to be taken in the center because carbonate rock is in the area and environmental constraints.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 10-0.

At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding Plan Conformance to Stan Schrek, Borough Engineer.

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Wharton Borough, Morris County

Ms. Swan acknowledged Wharton Borough's representatives present at the meeting: Jon Rheinhardt, Administrator. Ms. Swan also recognized Highlands Council Staff Liaison and Regional Planner Maryjude Haddock-Weiler.

Ms. Swan presented significant Highlands statistics as they pertain to Wharton Borough:

- Planning Area Lands: 1,362 acres – 100%
- Protection Zone: 197 acres – 14%
- Existing Community Zone: 948 acres – 70% (Roads 16%)
- Highlands Open Water Protection: 604 acres – 44%
- Forest Resource Area: 209 acres – 15%
- Conservation Priority Areas: 68 acres – 5%

Ms. Swan then presented the land use ordinance maps for the Borough showing the available infrastructure. Wharton requested Highlands Center Designation to revitalize the Borough's Main Street corridor and facilitate redevelopment opportunities. Washington Forge Pond is a focal point and is expected to serve as a community recreational resource. The proposed Center encompasses Main Street Corridor and industrial area east of Main Street, the East Dewey Avenue Redevelopment Area, and the Old Irondale Road affordable housing site. The Highlands Center is approximately 417.5 acres of the 1,362 total acreage.

Ms. Swan then provided an overview of the Petition of Plan Conformance and the administrative record for Wharton Borough as follows:

12/8/09	Petition for Plan Conformance Submitted, Full Municipality
6/23/10	Petition Deemed Administratively Complete
7/1/10	Petition Posted to Highlands Council Website
4/29/11	Draft Consistency Report Sent to Municipality
7/8/11	Final Draft Report Posted to Highlands Council Website
7/22/11	End of Public Comment Period (Start 7/8/11)
7/28/11	Final Report Posted to Highlands Council Website
8/3/11	Highlands Council Public Hearing

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Public comments were provided by the following individual/entities:

- Helen Heinrich, on behalf of the New Jersey Farm Bureau
- Erica Van Auken, on behalf of the New Jersey Highlands Coalition
- Robert Freudenberg and Peter Kasabach, on behalf of Regional Plan Association and New Jersey Future

A Comment/Response Document included detailed responses to all public comments received and was posted on the website. Ms. Swan provided an overview of the RMP consistency analysis as follows:

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	Highlands Center
Module 6 Land Use Ordinance	X	Highlands Center
Module 7 Petition for Plan Conformance	X	Request for RMP Updates, TDR evaluation and Highlands Center

Ms. Swan then summarized the Staff Recommendations for Wharton Borough's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Ordinance and Checklist Ordinance
- Adoption of Completed ERI, Highlands Master Plan Element and Highlands Land Use Ordinance
- Compliance with Fair Housing Act
- Highlands Center Designation Planning (TDR evaluation)
- Lake Restoration Management Plan
- Highlands Redevelopment Area Plan
- Wastewater Management Plan
- Sustainable Economic Development Plan

Mr. Holtaway made a motion on the Resolution for Wharton Borough. Mr. Visioli seconded it.

There were no Council Comments.

Public Comments

Erika Van Auken, New Jersey Highlands Coalition – Ms. Van Auken supports the Petition and appreciates Council's recommendation to preserve sites for development since Wharton is pretty

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close to build-out. Ms. Van Auden encourages cluster development or low impact options for development.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 10-0.

At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding Plan Conformance to Jon Rheinhardt, Administrator.

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Oxford Township, Warren County

Ms. Swan acknowledged Oxford Township’s representatives present at the meeting: Bonnie Riley, Deputy Mayor; Keith Gibbons, Committeeman; Mike Finelli, Township Engineer; and Paul Gleitz, Township Planner. Ms. Swan also recognized Highlands Council Staff Liaison and Regional Planner Maryjude Haddock-Weiler.

Ms. Swan presented significant Highlands statistics as they pertain to Oxford Township:

- Preservation Area Lands: 2,206 acres – 57%
- Planning Area Lands: 1,672 acres – 43%
- Protection Zone – 2,351 acres – 61%
- Conservation Zone – 705 acres – 18%
- Existing Community Zone – 699 acres – 18% (Roads 3%)
- Highlands Open Water Protection – 1,786 acres – 46%
- Forest Resource Area – 3,878 acres – 100%
- Conservation Priority Areas – 1,004 acres – 26%
- Agricultural Priority Areas – 542 acres – 14%

Ms. Swan then showed land use ordinance maps for the Township. She noted the map of historic resources as important for Oxford’s long industrial history. Oxford requested a Highlands Center to assist with the redevelopment of industrial sites and to support economic development. Iron ore mining operations in the 1700’s was followed by textiles until the first half of the 20th century. Oxford’s Center includes the Industrial Historic District, Oxford Textile Mill Redevelopment Area, a 14-acre forested site for housing with mitigation for this loss, and the “Triangle” (former Oxtex Industries) totaling 367 acres.

Ms. Swan then provided an overview of the Petition of Plan Conformance and the administrative record for Oxford Township as follows:

12/7/09	Petition for Plan Conformance Submitted, Full Municipality
1/22/10	Petition Deemed Administratively Complete
2/1/10	Petition Posted to Highlands Council Website
6/22/11	Draft Consistency Report Sent to Municipality
7/8/11	Final Draft Report Posted to Highlands Council Website
7/22/11	End of Public Comment Period (Start 7/8/11)
7/28/11	Final Report Posted to Highlands Council Website
8/3/11	Highlands Council Public Hearing

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Public comments were provided by the following individuals/entities:

- Paul Gleitz of Heyer, Gruel & Associates, on behalf of Oxford Township
- Helen Heinrich, on behalf of the New Jersey Farm Bureau
- Erica Van Auken, on behalf of the New Jersey Highlands Coalition
- Robert Freudenberg and Peter Kasabach, on behalf of Regional Plan Association and New Jersey Future

A Comment/Response Document included detailed responses to all public comments received and was posted on the website. Ms. Swan then provided an analysis of the consistency of the Petition as follows:

Petition Requirements	Consistent with the RMP	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	
Module 3 Housing Element/Fair Share Plan	X	
Module 4 Environmental Resource Inventory	X	
Module 5 Highlands Element	X	Highlands Center
Module 6 Land Use Ordinance	X	Highlands Center
Module 7 Petition for Plan Conformance	X	Request for Highlands Center and continued TDR evaluation.

Ms. Swan then summarized the Staff Recommendations for Oxford Township's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Planning Area Ordinance and Checklist Ordinance
- Adoption of Completed ERI, Highlands Master Plan Element and Highlands Land Use Ordinance
- Compliance with Fair Housing Act
- Highlands Center Designation Planning (intra-municipal TDR)
- Wastewater Management Plan
- Sustainable Economic Development Plan
- Water Use & Conservation Management Plan
- Habitat Conservation and Management Plan
- Agricultural Retention & Farmland Preservation Plan
- Stream Corridor Protection & Restoration Plan

Mr. James made a motion on the Resolution for Oxford Township. Ms. Carluccio seconded it.

There were no Council Comments.

Chairman Rilee asked if anyone from the municipality would like to be heard.

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Bonnie Riley, Deputy Mayor for Oxford Township – Ms. Riley commented that the Council staff did a wonderful job getting back to the municipality expeditiously during the Petition process. She particularly thanked Maryjude Haddock-Weiler.

Public Comments

Monique Purcell, Department of Agriculture –Ms. Purcell commented that she supports this Petition and it is very encouraging to see other Petitions coming in with a center designation recognized and TDR. She looks forward to Phase II of the agricultural retention plan.

Erika Van Auken, New Jersey Highlands Coalition – Ms. Van Auken supports this Petition but does have concerns regarding the condition of the Center Designation and the implementation of a Water Use and Conservation Plan that addresses deficits in water availability within the entire watershed.

David Shope, owns property in Lebanon Township – Mr. Shope asked for verification on where the center designation would be located. Ms. Swan responded to say that the center is in the Planning Area.

All members present voted on the Resolution by roll call. The Resolution was approved by a vote of 10-0.

At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding Plan Conformance to Deputy Mayor Bonnie Riley.

Consideration of Resolution – Proposed Highlands Redevelopment Area Designation for Givaudan Fragrances Corporation, Block 402, Lot 5, Mount Olive Township, Morris County

Mr. Holtaway commented that he worked with Givaudan over 10 years ago however does not have any continuing conflict so does not see a conflict with voting on this application.

Ms. Swan explained that the proposed project is the expansion of an existing building owned and operated by Givaudan Fragrances Corporation in Mount Olive Township (on Waterloo Valley Road within the Foreign Trade Zone.) The expansion would occur in two locations – along the western edge of the existing building – “Phase IIIA” (16,900 square feet [sq ft] for warehouse space), and along the southern edge of the building – “Phase IIIB” where there is currently a cut-out of the building (4,430 sq ft, also for warehouse space.) The existing facility in Mount Olive is the sole producer of fragrances for Givaudan in North America. The applicant states that in order to consolidate all raw materials in the location of production, drive efficiency, and meet anticipated production needs through 2020, room for an additional 3,000 to 4,000 pallet positions is required. According to the applicant, failure to expand to accommodate market demands would require the company to transfer a substantial amount of its production facilities to Mexico, and cause the loss of between 75 and 130 jobs in New Jersey.

The proposed Highlands Redevelopment Area contains 71.6% impervious surface, in excess of Highlands Act requirements for at least 70 percent impervious surface:

- Existing Impervious Surface = 306,236 sq ft

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- Allowable Highlands Redevelopment Area = 437,480 sq ft
- Proposed Highlands Redevelopment Area = 427,948sq ft

Ms. Swan then displayed maps of the site. The proposed project entails encroachment into Highlands Open Waters buffer related to a wetland located in the northwest corner of the parcel. That portion of the buffer area is currently disturbed (i.e., existing fire lane and maintained lawn). As encroachment into the buffer is required for the project and the buffer is in an existing disturbed condition, a waiver of this requirement by NJDEP would be required and is recommended. The northwest corner of the parcel and the area adjacent to the parcel to the west are mapped as Forest in a Forest Resource Area, Critical Habitat, and Prime Ground Water Recharge Area. The proposed expansions would not encroach into these areas. The locations of the proposed expansions are located within a Tier III Wellhead Protection Area, however the construction and use of warehouse space would not pose a significant potential for discharges of persistent organic or toxic pollutants to ground water or to the land surface. There would be no new water/wastewater requirements as the expansion is for automated warehouse space. Ms. Swan displayed the timeline for this application as:

- May 31, 2011 - Pre-Application Meeting
- June 6, 2011 - Applicant Submits Petition for Redevelopment Area Designation
- June 21, 2011 - Highlands Council posts Draft Consistency Determination and Draft Staff Recommendation Report on Council website
- Comment Period June 21 to July 7, 2011

Mount Olive Township provided comments supporting the project and public comments were received from:

- Erica Van Auken, New Jersey Highlands Coalition
- Wilma E. Frey, New Jersey Conservation Foundation

A Comment/Response Document included detailed responses to all public comments received and is posted on the website..

Staff recommendation is to approve the proposed Highlands Redevelopment Area designation subject to the following conditions:

1. The site already has greater than 3 percent impervious surface, this an HPAA redevelopment waiver will be required;
2. Encroachment into a Highlands Open Waters buffer shall be entirely within previously disturbed areas, which would not result in a net impact to the functional value of the buffer and therefore qualifies for a waiver;
3. Remainder of the property outside of the proposed Highlands Redevelopment Area be protected through a conservation restriction, specifically authorizing ecological restoration and maintenance; and
4. During the HPAA process, the applicant shall supply a stormwater management plan that incorporates low impact development techniques as dictated by current NJDEP Stormwater Rules.

Mr. Alstede made a motion to approve the Resolution and Mr. Walton seconded it.

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Council Comments

Mr. Alstede asked if Council discussed this at a prior meeting about the mapping in the entire trade zone area is in the Planning Area except for two businesses. Ms. Swan responded that it was discussed and Council does not have the authority to change the Highlands Act boundaries. Ms. Carluccio commented that regardless of the mapping there are sensitive resources on the property and adjacent to the property. Ms. Carluccio has concerns about the Highlands water buffer area and the Tier III wellhead. Ms. Carluccio asked what chemicals are used and what kind of analysis has been done.

Joseph Ciccone, Engineering and Facilities Givaudan – Mr. Ciccone commented that they do have an inventory list of the chemicals used on the site and these activities are regulated. Mr. Ciccone said that they are not adding anything different than what they already have.

Gregory Ploussas, Engineer for Givaudan – Mr. Ploussas commented that this is a very modest expansion and everything will be inside the facility. There are separate containers that contain the chemicals and there are no drains.

Ms. Carluccio commented on the remainder of the property which may propose further expansion and asked if that would come back to the Council for a vote. Ms. Swan confirmed that it would.

Mr. James asked if there is a Clifton site and asked if there continuing contamination issues. Mr. Ciccone said that there is an ongoing Passaic River clean up and that was a true chemical site. Mr. Ciccone stated that they are a compounding facility, not a chemical facility at the Mount Olive site.

Public Comments

Deborah Post, owns property in Chester Township – Ms. Post commented that this is a classic example of red tape where the applicant will need to go to the NJDEP next. This process should be centralized and in one place.

David Shope, owns property in Lebanon Township – Mr. Shope commented that if you hassle business too much, they are gone and jobs will go with them.

All members present voted affirmatively on the Resolution by roll call with the exception of Ms. Carluccio. The Resolution was approved by a vote of 9-1. Ms. Swan recognized Council staff member Chris Ross for her efforts on the application and leadership of project review.

Resolution – Authority For Highlands Plan Conformance and Highlands Project Review

Chairman Rilee suggested that this Resolution be carried over to the next meeting so Council may have a general discussion on policies within the Act and RMP. Mr. James agreed with putting the Resolution off until next meeting. Chairman Rilee asked Council Members if they have items/ideas for discussion to bring forward to him or Ms. Swan. It was noted that the next scheduled meeting is Thursday, September 15, 2011 at 4:00pm.

Public Comments

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Hank Klumpp owns 150 acres in Tewksbury Township – Mr. Klumpp read a statement that he submitted to Council for the record regarding the Act, his unanswered questions by Council and loss of equity. He introduced his grandsons to the Council. Mr. Klumpp urged the Council to go back to the Legislature and do something to come up with some money for landowners.

Deborah Post, owns property in Chester Township – Ms. Post submitted written comments on behalf of Hal Danielson's wife Alice Shane. Ms. Post also submitted written comments on TDR and deeds of easement.

Kathleen Caren, resident of West Milford and Passaic County Planning Board – Ms. Caren has worked closely on Passaic County's Petition which was approved December of 2009. Ms. Caren commented that it is a pleasure to work with Council staff, in particular Judy Thornton who is the Passaic County liaison. Ms. Caren commented that Passaic County has always wanted to protect the water even before the Highlands Act. Ms. Caren commented that water is going to be like the oil of the 21st century. She commented that the statement that there was no funding was incorrect as the funding for open space is presently available. Ms. Caren stated that so many Petitions speak to the reasonableness of the RMP and the opportunities that are there.

David Shope, owns property in Lebanon Township – Mr. Shope commented on Holland Township's budget and how it increased due to Highlands Council funds. Mr. Shope supplied a copy of the budget which Mr. Walton requested to see. Mr. Shope suggested that the grant funds were being used to balance the town's budget. Mr. Shope commented on the evaluation of loss land equity and submitted that report as well. Ms. Shope inserted language in the proposed Resolution which is being put off until next meeting and adds Senator Smith's language. Ms. Shope submitted a copy of the Resolution and his added language.

Mr. Visioli made a motion to adjourn the meeting. Mr. James seconded it. The meeting was adjourned at 7:53pm.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF AUGUST 3, 2011

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 9/15/11

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

**Vote of the Approval of
These Minutes**

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Carluccio			✓			
Councilmember Dougherty		✓	✓			
Councilmember Dressler						✓
Councilmember Francis			✓			
Councilmember Holtaway			✓			
Councilmember James			✓			
Councilmember Mengucci					✓	
Councilmember Richko	✓		✓			
Councilmember Schrier					✓	
Councilmember Visioli			✓			
Councilmember Walton						✓
Chairman Rilee			✓			

PUBLIC COMMENTS

Memo To: Highlands Council Secretary

From: Deborah Post

Date: July 31, 2011

Re: Comments Correction

During public comment at the July 28, 2011 HDC Bank Board meeting, I stated from memory that the SADC had preserved a property in Warren County known as Greenway Flowers for \$120,000 an acre. While close to the Warren border, Greenway Flowers is in western Morris County. The easement price paid was \$95,000, not \$120,000. The appraisal conclusions were higher than the price paid.



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GMC

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Photos from The Star-Ledger

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N.J. heat waves continues



Friday, July 22, 2011 8:08 PM



By **Star-Ledger Staff**

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SATURDAY, JULY 23, 2011



PHOTOS BY FRANCES MICKLOW/THE STAR-LE

Shaquan Knight, 13, sprays his friends with the fire-hydrant flow yesterday in Newark.

ssions because they said they were
aid of retaliation, Rice said. He
id the testimony included claims
at some people were rejected
cause of bad credit reports, while
ners with felony convictions were
proved.
Rice said he has been unable to
rt through the truth of those ac-
sations because, although state

campaign between incumbent Mayor
Cory Booker and challenger attorney
Clifford Minor was heating up.

Someone sent out flyers under
Minor's name that said felons were
being allowed on the police force.
At the time, Minor told me the fliers
were not coming from his campaign
and he had put out the word for
whomever was responsible to stop

ground check
out and replace
You'd think t
been at least as
mining if some
the way the ba
ommendations
Some cases h
may involve ju
had been expu

EUGENE ROBINSON

Comments submitted at Highlands Council Meeting
on August 3, 2011 by David Shope.
Page 3 of 10

Open mind on climate 7-9-10



JOHN MUNSON/THE STAR-LEDGER

Chico Ramirez, 9, and Elizabeth Gonzalez, 7, play in the spray from an open hydrant in Paterson during the above-average temperatures this week.



I think we should be bold and make a statement for the students.—Candace Straight, a member of the Rutgers University Board of Governors after it cut in half the tuition increase proposed for the coming school year

YOUR TOWNS

Comments submitted at Highlands Council Meeting on August 3, 2011 by David Shope.
Page 4 of 10

our daily summary of news
opening around New Jersey
For more, go to nj.com/news

TOMORROW

9:30 A.M.

Nature Walk for ages 9 and older. South Mountain Reservation, Dogwood Hill, Brookside Drive, Short Hills.

10 A.M.

Gardens of Jefferson. Self-guided tours of private gardens for ages 12 and older. \$15. Jefferson Township Museum, George Chamberlin House, 315 Dover-Milton Road, Milton.

10 A.M.

"Historic Churches of Morristown," guided tour. \$10. Morris County Visitors Center, 6 Court St., Morristown. Registration required. (973) 831-5151.

11 A.M.

12th annual Garden Party, lectures, workshops and discussion with horticultural staff. \$3. Colonial Park, Perennial Garden, Mettlers Road, East Millstone.

NOON

Bastille Day Fete in Frenchtown, music, demonstrations, French-themed meals in restaurants, puppets, street performers, silent art auction, mural and outdoor screening of "The Pink Panther."

1 P.M.

Evergreens Tour, collection of local area postcards from turn-of-the-20th century. \$5-\$8. Evergreens-Shultz House Museum, 30 N. Mountain Ave., Montclair.



ARISTIDE ECONOMOPOULOS/THE STAR-LEDGER

HEAT, HUMIDITY AND AN OPEN HYDRANT

Rasheem Bond, 11, takes advantage of an open fire hydrant at the corner of Pennsylvania Avenue and Astor Street during a hot week in Newark. Temperatures in the high 80s and low 90s, with lots of sun, are expected to continue through the weekend.



Opening hydrants no way to stay cool

Published: Friday, June 13, 2008, 6:16 AM Updated: Friday, June 13, 2008, 6:20 AM

Chanta L. Jackson
By

Despite the summer heat, Newark residents are reminded not to open fire hydrants on city streets. Doing so can severely reduce water pressure and hamper firefighters' ability to quell blazes, city official say.

In addition, open hydrants disrupt the water supply for homes and businesses and create safety hazards for children who play in the water sprays as well as for motorists.

"It is illegal to open fire hydrants in the city of Newark. This practice lowers water pressure which increases the potential for injury or death during a fire or other emergency." Mayor Cory A. Booker said. "I am urging our citizens to comply with the law and report open fire hydrants immediately to our fire department. By working together our city can get through summer heat waves calmly and safely."

Those who violate the rule face fines of up to \$1,000 and 90 days in jail for each offense.

To report an open fire hydrant, contact the Fire Department at (973) 733-7400.

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NEWS

Camden Officials: Open Fire Hydrants Causing Water Shortage

June 1, 2011 8:46 AM

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2 comments

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(Credit: TIM SLOAN/AFP/Getty Images)

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CAMDEN, NJ (CBS) – The city of Camden is experiencing what officials are calling a “severe water shortage” caused, in large part, by people illegally opening fire hydrants to keep cool.

As a result, water pressure levels are lowered, which could cause a problem for fire fighters in an emergency. And water coming out of the tap could be discolored.

An announcement from Mayor Dana Redd’s office asks people to be vigilant and report any open hydrants to police. Violators could face fines and/or jail time.



Reporting [David Madden](#)

Reported by David Madden, KYW Newsradio 1060

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lehighvalleylive.com

Oppressive heat to break for remainder of week

Published: Tuesday, June 29, 2010, 11:10 AM Updated: Tuesday, June 29, 2010, 11:22 AM



By

Express-Times staff



AP File Photo |
JOSE F.
MORENO

Erika Arroyo, right, cools
off from a open fire
hydrant in North Camden,
N.J., earlier this month.

As the temperature creeps near 90 again today and feels more like 95 in the Lehigh Valley, many people are already waiting for summer to end.

But before you start frantically searching for the closest public swimming pool, take heart that the next few days will bring some relief.

The forecast for Wednesday through Friday is sun with highs in the upper 70s and lows dipping into the 50s at night, making it feel more like spring. Temperatures will break into the mid-80s and 90s again for the weekend, with sunny skies lasting through next week.

Average temperatures for early July hover in the low 80s.

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Denville township announces water-use restrictions

Published: Thursday, July 08, 2010, 8:49 AM Updated: Thursday, July 08, 2010, 4:21 PM



New Jersey Local News Service

By



Zach Ornitz /The Star-Ledger

Ismael Gonzalez, 21, (left) and Eric Hernandez, 16, find relief from the heat wave on Wednesday in the cold spray of an opened fire hydrant in Newark.

DENVILLE — The township this morning notified its residents of water-use restrictions.

Through its automated calling system and a notice on the Denville website, the township announced an odd-even system for water use. Residents with odd numbered addresses can only water lawns, shrubbery and gardens on odd-numbered days. The sole exception is newly seeded or sodded lawns, which can be watered every day at dawn and dusk.

The announcement also stated that power-washing of homes can only be done by commercial operators and that residents

can only wash their cars on weekends.

More heat wave coverage:

- **N.J. temperatures take small dip as humidity climbs**
- **N.J. utilities say electric usage during heat wave will not break 4-year record**
- **Scorching temperatures, heat wave will continue into next week**
- **Gov. Chris Christie urges N.J. residents to conserve drinking water during drought**
- **NJ Transit announces train delays, cancellations due to excessive heat**



Excessively hot weather heads to N.J.

Published: Tuesday, June 07, 2011, 6:36 AM Updated: Tuesday, June 07, 2011, 8:02 AM

The Associated Press
Ap By



Zach Ornitz /The Star-Ledger

Ismael Gonzalez and Eric Hernandez find relief at an opened fire hydrant on North 10th Street in the Newark's North Ward in this July 2010 file photo. Temperatures are expected to be in the 90s for the next three days.

Today might mark the start of a heat wave in New Jersey.

Forecasters say hot and humid weather will start to move into the region and temperatures will climb into the 90s. It takes three consecutive days of such temperatures to be a heat wave.

The National Weather Service says an excessive heat watch is in effect from Wednesday afternoon through Thursday morning for Mercer, Gloucester, Camden and northwest Burlington counties.

The watch means conditions exist for temperatures and humidity to combine to

make it feel like 100 degrees.

The elderly, sick, children and pets are most at risk when it's that hot outside.

Officials advise those people to drink plenty of water and try to stay in an air conditioned environment.

Weather coverage from NJ.com.

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Temperatures climb to 97 degrees at Newark airport

Published: Tuesday, July 12, 2011, 2:13 PM Updated: Tuesday, July 12, 2011, 2:13 PM



By **Abram Brown/The Star-Ledger**

New Jersey is on pace to tie the high-temperature record today at 98 degrees. Thanks to a slight fluctuation, temperatures at Newark Liberty International Airport already climbed to 97 at 1:34 p.m.

For anyone outside, it's going to feel more like the low 100s, said Lauren Nash, a National Weather Service meteorologist. Temperatures won't drop until this evening, and will sink to the upper 70s, Nash said.

The culprit for this heat: high pressure systems moving in from the south and west, along with a northwestern wind that's helping the ground cast heat and bake.

"If there was wind coming from the ocean, then it would be cooling us," Nash said.

A cold front will move in tonight, and provide some relief Wednesday as the temperature drops to the lower 90s. And meteorologists have taken even the slightest chance of rain out of the forecast.

Essex County has a cooling center open until 10 p.m. at the Richard J. Codey Arena at South Mountain, 560 Northfield Ave. in West Orange.

Somerset County **has listed several senior centers as cooling centers.**

Previous coverage:

- **Record heat possible in NJ, could feel like up to 105 degrees**



Aristide Economopoulos/The Star-Ledger

Phil Huntley, left, is chased by Yahyness McDonald, 5, while playing in a water fight on Monitor Street in Jersey City in this June 9 photo. They had opened up a fire hydrant to cool off.

My name is Hank Klumpp. I own 150 acres in the Highland Preservation area.

My family has been farming in Tewksbury, Hunterdon County, since 1952. Because of the Highlands

Bill and Preservation, my family is being faced with a situation that will change our lives forever. The farm was originally my father's and now it is mine and was to be my sons' in the future. However, our land investments are being seriously jeopardized by this legislation. I can only hope that some compromises will be made. When I inherited

②

the farm, the land was appraised as actual real estate and taxed accordingly. Now, what happens when my sons inherit the same piece of property? Are they going to inherit land in the Highlands Preservation Area that has no value? Land with no equity? How will the land be appraised? Is it still worth the same? Picture this - same 150 acre farm - Grandpa, Father, Sons, Grandsons - all farming year after year. How can generations of investments be taken away? Once land is in the Highlands Preservation Area, with

③
rediculous restrictions, it is basically
worthless — it has no equity. Ask
any bank.

The Highlands Act has changed
everything. Hunterdon farmers can't
be punished for the problems of the
rest of the state. Trenton can't
afford to buy my land for the
REAL amount it is worth so they
are taking it through regulations
and by forcing it into preservation.
I have been asking for over seven
years now to see the scientific
study that put my farm in the
Preservation Area. There is no

(4)

scientific study. How were the boundaries decided? My property is in the preservation but property down the road is not. Please tell me how the line was drawn.

Farmers need help to continue farming practices and to, also, safeguard their investments. We are being forced to pay such a huge price. How unfair it is to have our business and investments stolen by legislators who do not understand the farming business, and have nothing to lose themselves. Legislators tell us to speak to

(5)

you but without proper funding in place you have to go back to the legislators and express the fact that without funding, to be able to compensate people for their loss, rights should be given back because the Highlands Act was not suppose to hurt anyone. When the 400 million dollar bond issue was passed by the voters, not one penny was dedicated to the Highlands.

The Highlands Act was so poorly written that many pages of amendments have been added

(6)

and, even though it still isn't

RIGHT, legislators are willing

to make life-altering changes in

the farmers' future.

Year after year, I have

stood before the Highlands Council

asking questions but have received

no answers. This council has been

like a revolving door. Through the years, many of

the people who drew up, signed, and

backed the Highlands Act are now

long gone - they have moved on and

are not looking back at those of

us who have been left with the

brutal consequences of the

⑦
disaster it has brought to the
people paying the price. I've
been called one of the half-
dozen "persistent regulars." It's
the people with everything to
lose that attend these meetings—
the general public in the Highlands
is unaware of all the regulations
even they will be facing and most
never even heard about the Highlands Act.
"Save the water" is such
a cover-up for the biggest land
grab ever. Devaluating land by
as much as 90% makes the
Highlands Act a legal theft.

When the Highlands^⑧ Act
was passed, there was no funding
in place to compensate landowners
and - now - over seven years later,
there is still no funding. The
state has NO money.

Hank Klumpp
24 Longview Road
Lebanon, N.J. 08833
(908) 832-7634

Highlands Council Comments – August 3, 2011

My name is Deborah Post. I own property in Chester Township.

At the June 16 meeting, I addressed the specific issue of the tdr pricing tragedy. It is unconscionable to offer hardship cases less than a quarter on the appraised dollar of their property value losses.

Today I will address the specific issue of the deed restrictions associated with the tdr. All four deed restriction documents, referred to as deeds of easement, are lengthy, onerous and overreaching, requiring the landowner to sign away their privacy and other use rights for which they are not being paid. Nowhere in the appraisal or pricing process is the value of lost privacy or other lost property uses, beyond the development right, included in the valuation. The deeds of easement, as with any contract, may require no more than that for which is being paid in the contract.

I encourage the new chair to visit the subject of deeds of easement with today's NJDEP. This Council's deeds of easement hark back to the old DEP of the Lisa Jackson era when strangulation of all landownership was the open goal. Today's NJDEP has a much shortened and more reasonable deed of easement in less than two pages. This Council needs to get with the new policies.

The deeds of easement permit access by government without stating reasonable cause, allowing bureaucrats to snoop in the backyard at will, a de facto waiver of the Fourth Amendment of the US Constitution. In our world of Google Earth and iMaps, there is absolutely no need to demand property inspection without reasonable cause as any attempt to build a structure would be known via satellite viewing. Compensation for a property taking must not require the abdication of the personal privacy of our homes.

The conservation deed of easement with bonus states "All uses of the property are prohibited" except specified existing use and non-impervious trails. All uses are prohibited???? Highlands property values were reduced by 80 to 90% by the passage of the Highlands Act. A deed restriction that prohibits all uses in the bundle of property rights will render Highlands properties completely worthless and the aftermarket value for land that by definition cannot be used -- but that will still have maintenance needs/costs -- will be less than zero.

The conservation deed of easement without bonus appears to allow other property uses but then craftily refers to those uses permissible under the Highlands Regional Master Plan, an impermanent document subject to political rigging. The signer of this deed of easement has no idea what uses of the land will be permissible under tomorrow's Regional Master Plan. This language is a trick, and a dirty one at that.

Another deed of easement puts the Highlands Council in charge of locating a Highlands exemption on the property, a recipe for that exemption to de facto vaporize along with the landowners other development rights, another dirty trick in the making. The Act gives the DEP

sole authority in connection with Preservation Area exemptions. The Council need not get involved.

The Highlands Council has never formally adopted its deeds of easement, posted on the Council's website headed with a "final" in the red lettering of a draft. In the past, Mr. Borden has stated on the record here that the deeds of easement are "negotiable", a sad chortle in context as hardship cases begging for pittance are unlikely tough contract negotiators. This Council needs to weigh in on whether or not they endorse the overreaching deeds of easement being thrust down the throats of the financially distressed by this Council's staff.

The tdr deed restriction must be one or two sentences at most, clarifying that the right to build has been sold and referring to the Highlands Act itself for all further restrictions. Anything more is an overreach of the intent of the Act for which the HDC has not been priced to compensate.

I have here a simple TDR deed restriction in use in Pitkin County Colorado. I encourage all to compare the simplicity and straightforward nature of the Colorado document to the Highlands Council's complex and overreaching multi-page deeds of easements.

At a DEP stakeholders meeting last year, several elderly farmers made it crystal clear to the DEP that the proposed deed of easement is a document they would never sign, and that to ask them to sign such an onerous document that would both further depress both their land values, deny their home's privacy, and constrain agricultural viability was to grind salt into the devastating wound of their property losses.

Highlands TDR/HDC

DEED RESTRICTION

THIS DEED RESTRICTION, made and entered into this _____ day of _____, 2008, by ~~D. Jan~~ _____ Black.

WITNESSETH

N.J. WHEREAS, D. Jan Black ("Owner") is the fee simple owner of that certain real property in Pitkin County, Colorado, that is more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "Property"); and

WHEREAS, contemporaneously with the execution of this Deed Restriction, Pitkin County is executing and delivering to the Owner one separate Irrevocable Certificate of Transferable Development Rights, bearing Certificate No. _____, evidencing the permanent severance from the Property of all development rights; and

WHEREAS, the Owner has represented that no development or improvements currently exist on the property; and

WHEREAS, in exchange for the issuance of said Certificate by Pitkin County, the Owner is prepared to deed restrict the Property against any future development.

NOW, THEREFORE, for and in consideration of the issuance to D. Jan Black of TDR Certificate No. _____, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Owner agrees as follows:

1. **Deed Restriction of Property.** D. Jan Black hereby permanently restricts the Property against any future development, as the term development is defined in the Pitkin County Land Use Code. The Highlands Act N.J.S.A. 13:20 - N.J.
2. **Covenants Running With The Land; Binding Effect.** The provisions of this Deed Restriction shall constitute covenants that run with the title to the Property for the benefit of Pitkin County, Colorado its successors and assigns and shall be deemed an appurtenance to the title to such lands. N.J.

IN WITNESS WHEREOF, D. Jan Black has executed this Deed Restriction as of the day and year first above written.

New Jersey
STATE OF COLORADO)
COUNTY OF PITKIN) ss.

The foregoing Instrument was acknowledged before me this _____ day of _____, 2008, by D. Jan Black.

Witness my hand and official seal.
My commission expires: _____

Notary Public

ACCEPTED BY PITKIN COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Title: _____

Mark-up of actual deed restriction used
in Pitkin Cty CO's TDR program.

August 2, 2011

Dear

It is truly heartbreaking to write this letter. It forces me to face the fact that the lives of my husband, Harold Danielson, and I have been shattered by the Highlands Act.

With the passage and signing of this Act in 2004, we were deprived of our entire retirement fund which would have accrued from a development we started in 2003 in Hunterdon County, halted because of the retroactive passage of this Act. If it were not for the retroactive nature of this bill, we would have been alright.

Virtually the entire value of this 13 acre property in Hampton was wiped out at Bob Smith's whim when he lied to get the votes of the New Jersey legislature, and Jim McGreevy's signature. With the sale of four upscale homes we planned to build, we would have netted \$2-1/2 million, enough to fund our retirement. That is gone. We can't even sell this property because no one wants to buy it. Unfortunately we invested all our savings and took personal loans to pay for this project.

Now in our 70's -- I am 77 and my husband is 74 -- we face the cruel indignities of extreme poverty, with only Social Security checks to rely on. We lost our residence in Summit, NJ to foreclosure and were forced to vacate this home in August, 2010.

During the eviction process, brought about by our financial losses due to the Highlands Act, my husband suffered coronary heart failure and was rushed to Morristown Hospital for open heart surgery. Upon his release from that hospital, he went back to packing and moving our property when he suffered catastrophic heart failure and was taken to Overlook Hospital by ambulance.

Because we could not have access to the house, we lost much of our personal property, including antique silver and other heirlooms which cannot be replaced.

Since we did not have the funds to rent another home or apartment, we relocated to an apartment in Linden NJ via a barter arrangement. We allowed a party in the composting business to store their farm equipment on

our Hampton property in exchange for use of the apartment we currently live in.

Unfortunately, it has become apparent that this party has been engaging in illegal activities in violation of Department of Environmental Protection (DEP) regulations. When we OPRA'd their activities, we learned that they had forged my husband's signature to certain State DEP documents – criminal conduct we reported to the appropriate state authorities. Having reported these forgeries, of course, now makes us vulnerable to eviction from this apartment. When this occurs, and it will, we will be homeless with no place to go.

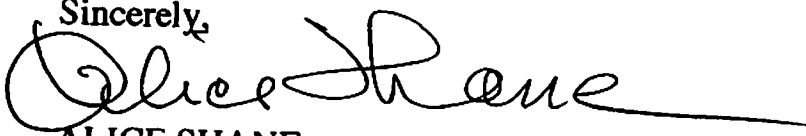
We do not have a car at our disposal because our SUV was repossessed – our Social Security checks did not enable us to continue payments. Our Supplemental Medicare Insurance (Medigap) costs us \$880 a month, so there is hardly anything left over. Sometimes, our food supply gets dangerously low between Social checks because we often cannot afford to buy all the food we need, necessitating that we rely upon Meals on Wheels as a food source. Our credit scores – once excellent -- have plummeted.

I find it hard to believe that such cruel, thoughtless legislation such as the Highlands Act could have been enacted, depriving us of the basic necessities of life and what is rightfully ours.

Even after seven years, the Highlands Council has yet to come up with a funding source to compensate us for our losses. They claim they have funding, but it is only for hardship cases in which a very small fraction of the property's value is provided. In the meantime, people such as Eileen Swan and Tom Borden who head up the Highlands Council receive substantial salaries and benefits for enforcing this outrageous legislation while we have lost everything that makes life worthwhile.

These are the true, unvarnished facts of life for us since the State of New Jersey has stolen the value of our property and our right to build on it, with no likelihood of just compensation.

Sincerely,



ALICE SHANE



New Jersey Highlands Coalition

Action Alert

New Jersey Highlands Coalition
Alliance for Historic Hamlets · ANJEC · Citizens to Save Tewksbury
Musconetcong Mountain Conservancy
New Jersey Conservation Foundation · Sierra Club NJ Chapter
Residents Allied for Neighborhood Preservation, Inc.
Skylands Preservation Alliance · South Branch Watershed Association
Upper Raritan Watershed Association

Join us to commemorate
the 7th Anniversary of the Highlands Act
with a Highlands Conformance Rally followed by
An Important Highlands Council Meeting

August 3, 2011

Briefing 2:00pm:
Upper Raritan Watershed Association
Fairview Farm
2121 Larger Cross Road
Bedminster, NJ 07921

Rally at Highlands Council Headquarters 3:30pm
Highlands Council Meeting 4:00pm

100 North Road
Chester, NJ 07930

Come rally in support of Highlands Municipal
Conformance on the anniversary of the Highlands Act!

There have been troubling changes to the Highlands Council membership, as two publicly avowed anti-Highlands Act elected officials have joined the Council: Hunterdon County Freeholder Robert Walton, a signee of a petition calling for a repeal of the Highlands Act; and Council Chairman Mayor Jim Rilee, who as mayor of Roxbury frequently expressed contempt for the Act and the Highlands Council in township meeting minutes.

In an alarming decision that sent a chill to Highlands municipalities, the conformance petition of Hackettstown was denied at the June Highlands Council meeting. The months of detailed planning that Hackettstown and the Council staff devoted in order meet the specific standards that conformance requires-funded by our tax dollars-was ignored. Council members Rilee and Walton gave no explanation for their negative votes.

Tracy Carluccio - one of the two remaining original Council members and the Council's sole environmental professional - succeeded with a motion to reconsider Hackettstown's petition at the next meeting. In addition to Hackettstown, the August 3rd meeting agenda includes consideration of petitions from Pohatcong, Alpha, Wharton, Oxford and a redevelopment area designation in Mt. Olive.

On the anniversary of the 2004 Highlands Water Protection and Planning Act, let's remind the Highlands Council that the public expects

them to uphold the letter and the spirit of the Highlands Act, that the momentum achieved by Highlands municipal conformance must be supported and not impeded, and that the primary mission of the Council is to protect, restore and enhance the natural resources of the Highlands.

Our presence at the Council meeting will send a positive message to Council members Bruce James and Michael Dressler, whose nominations the NJ Highlands Coalition supported. This will be their first meeting.

An update on the issues will be presented at the briefing along with talking points for public commenting at the Council meeting. At 3:00pm we will head to Chester for the 3:30pm rally. Sponsors and guests, including Assemblyman John F. McKeon, co-sponsor of the Highlands Act, will talk about the need for continued support for the Highlands Council's work, the need for continued public involvement, and the successes achieved since the passage of the Highlands Act.

Please contact Erica Van Auken at erica@njhighlandscoalition.org to let us know that you'll be attending the briefing, rally and the Highlands Council meeting.

Please click for directions to [Fairview Farms](#), and to the [Highlands Council Headquarters](#).

The New Jersey Highlands Coalition represents a diverse network of organizations - small and large, local, regional, statewide and national - and individuals with the common goal to protect, enhance and restore the New Jersey Highlands and to preserve the quality and quantity of drinking water both for the 800,000 people in the Highlands as well as the more than 4.6 million people in surrounding areas who depend on Highlands water. For more information visit our [website](#), like us on [Facebook](#) and follow us on [Twitter](#).

[Forward this email to others who may wish to become involved.](#)

New Jersey Highlands Coalition | 508 Main St | Boonton | NJ | 07005

FOR CONSIDERATION AT THE JUNE 16, 2011
MEETING OF THE HIGHLANDS COUNCIL

RESOLUTION 2011-
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND
HIGHLANDS PROJECT REVIEW

WHEREAS, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

WHEREAS, the Highlands Act created the Highlands Council as a regional planning and protection entity, to develop, adopt and periodically revise a Regional Master Plan, with a primary goal of protecting and enhancing the significant values of the resources of the Highlands Region; and, another primary, if not superior goal of providing landowner compensation for land equity lost as a result of the Highlands Act. This goal was eloquently put forth on March 30, 2004 by Senator Bob Smith at a public meeting about the act. The following quote was spoken by him in response to numerous landowner equity concerns by the public and fellow legislators! "If there was one lesson tonight, it was the voice in the background from Tom Cruise 'SHOW ME THE MONEY.' (Laughter) and the chairman McKeon and I pledge to you that we will show you the money. We're currently working with the Governor's office to put together the dedicated and guaranteed source of funding so that Highlands, which is making a sacrifice for the rest of the state is properly compensated. We will show you the money."

WHEREAS, the Highlands Council adopted the Regional Master Plan (RMP) on July 17, 2008 and, as a result of Executive Order 114 (2008), the RMP has an effective date of September 8, 2009; and

WHEREAS, Section 14 of the Highlands Act requires that within nine to 15 months after the effective date of the Regional Master Plan, each municipality located wholly or partially in the Preservation Area shall submit revisions to the municipal master plan, development regulations and other regulations, as applicable to the development and use of land in the Preservation Area, as may be necessary to conform them with the goals, requirements and provisions of the RMP (Plan Conformance); and

WHEREAS, Section 15 of the Highlands Act states that for any municipality located wholly in the Planning Area or for the portion of a municipality lying within the Planning Area, the municipality may, by ordinance, petition the Highlands Council of its intention to revise its master plan, development regulations and other regulations, as applicable to the development and use of land in the Planning Area, to conform them with the goals, requirements and provisions of the RMP; and

WHEREAS, the Highlands Council prepared and distributed to the Highlands municipalities and counties Plan Conformance Guidelines outlining the process and procedures for petitioning the Highlands Council for Plan Conformance; and

WHEREAS, Section 13 of the Highlands Act requires the Highlands Council to create a regional transfer of development rights (TDR) program for the Highlands Region which includes a program for voluntary TDR receiving zones for any municipality within the seven Highlands Counties and sending zones for the preservation of lands to protect Highlands resources; and

WHEREAS, Section 11.a.4 of the Highlands Act requires 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 RMP; and

Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

SENATE BILL No. 1 and ASSEMBLY BILL No. 2635

(The "Highlands Water Protection and Planning Act")

LOCATION: Skylands Manor
Ringwood State Park
Ringwood, New Jersey

DATE: March 30, 2004
7:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Bob Smith, Co-Chair
Assemblyman John F. McKeon, Co-Chair
Assemblyman Michael J. Panter, Co-Vice Chair
Senator Henry P. McNamara
Assemblyman Robert M. Gordon
Assemblyman Reed Gusciora
Assemblyman Louis M. Manzo
Assemblyman Guy R. Gregg
Assemblyman John E. Rooney



ALSO PRESENT:

Judith L. Horowitz
Carrie Anne Calvo-Hahn
Lucinda Tiajoloff
*Office of Legislative Services
Committee Aides*

Kevil Duhon
*Senate Majority
Committee Aide*
David Eber
Assembly Majority

Thea M. Sheridan
*Assembly Republican
Committee Aide*

*Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey*

What I was struck by today is, that in a lot of ways, I always think that we, kind of, live the same lives, we're just in different places. I heard people -- "Yeah, I was on the zoning board, but the new administration kicked me out because I was pro-development." Someone else got up and said, "Yeah, I'm the Republican, and we're with that group." And, you know, it's the same, regardless of whatever town or city your in, anywhere in the State of New Jersey.

The difference is that those that aren't within what we've designated to be the core -- and make mistakes -- like in my own community, in West Orange, where I'm the Mayor-- Our mistakes are translated, maybe, into a loss of the quality of life, maybe more traffic, air not as clean as it could be, probably extra taxes because of the school children that come in. And there's permutations of the debate over condos -- they're not going to have school children, we'll make money, whatever it might be. But if we make a mistake, that's where the transgression goes to, our own individual quality of life, ergo home rule.

If there are mistakes made by local government, relative to the core that's remaining, the entire State of New Jersey will suffer, not to mention Pennsylvania, New York. This implication goes beyond even New Jersey. And this is why, in a way, I pray for wisdom for all of us, as we go through this evaluative process, to make certain that we do the right thing, because we can't afford not to.

And with that, we look forward to working hard together. And thank you all, again.

—— I'm going to turn it over to Senator Smith. (applause)

SENATOR SMITH: Thank you, Chairman.

The Assembly Environment Committee and Chairman McKeon, have worked long and hard on this. And we're going to be working longer and harder. We've got a pretty hectic schedule ahead of this. But your comments tonight make all the difference in the world.

If there was one lesson tonight, it was the voice in the background from Tom Cruise, "Show me the money." (laughter) And Chairman McKeon and I pledge to you that we will show you the money. We're currently working with the Governor's Office to put together the dedicated and guaranteed source of funding so that the Highlands, which is making a sacrifice for the rest of the state, is properly compensated. We will show you the money.

And let us not lose track of the fact that this is a bill about water. It's about a lot of things, but it's the water supply for the future of the State of New Jersey. We can't have-- Are there any builders left in the room? There will be no residential housing if there's not water. There will be no building, no factories, no anything if there isn't a good, clean, sufficient water supply.

If you look at the Task Force's report, it indicated that the cost of water treatment is estimated to increase \$30 billion if we don't protect this water supply. What more do we need to know? How many times do we have to be hit in the side of the head with a 2x4? This is one of our last chances to keep New Jersey's future bright.

Now, some comments that you need to know: If you would like to supplement our record or send in comments that you'd like us to consider, please take this address: Assembly and Senate Environment Committees, State House Annex, P.O. Box--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Wait a minute.

HOLZHAUER & HOLENSTEIN, LLC

REAL ESTATE ADVISORY SERVICES

MICHAEL E. HOLENSTEIN, MAI, CTA, SCGREA

STAFF APPRAISERS:

WILLIAM P. CONYERS

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CONSULTING REPORT **LIMITED-RESTRICTED FORMAT**

IMPACT OF
HIGHLANDS WATER PROTECTION AND PLANNING ACT
AND ACT RULES
ON PROPERTY VALUE WITHIN THE
PRESERVATION DISTRICT

PROJECT REFERENCE

HIGHLANDS REGION
NJ HIGHLANDS PRESERVATION AREA

PREPARED BY

MICHAEL E. HOLENSTEIN, MAI, CTA
SCGREA; NY, NJ-RG01234, PA-GA1733-R

REPORT DATE

SEPTEMBER 1, 2007

FOR

BOARD OF CHOSEN FREEHOLDERS
WARREN COUNTY

%

HUESTON McNULTY, PC
ATTORNEYS AT LAW
256 COLUMBIA TURNPIKE
FLORHAM PARK, NJ 07932

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September 1, 2007

Hueston McNulty, PC
Attorneys at Law
256 Columbia Turnpike, Suite 207
Florham Park, NJ 07932

Attn: Stephen H. Shaw, Esq., as Warren County Special Counsel, Highlands Litigation
Re: Appraisal & Consulting Services, Impact of the Highlands Act & Act Rules, Warren Co, NJ

Dear Mr. Shaw:

I understand that your Firm is Special Counsel to Warren County (the "Client") in prospective litigation related to passage of the Highlands Act Legislation (the "Act") and associated Rules (the "Act Rules").

In accordance with your request, I have prepared this consulting report for use by the Client, its Subsidiaries, and Assigns as an outline of expert testimony to be conducted by Michael E. Holenstein, MAI in connection with this work.

The "purpose" of the work is to demonstrate the impact that the Act and Act Rules have had on the value of property located within the Preservation District. The function ("use") of the work is to provide the Client with litigation support services.

Thank you for this opportunity to have continued our service to the Warren County Board of Chosen Freeholders.

Respectfully submitted,
HOLZHAUER & HOLENSTEIN, LLC
By:

MEH via Electronic 10/10/07

MICHAEL E. HOLENSTEIN, MAI, CTA
SCGREA: NY, NJ-RG01234, PA-GA1733R

MEH/tps
Enclosures
File #1073-10-07 Summary

INTRODUCTION

The Highlands Act

The Highlands Act established two distinct areas of influence identified as the Preservation District and the Planning District. This report addresses the impact that the Act and ensuing Act Rules manifest on property values within the Preservation District.

The Act Rules

It is assumed that the reader has access to a copy of the “complete” Highlands Water Protection and Planning Act Rules, circa November 2006,

(www.nj.gov/dep/rules/rules/njac7_38_2006_1204complete.pdf)

and the “Readopted Rule”

(www.nj.gov/dep/rules/adoptions/njac7_38_20061204.pdf)

and is otherwise generally familiar with the Highlands Act and the body of land within NJ encompassed by the Highlands.

Act-Rules & Impacts

Discussion of the Act and Act Rules requires some convention to avoid confusion and excessive rhetoric.

Basis understandings relied upon within this document include:

1. That when presenting or discussing issues (pro or con) regarding the Act and Act Rules, the presenter must define the scope of influence under which their comments are being made. Specifically, comments must be discussed in the “macro” sense (Statewide NJ) or the “micro” sense (political and neighborhood subdivisions within the State, or smaller). Generally speaking, the Act and Act Rules are directed to a scope of influence intended to be “macro” in the sense of characterizing impacts and benefits to the State of NJ as a whole.
 2. Because the market for real estate is dynamic, findings and conclusions must either be expressed as of a date certain (e.g. a “value opinion”) or as a general affect that is likely to fluctuate over time (e.g. a “trend opinion”). Opinion regarding “impacts” might reasonably stated as point specific or as a general trend or as a wasting “stigma”.
 3. That the Highlands Act does not restrict development in a macro sense. In other words, while development may be restricted within the Preservation District (a more “micro” effect), the Act and Act Rules do not specifically prevent development outside the Preservation District.
-

NJ Highlands Act, Value Impact Summary

4. The Act and Act Rules are apparently intended to re-direct development from the Highlands Preservation area to “appropriate” areas of the State. Reliance is placed on regional planning and transfer of development rights (“TDR’s”) to facilitate re-direction of growth.
5. That the Act and Act Rules do not facilitate or insure that any area outside the Highlands will accept any, if not all, the redirected growth.
6. The impact that the Act and Act Rules have on property use, utility, function, and hence value, has dramatically different impact and ramification when viewed in a macro and micro sense.
7. The impact that the Act and Act Rules have on NJ economics is dramatically different when viewed in a macro and micro sense.

Scope of Work

Holzhauser & Holenstein, LLC (“H&H”) is retained by Hueston McNulty, PC on behalf of the County of Warren to assist with:

1. Critical review of the proposed Highlands Water Protection and Planning Act Rules (December 19, 2005) as readopted, and
2. Assessing the impact that the Highlands Act Legislation has on property value within the constituent communities located within the Highlands Preservation District.

Warren County is identified as the “Client” and “Intended User” of these appraisal services. This document is identified as a Consulting Report. Reliance on the report is restricted to the Client, its Affiliates, and Assigns. The appraisal services rendered by H&H are intended to form the basis for expert testimony before judicial and quasi-judicial bodies within the State of New Jersey.

The purpose of this consulting report is stated under #’s 1&2 above. The function (“use”) of the consulting report is to provide the Client with litigation support services and to provide the Intended Users with professional interpretation and opinion regarding the Act and Act Rules.

This document is characterized under USPAP as a “Consulting Service/Report”. To the extent that the report requires appraisal opinion and/or conclusions, it is identified as a Limited Appraisal in Restricted Report format (USPAP 2-2c). No specific departures from USPAP are invoked. Case study material and evaluations are generally complete appraisals specific to the identified subject properties.

Special Assumptions & Limiting Conditions

1. It is assumed that the Act Rules accurately constitute the representations, findings, and conclusions of the NJ Department of Environmental Protection (the “Department”) as preparer and the Act Rules are consistently prepared, or are intended to be consistently prepared, in accordance with the statutory requirements for a State rule.
2. That the Department has conducted appropriate due diligence when relying upon the studies and findings reported by others.
3. That the Department’s responses to public comment (regarding the draft rules) are intended to reiterate, clarify, and ratify the firmly founded and correct findings, conclusions, and convictions of the NJDEP that form the substantive basis for the Act Rules.

Inspection, Land & Premises

Michael E. Holenstein, MAI, principal of H&H, LLC, has continually practiced real estate appraisal and consulting services within the NJ Highlands Region for the last 20 years. General familiarity with the region is represented. The cumulative results of approximately 200 independent appraisals are referenced. These properties were individually inspected IAW preparation of those appraisals. Approximately 80 of the appraisals cited were prepared by outside firms reporting to either the State or County Agricultural Development Boards. H&H, LLC is certified to prepare these reports and has prepared approximately 120 of the same within the last 5 years. Familiarity with the property inspection process is represented.

FINDINGS & CONCLUSIONS

Structure of Review

During February 2006, H&H, LLC was retained by this Client to conduct a review of the then proposed Act Rules. Specifically, H&H, LLC was retained to conduct:

1. Critical review of the proposed Highlands Water Protection and Planning Act Rules (December 19, 2005), and
2. Assess the impact that the Highlands Act Legislation has on property value within the constituent communities located within the Highlands Preservation District.

The Act Rules section reviewed by H&H, LLC is found from Page 186 of 372, "Social Impact", through Page 266 of 372, "Agriculture Industry Impact".

The methodology and convention employed to conduct the work was to sequentially address facts, verbiage represented as fact, and findings and conclusions beginning on Page 186 of the proposed Act Rules and ending after Page 372. Periodic direct reference was made to the Act Rules text by citation; independent findings and analysis were inserted where appropriate.

The Holzhauer & Holenstein, LLC report (February 14, 2006) is included herewith by reference.

Act Rules Review

The following paragraphs are excerpts of detailed commentary prepared and submitted by H&H, LLC as subsequently responded to by the Department and recorded within the Act-Rules "re-adoption" text document (www.nj.gov/dep/rules/adoptions/njac7_38_20061204.pdf).

Despite the comments made by H&H and 114 other Commentators, NJDEP has apparently readopted the Act Rules with no substantive changes. Certain of the H&H Comments & Department Responses are listed following. H&H rebuttal comment is included as the same pertains to the Scope of Work associated with this document.

Initially, within the H&H February 14, 2006 report under the heading:

"Social Impact"

H&H Comment: There is no evidence presented (insert: *within the Act Rule Document*) that conclusively demonstrates that the Act Rules provide a macro social impact that is not redundant in the context of prior-existing rules and regulations. Further, the degree to which an impact will be realized is wholly dependant upon presupposed eventualities that have not occurred since adoption of the Act and may, or may not, occur outside the Preservation District. Implementation of TDR's is an excellent example.

NJ Highlands Act, Value Impact Summary

NJDEP Response: To Comment # 666 (Page 457) as above:

“The Highlands Act consolidates aspects of several existing programs, strengthens their protections, and adds some unique protection provisions as well...”

H&H Rebuttal: Upon review it is evident that the Department does not have a credible response to Comment #666. The assertion that the Act “adds some unique protections provisions” rings hollow. Given the scope and context of the Act and Act Rules together with the resources available to the NJDEP, it is incumbent upon NJDEP to come up with something better than “some unique protection provisions” as support for the Act and Act Rules as not being redundant in the context of the prior existing rules and regulations. As NJDEP has not produced the said examples and proofs it is left to the Reader to garner that the Act and Act Rules are wholly or largely redundant.

Initially, within the H&H February 14, 2006 report under the heading:

“Economic Impact”

H&H Comment:

The net result of transferring development potential and associated economic impact value from the Preservation District to areas outside the core is an effective transfer of property worth from owners within the Preservation District to other private property owners. The order of magnitude for transferred value from one group of private individuals to another is demonstrated by the following model:

The Act Rules cite several different development and buildout scenarios as probable occurrence with the Preservation District. These include (@ Page 217) that the potential dwelling units within the PD (at buildout) total 215,421 units (say 215,000).

H&H independent analysis (attached) supports that the 2006 median home value within the Highlands region is reasonably supported @ \$373,000. The impact that the Act-Rules have on property owners within the PD is estimated as follows:

$$215,000 \text{ units @ } \$373,000/\text{unit} = \$80,195,000,000.$$

This calculation demonstrates an \$80 Billion loss in ratable base for Highlands PD municipalities.

Further, the above depiction does not account for other forms of development, e.g. commercial and industrial. It also does not make a distinction among dwelling units as may be developed with other than SFR homes.

The “average economic multiplier” for the US is cited within the Act-Rules (@ Page 208) as being Factor = 2X. Therefore, the cost to local economies resulting from the failure to construct and sell 215,000 dwelling units is estimated as follows:

$$\$80.195\text{Billion} * \text{Factor (2X)} = \$160 \text{ Billion Dollars}$$

Given the methodology customarily cited within the Act-Rules, the loss in sales and realty transfer tax together with the lost jobs, and jobs spending multipliers results in the conclusion that the Act-Rules will have an astronomical impact on the economy and the ratable bases of the PD communities.

However, this statement is not necessarily true based on the same criticisms of the Act-Rules presentation of cost/benefit analysis. The problem must be evaluated on a micro and macro basis.

Therefore, it may be stated that Statewide, and over a period of time, the loss of ratable base, and the gross affects on the economy are likely to be negligible. The Act and Act-Rules don't prevent development, the same are just redistributed.

The absorption of the theorized dwelling units will be delayed due to the increased regulation and the time necessary to facilitate increased density potentials within “appropriate” areas for development but the gross demand for housing will eventually be met.

What can be stated with certainty is that whatever economic benefit is received by areas outside the Preservation District will come at the expense of the property owners and the local economies within the PD.

NJDEP Response: To Comment # 719 (Page 492) as above:

In the interests of clarity, the H&H Rebuttal comments are inserted in the Response text as **“Blue Bold”**.

“For the reasons set forth at length in the economic impact analysis, the Department believes that the long-term statewide impact of the rules being readopted will be significantly positive rather than negligible or neutral.”

When making an argument or asserting a claim, it is inappropriate to assert that the argument or claim is, of itself, sufficiently self evident that it overcomes objection. Comment #719 challenges the Department's claims, assertions, and purported facts. It is therefore “no argument or explanation” to say, ipse dixit that the argument or purported facts are either self evident or correct.

"In terms of the asserted short-term redistributive impacts, the Department notes the following:

- 1. The commenters assume that the value of \$373,000 per home can be extrapolated to new housing. However, as the supply of housing increases, the price of new housing may decline as a result of supply and demand effects and because as new housing is built, the areas in which the construction takes place will, by definition, become more congested and therefore less attractive to subsequent homebuyers."*

There is no question that the unit, \$373,000/house, can be relied upon as it is the average of the reported median home prices for all homes sold within the Preservation District communities (50) during the cited time period adjusted for general property appreciation (only) to the date of the report (2006). Does the Department intend by their comment to assert that the unit of \$373,000 is too low? The probability is that new housing costs will continue to exceed old housing costs consistent with the movements of the market during the post WWII era.

As for an assertion that the "price of new housing may decline as a result of supply and demand effects", this comment belies the very fundamental of supply and demand. There has not been a single instance of sustained oversupply in the last 60 years. When supply exceeds demand, builders stop building. It is certainly true that there are periodic instances when the market corrects but there is not a single instance of declining values within the Highlands or proximate locations over any 10-year period since the end of WWII. There is also no evidence that the cost of developing homes (bricks & mortar) has declined in support of the Department's illusion that new housing would cost less than existing housing.

As to the issue of congestion affecting desirability, we have only to look at the trends in real estate development within the more suburban counties to the east. There will always be those who want to live in the country but it is the Department's own findings that cite that persons "prefer to live in neighborhoods...." the very like of which would have been built in the Highlands pursuant to Town & Country planning.

- 2. "To the extent that development occurs outside the preservation area, the communities in the preservation area will not have to bear the costs of development, for example, the costs of new roads, water and sewer lines, schools, fire and police protection, etc. To the extent that such costs are avoided, communities in the preservation area may experience no net fiscal impact."*

It was my apparent misconception that, under the format used by the Department to present the Act Rules, that a savings of costs equals a benefit. Further, that those costs are appropriately viewed to assess "natural value" as the present value of the cost savings for a period of 25 years discounted @ 5%. Following the Department's logic (when universally applied), the "benefit" to the preservation area property

owners is no less than \$1,127 Billion dollars calculated as the present value of \$80Billion/year for 25 years @ 5%/annum.

This rebuttal comment is provided to demonstrate the Department's arbitrary application of its supporting logic and to demonstrate the utterly ridiculous use of similar application to assert a "benefit" based on "natural value" as differentiated from the more tangible and generally accepted term "market value".

3. *"Some portion of the new housing would likely be affordable housing, which, would likely have a lower average price than the existing median cited by the commenters".*

Under COAH, it is absolutely likely that some of the new units will be low to moderate. However, it is in the nature of averages to include the highs and lows. The Department's response lacks the illumination associated with an ability to average a series of numbers and is hence not credible.

4. *"Any change in sales tax or realty transfer tax revenues is already reflected in the multiplier, and such changes would not constitute additional benefits or costs to communities in the preservation area."*

So noted.

5. *"The Department's rules contain several exemptions to permit single-family dwellings so the estimated loss of 215,000 units is an obvious overestimate. To date, the Department has confirmed 351 exemptions."*

The Department's inability to be specific about the numbers and types of exemptions as differentiated from stating "some exemptions" highlights the utterly picayune relief that the exemptions offer affected property owners. The 351 confirmed exemptions reflect 0.20% (that's 1/20th of a percent) impact on the cited numbers. The reader is reminded that the number of units cited (@ 215,000) was taken directly from the Act Rules document (@ page 215) and was rounded down from the stated build-out numbers of 215,421 units. The confirmed exemptions (351) fall firmly within the rounding error (421) of the analysis and are therefore inconsequential.

6. *"The Department's regulations may result in some level of reduction in value for landowners in the Highlands but does not deny all use. Consequently, municipalities will not assess these lots as having zero value."*

The Department's acknowledgement that "some level of reduction in value" may be experienced is cavalier at best. The Department is the lead organization in the acquisition of open space and easements within the State of NJ. The Act itself calls for a special evaluation scheme to be implemented to insure that property owners attempting to voluntarily sell their land or easements to the State of NJ are paid "pre-Act" values. These acquisitions demonstrate that the value of development rights

differs widely among impacted properties but that in many cases (as later cited herein) the damage is from 60% to 90% of pre-Act values.

Further, the Department's regulations clearly do not deny all use but the uses allowed may not be economic. This condition may change over time. Pursuant to the definition of an "uneconomic remainder", where a partial taking results in an uneconomic remainder the taking is tantamount to the fee. This condition may eventually result in the Department's Rules affecting a regulatory taking except as may (in the discretion of the issuing agency) be averted by Highlands Preservation Area Approval waiver (NJAC 7:36-6.4).

7. *"A transfer of development program is yet to be developed and its potential positive impacts on property owners cannot be assessed."*

For these reasons, the Department believes that any short-term redistributive impacts are likely to be significantly lower than the commenters project.

The H&H, LLC February 14, 2006 Report was predicated on a general perception that the Act and Act Rules did not limit development *per se* but rather facilitated its transfer to "appropriate" areas within the State.

It has since become clear that, while implementation of TDR's and voluntary cooperation among communities may facilitate the effective transfer of (a portion of) the lost development units, that there is, in all practicality the strong probability that most of the 215,000 "lost" units will never be located within NJ.

Given this probability, the H&H conclusion that,

"...the Act-Rules will have an astronomical impact on the economy and the ratable bases of the PD communities."

is irrefutable. The notion (held by H&H) that the value associated with lost and gained development potentials was being redistributed by the Department is evidently not appropriate. It may therefore be conclusively stated that, to the degree that development potentials are not able to be transferred, the worth of the same will be lost to the State of NJ as differentiated from just lost by the Preservation District Communities.

Regardless of the eventual disposition of the transferred or lost worth, it may be reliably stated that the communities and landowners within the Preservation District will lose property value and economic worth in the range of \$160 Billion dollars.

End discussion of H&H February 14, 2006 report and the Department's responses to Commentator comments regarding the then proposed Act Rules.

Impact on Property Value

The Client has requested that the Act and Act Rules be evaluated for their impact on property values. For the purpose of analysis, “property” is separated into “premises” (buildings and supporting land) and “land” where the term is intended to mean vacant land or land having a Highest and Best Use for redevelopment as though vacant.

Impact on Premises:

The impact that the Act and Act Rules have had on premises is diverse.

Generally speaking, the Law of Supply & Demand supports that where demand exists and a commodity’s availability is limited, its value will increase. It may therefore be reasonably stated that existing homes within the Highlands Preservation District should be expected to increase in value at least commensurate with the general market as a whole.

To the extent that an existing home requires renovation or expansion, the Act and Act Rules contain a complex series of exemptions that facilitate work of this type. As each case is specific, the impact of the Act and Act Rules on individual premise is too specific for general comment herein.

Impact on Land:

The impact that the Act and Act Rules have on vacant land is extremely complex. There are many variables including human elements that collectively render each property unique. In the context of this appraisal and consulting assignment it is incumbent upon H&H to elucidate such areas as may be sufficiently common to facilitate generalization.

The first demonstration, identified as “**Development Rights Study**” deals with the value of development rights as a percentage of gross property values.

The second demonstration, identified as “**Warren County Development Rights Summary**” deals with the value of development rights as a percentage of gross property values but also offers insight relative to the difference in impact experienced by properties within and beyond the Preservation District.

NJ Highlands Act, Value Impact Summary

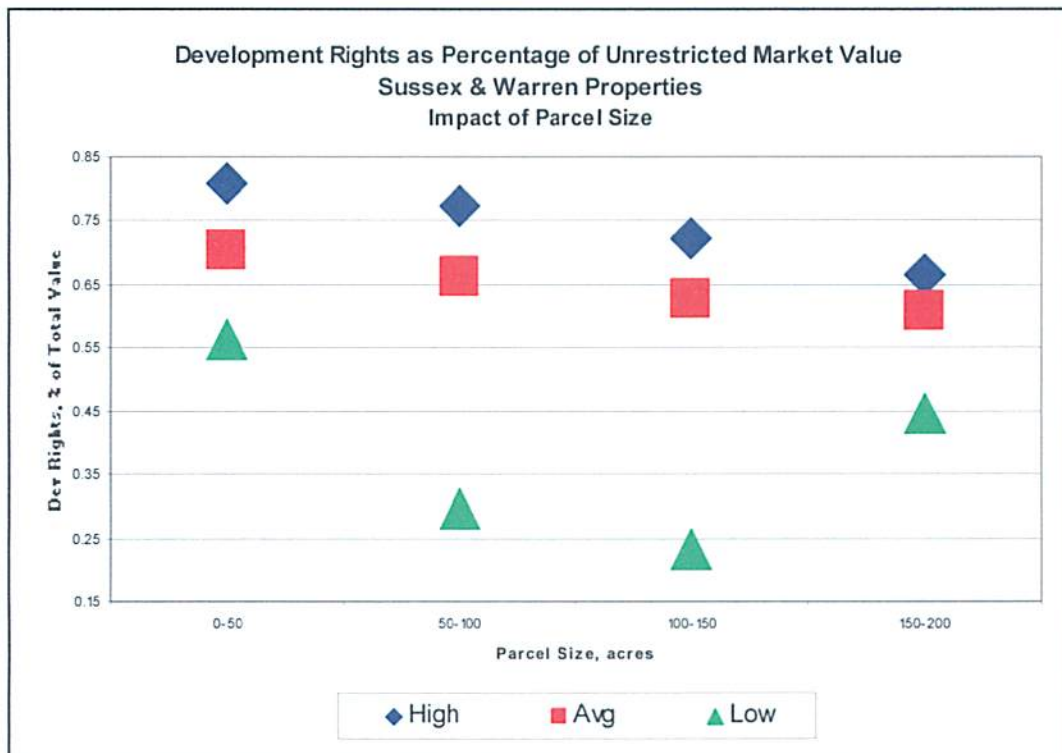
Development Rights Study:

This study was conducted to provide a pictorial demonstration referencing the impact of various factors on the value of Development Rights being acquired through the Farmland Preservation Program. The study utilized data developed through direct appraisal of properties by Holzhauer & Holenstein, LLC within Warren and Sussex Counties for the State Agricultural Development Committee and for private clients. The study covered the years 2002 through 2005, though the bulk of the data was developed between 2003 and 2004.

Development Rights Value is calculated as the mathematical difference between “Unrestricted Market Value” and “Restricted Market Value” as defined (addenda) consistent with the NJ Farmland Preservation Program Appraisal Standards.

Within the following point graph, the Development Rights Value was expressed as a percentage of Unrestricted Market Value for each parcel appraised. The graph is further differentiated to compare the relationship of Parcel Size and the DRV/Unrestricted Market Value percentage figures.

The data was initially sorted based on parcel size and then grouped as to acreage ranges from 0-50 acres, 50-100 acres, 100-150 acres, and 150 to 200 acres. Within these groupings, the maximum, minimum and average values were determined. The following graph indicates the range of percentage value attributable to development rights when sorted as a function of parcel size:



The graph indicates that a distribution of values is established within the various parcel size ranges.

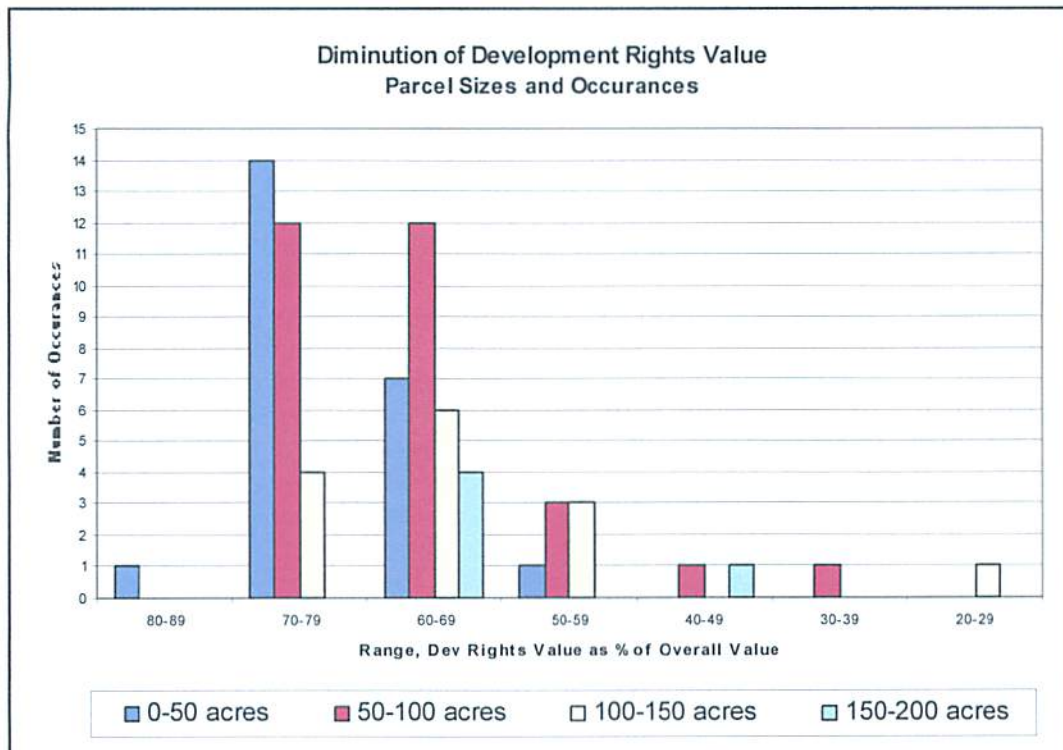
NJ Highlands Act, Value Impact Summary

H&H understanding of this data supports that the range among percentage values for a given group of properties (grouped by size) is due primarily to the quality of the parcels with respect to soils, topography, wetlands and the permitted density as determined by zoning and legislative restrictions.

The graph further indicates that development rights value, as a percentage of gross unrestricted value, tends to trend downward as gross parcel sizes become larger.

The graph supports a conclusion that development rights value as a function of unrestricted market value ranges from an approximate high differential of 65% to 80% to low differential of 20% to 55% with the average of all parcels studied ranging from 60% to 70%.

The previous graph prompted the question as to how the data points are distributed. In response, the following bar chart was developed:



The chart depicts the number of occurrences or distribution within the various percentile ranges for the studied parcels. The trend is confirmed that development rights value as a percentage of unrestricted market value tends to decrease as parcel size increases. Further, it is evident that most of the properties surveyed fell within the 60% to 80% range.

Conclusion: This study, based on appraisals and analysis that either pre-date the Highlands Act or were performed for the SADC completely independent of the Act and/or Act Rules clearly depicts that approximately 60% to 80% of property value is attributable to development rights. As these development rights were eradicated by the Act and Act Rules, it follows that the sample properties typically would lose 60% to 80% of their pre-Act value in response to the Act.

NJ Highlands Act, Value Impact Summary

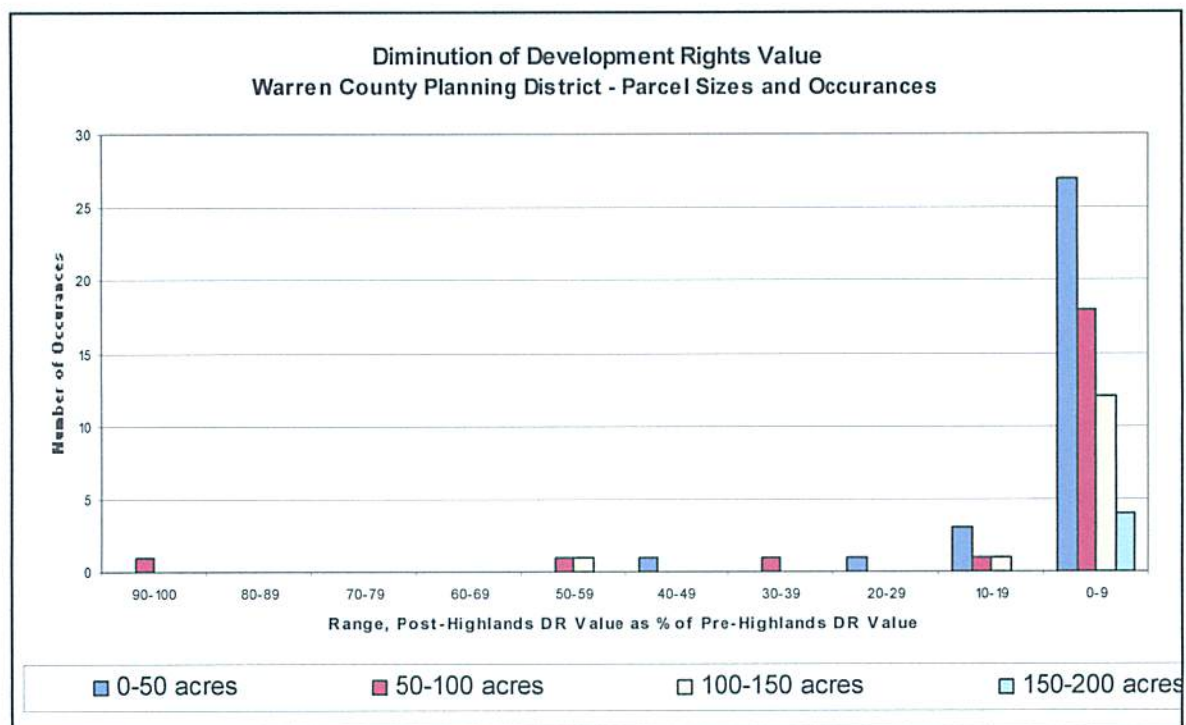
Warren County Development Rights Summary

Following are two point graphs and four bar charts demonstrating statistical data gleaned from a sample of 60 appraisals, 24 of which address property located within the Preservation District and 36 of which address property located beyond the Preservation district (mainly in the Planning District).

These appraisals were commissioned by the Warren County Department of Land Preservation ("WCDLP") for the 2006, 2007 and 2008 ADC acquisition rounds. The appraisals were hence conducted during 2005, 2006, and 2007. H&H, LLC prepared seven of the 60 appraisals.

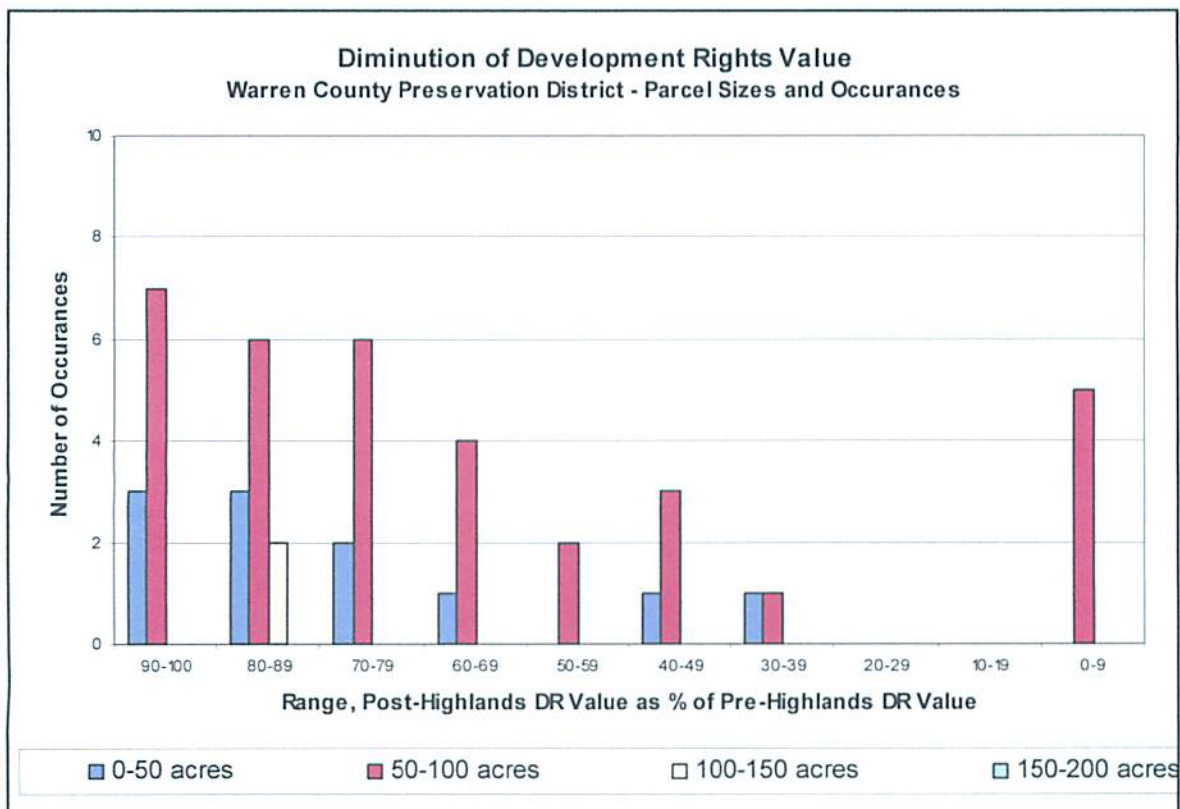
The basic data reported by these charts and graphs has been compiled by WCDLP in a cursory report titled "Property Value Analysis". The source copy is maintained within my files.

The interesting aspect of this data that differs from previous studies is its point in time (well after passage of the Act) and that WCDLP compiled the data separately for lands within the Preservation District and beyond the same. Comparison of the differences among properties and appraisal results is demonstrated by the immediately following "compilation" bar charts (two).



The above chart demonstrates that, of the properties surveyed outside the Preservation District, the Act and Act Rules marginally affected the value of imputed development rights with the largest occurrence falling below 10%. This data indicates that lands outside the Preservation District are not significantly affected by the Act or Act Rules. This bar chart is contrasted with the following chart that depicts the same data for properties located within the Preservation District.

NJ Highlands Act, Value Impact Summary



The above chart demonstrates that the imputed value of development rights for property located within the Preservation Area is severely affected by the Act and Act Rules.

Essentially, the greatest number of occurrences demonstrates a loss in development rights' value from 60% to 90% and the majority of properties surveyed experienced a loss in development rights value from 70% to 99%.

Interim Conclusion

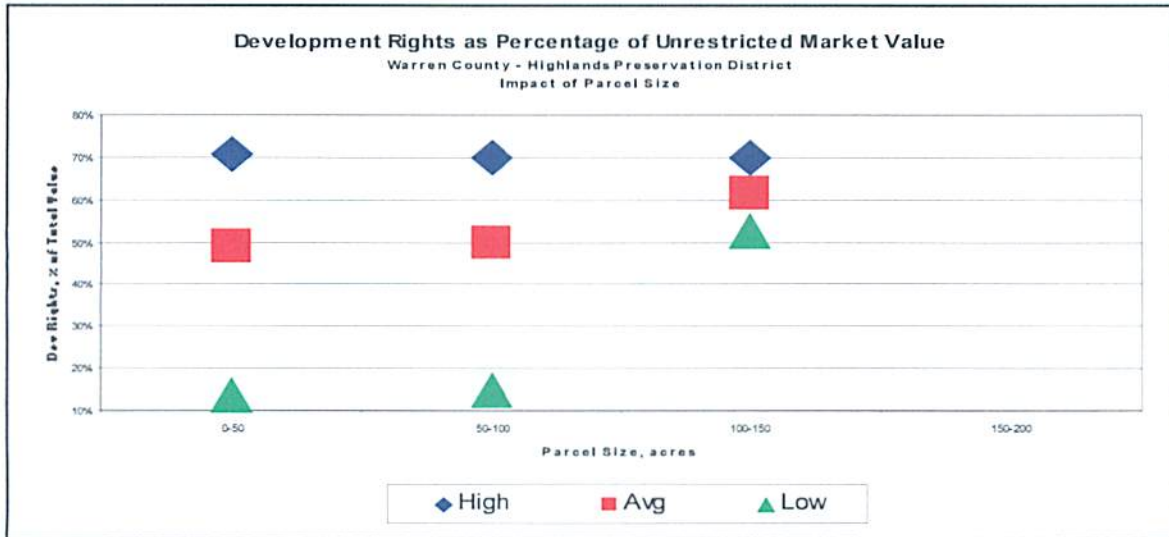
When comparing property located within the Preservation District to lands in the Planning District and beyond, it is evident that, if an allowance for "other factors" of 10% is applied to the data, it may be reasonably concluded that the Act and Act Rules are typically responsible for a loss of development rights value ranging from 60% to 89% of the pre-Act value.

Continuing:

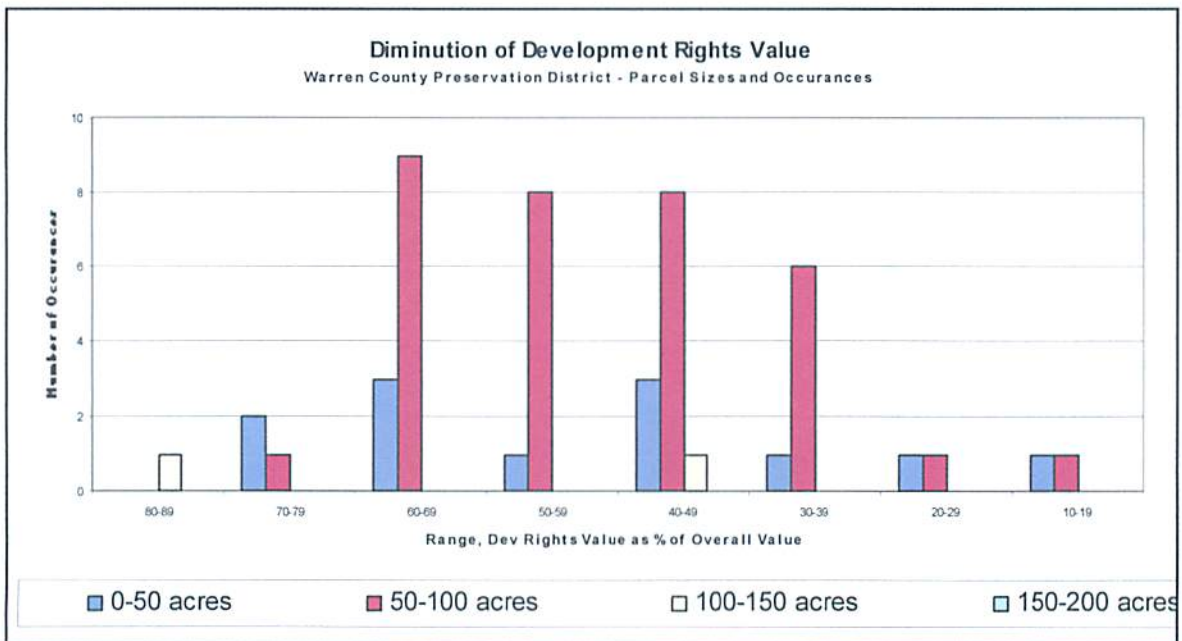
The following two point graphs and bar charts depict the "raw" data relied upon within the immediately preceding bar graphs.

NJ Highlands Act, Value Impact Summary

The first point graph (below) demonstrates the array of data for surveyed properties located within the Highlands Preservation District. This data is based on appraisals conducted during 2005, 2006, & 2007 that employ the “Lookback Provision” of the Act which requires that property be appraised pursuant to the rules and regulations in effect as of January 1, 2004. Under the Lookback Provision, the development rights eradicated by the Act are still part of the bundle of rights appraised.



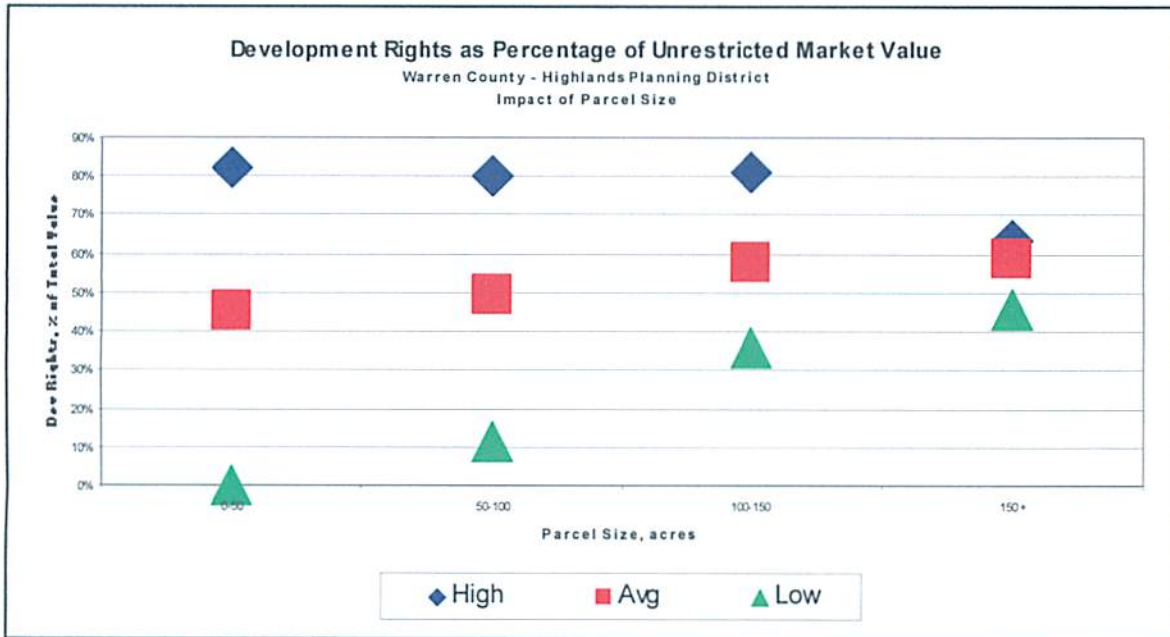
This data demonstrates that the value of development rights as a function of Unrestricted Market Value ranges from 0% to 80%. The data is distributed within the bar chart, following:



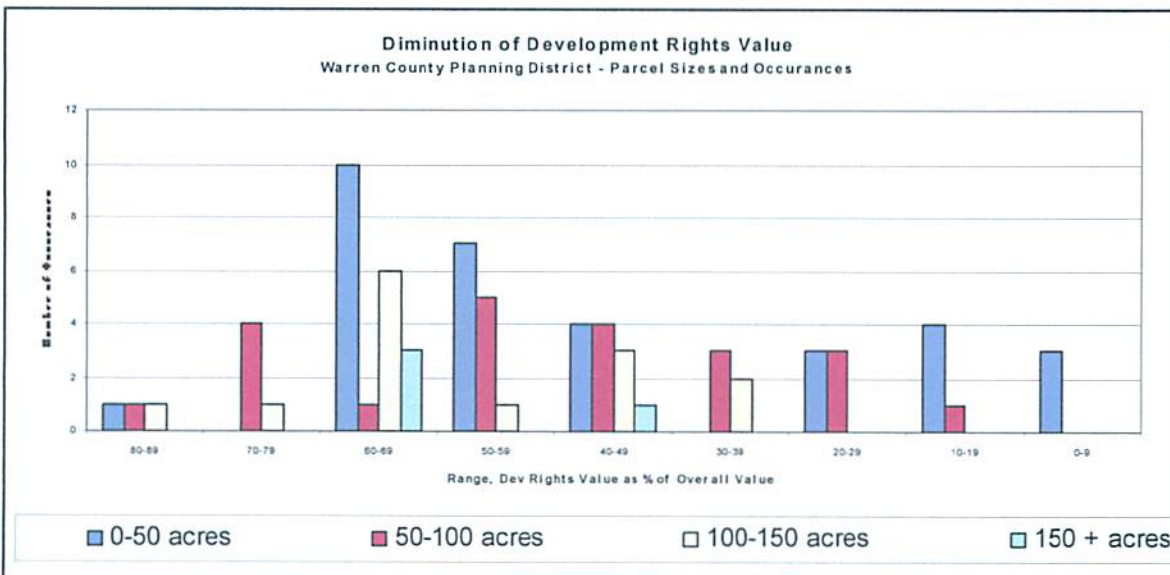
The bar chart depicts that in the post-Act years (2005-2007) that the residual value of property (net of development rights) has increased. The corresponding incremental value of property value attributable to the worth of development rights typically ranges from 30% to 70% and the frequency of occurrence is more evenly distributed to the middle of the chart.

NJ Highlands Act, Value Impact Summary

This next point graph demonstrates the array of data for survey properties located within the Highlands Planning District and beyond. This data is also based on appraisals conducted during 2005, 2006, & 2007 that employ the "Lookback Provision" of the Act. As previously noted, the Lookback Provision only affects the results of these appraisals by a factor typically less than 10%.



This data demonstrates that the value of development rights as a function of Unrestricted Market Value ranges from 0% to 80%. The data is distributed within the bar chart, following:



The bar chart depicts that in the post-Act years (2005-2007) that the residual value of property (net of development rights) has increased. The corresponding incremental value of property value attributable to the worth of development rights typically ranges from 30% to 70% and the frequency of occurrence is more evenly distributed to the middle of the chart.

RECONCILIATION
& FINAL CONCLUSIONS

Introduction

The Act and Act Rules are complicated.

The real estate encountered within Northern NJ, in particular, the Preservation and Planning Districts, is diverse.

A fundamental axiom of real estate appraisal practice is that land has value and improvements contribute to value.

The value of land is based on its economic utility for some purpose.

The economic utility of land is base on its physical, functional, and legal uses. The use that demonstrates the highest value is said to be the "Highest & Best Use".

When land that is physically and functionally suited to development is legally prohibited from development, it will be less valuable than other land having the same physical and functional characteristics that is not legally prohibited from being developed.

The Act and Act Rules legally prohibit many of the heretofore legally permitted uses of land at the previously prescribed densities within the Highlands Preservation District.

Reconciliation

Comments # 666 & # 719 and associated Department Responses were presented above because the same represent candid objection to the Act and Act Rules and objective evidence of the Act and Act Rules' impact on property values. These estimates were developed using the Department's figures and the Department's methodology and the comments have been reviewed by the Department with responses published; the Department's responses have been rebutted.

The Client has requested an opinion of the gross diminution in property values experienced by the Preservation District in response to the Act and Act Rules.

Accepting that the direct impact on lost development (land & buildings for 215,000 units of housing) is reasonably stated as of 2006 @ \$80 Billion Dollars, the question becomes what portion of that figure is simply attributable to the land.

A "Builder's Cost Ratio" ("BCR") is a rule of thumb relied upon when developing property. Simply stated, a builder will target land as a percentage of the finished residential unit sale price. For residential housing in suburban and rural areas similar to the Preservation District, an acceptable BCR typically ranges from approximately 25% to 35%. Within more heavily suburban areas, the scarcity (and hence cost) of land will typically force the BCR to levels of 45%.

This form of cursory analysis is supported by the actions of typical market participants and, most of the residential housing data loaded for all the CAMA systems currently on file within the State's listing of Class 2 properties (perhaps 1,000,000 entries).

Application of a BCR to practical circumstances includes that if a finished residential unit sells for \$100,000 the contributory value of the land will range from \$25,000 to \$35,000.

Adopting the most conservative estimate of BCR application @ 25% and the estimated total cost of lost development @ \$80 Billion Dollars, it is evident that the implicated loss in land value is approximately \$20 Billion Dollars net of any consideration for the residual value of land that is impacted by the Act and Act Rules.

The residual value of lands impacted by the Act and Act Rules is well supported by independent evaluation as ranging from 70% to 80% of pre-Act values.

I conclude that the residual value of lands within the Preservation District is reasonably stated at approximately 25% of pre-Act values and that the resultant loss in property value within the Preservation District *due to the Act and Act Rules* (as of 2006) is reasonably estimated @ \$15 Billion Dollars (75% of \$20 Billion).

Summary of Conclusions

1. Based on information provided by the Department as supplemented by the independent investigation and analysis of H&H, LLC, effective 2006, approximately **\$80 Billion Dollars** of real estate development will not occur within the Preservation District.
2. A portion of the \$80 Billion in development will be transferred from the Preservation District to other areas within NJ deemed "appropriate" by NJDEP that otherwise indicate an interest in "taking on" additional development. The balance of the development dollars will apparently not be invested in NJ.
3. Based on the Department's analysis and methods of presenting data, the \$80 Billion loss in development will have a \$160 Billion Dollar impact on the economy of the Highlands Preservation District Communities. To the extent that the development is never conducted in NJ, the impact may eventually apply to NJ in a macro sense.
4. Of the \$80 Billion Dollar impact experienced by the Preservation District Communities, approximately \$15 Billion Dollars is directly attributable to a diminution in land value. This loss in land value is borne by, and in many cases has a devastating affect upon, the constituent owners of property within the Highlands Preservation District.
5. On average, vacant and minimally improved properties located within the Preservation District have lost 70% to 80% of value depending upon many factors. The principal considerations in estimating loss to specific property are the property's physical and functional characteristics, particularly gross size.

CERTIFICATION

This consulting report is certified to the Intended Users only; it is restricted for use by the Client & Intended User(s) to assist with professional interpretation and opinion regarding the Act and Act Rules. I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional work.
3. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.
5. As an appraiser I am acting in an independent capacity; the appraisal assignment is not based upon a requested minimum valuation, a specific valuation, or approval of a loan.
6. My analyses, opinions and conclusions were developed, and this appraisal has been prepared in conformity with the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.
7. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
8. As of the date of this report the undersigned has completed the requirements of the continuing education program of the Appraisal Institute and Appraisal Foundation.
9. I am generally familiar the Highlands Region properties by type and location.
10. No one provided significant professional assistance to the report signatory with respect to the reported conclusions.
11. That I am in compliance with the Competency Provision of USPAP and have sufficient education and experience to perform an appraisal of the subject property.
12. That my opinions regarding the Act-Rules are as reported within the body of this letter-report.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, the firm with which he is connected, or any reference to the Appraisal Institute or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent and approval of the undersigned.

MEH via Electronic 10/10/07

MICHAEL E. HOLENSTEIN, MAI, CTA
SCGRE: NY, NJ-RG01234, Pa-GA1733-R

ASSUMPTIONS AND LIMITING CONDITIONS

1. No survey of the subject property has been prepared by the appraiser. I assume no responsibility for matters legal in character nor do I render any opinion as to the title, which is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.
3. The sketches, drawings, photos and photocopies within this report are included to assist the reader in visualizing the property. No responsibility in connection with these exhibits or the referenced work of others is assumed.
4. The information furnished by others including but not limited to surveys, maps, site plans, building plans, leases, and income information as footnoted within this report, is believed to be reliable and is verified whenever possible. However, no warranty is given for its accuracy.
5. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
6. It is assumed that all applicable zoning regulations and use restrictions have been complied with and that the subject property is a legal, conforming use within the zone unless non-conformity has been otherwise stated and considered within the report.
7. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based unless otherwise stated. This assumption specifically includes the requirements of the Industrial Site Recovery Act (ISRA), if applicable, and assumes the ability to convey the property with free title.
8. It is assumed that the utilization of the land and improvements is within the property's lines and that there is no encroachment or trespass relative to adjoining lands.
9. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
10. Any value estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the reports.
11. Any value estimates provided in this report are as of the date specified based upon the prevailing market conditions and are subject to fluctuations in accordance with such factors.
12. Unless otherwise stated in this report, the existence of hazardous substances, latent or subsurface defects, or environmental conditions, which may or may not be present on or about the property was not observed by the appraiser nor brought to the attention of the appraiser. The appraiser has no knowledge of the existence of such materials/conditions on or in the property. The appraiser, however, is not qualified to detect such substances/conditions. The presence of substances such as, but not limited to, asbestos, urea-formaldehyde foam insulation, radon gas, fuel leaks, lead-based paints or other potentially hazardous materials or conditions such as sink holes, earthquake faults, underground caverns or streams, may affect the value of the property. The value estimate is predicated on the assumption that there is no such material or condition on or in the property or in close proximity to the property that would cause a loss in value. No responsibility is assumed for any such materials or conditions, nor for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

NJ Highlands Act, Value Impact Summary

13. The value estimate is further predicated upon the assumption that there are no endangered species habitat, historical/archeological/cultural sites, burial grounds, or critical natural features within the boundaries of this property.
14. The data used in this report has been secured from sources considered reliable and has been verified to the extent possible by this appraiser; however, correctness is not guaranteed.
15. Possession and use of this report by the Client may be governed by the Freedom of Information Act. Procedurally, the report is prepared as a complete document for the stated use by the stated user. Unintended users and users that do not possess proper appraisal qualifications are advised that the data, methodology, conclusions, and opinions provided by the report may not be applicable or reliable if used outside the stated context. The possession and use of this report and all conclusions to value is strictly governed by the professional relationship between client and appraiser.
16. Failure to satisfy any and all outstanding appraisal fees pursuant to the agreed scope of the assignment shall render all conclusions and certifications null and void.

PROFESSIONAL QUALIFICATIONS OF MICHAEL E. HOLENSTEIN, MAI, CTA, SCGREA

Business & Education:

- Current** ♦ HOLZHAUER&HOLENSTEIN, LLC ; Principal Member (1998-)
- Prior** ♦ LIN-HOLZ ADVISORY GROUP, LLC ; Principal Member (1997&1998)
Employed by R.L.Holenstein, MAI as an Appraiser and Licensed R.E. Agent (1987-1996)
- 2001** ♦ State of New York Certified General Real Estate Appraiser (SCGREA #46000039750)
- 1999** ♦ Commonwealth of Pennsylvania Certified General Real Estate Appraiser (SCGREA #GA1733R)
- 1995** ♦ Designated as a Member of the Appraisal Institute (MAI), Member #10824.
- 1993** ♦ New Jersey State Certified General Real Estate Appraiser (SCGREA #RG01234)
♦ Certified by the State of New Jersey as a Tax Assessor (CTA)
- 1989** ♦ Graduated Upsala College Cum Laude with BA and BS degrees in Business & Management
- 1987** ♦ Licensed by the State of New Jersey as a Real Estate Salesperson
- 1983-87** ♦ United States Marine Corps, Active Duty Status. Stationed in the Continental U.S. and Asia. Occupational specialties included Air Frames Structural Mechanic (MOS-6143), CDI (Collateral Duty Inspector), and NDI (Non-Destructive Inspector). Promoted meritoriously four times to E5. Awarded Navy Achievement Medal in December, 1986 in recognition for outstanding service while stationed in South Korea, ten Meritorious Masts, three Letters of Commendation, Certificate of Commendation and selected as Outstanding Marine NCO, 1st Marine Aircraft Wing.

Seminars/Conferences:

- ♦ NJAC, Tax Bd. Commissioners & Administrators; Annual Education Seminar/Conference, (1995 -)
- ♦ Metro NJ Chapter, Appraisal Institute, Annual Princeton Conference, (1987 -)
- ♦ Dynamics of Office Building Valuation - Appraisal Institute
- ♦ Condemnation Appraisal Practices Seminar - Appraisal Institute
- ♦ ACOE Wetlands Delineator Courses - Rutgers Extension
- ♦ Attacking/Defending Appraisals in Litigation - Appraisal Institute
- ♦ Appraiser as an Expert Witness - Appraisal Institute

- ♦ Handling Eminent Domain & Regulatory Taking Cases
- ♦ Land Use Law Conference
- ♦ Advanced Expert Witness Deposition Tactics NJ
- ♦ Appraisal Consulting: A Solutions Approach for Professionals
- ♦ NJ Real Estate Title law, Problems & Solutions
- ♦ Keys to Effective Witness Examination, NJ
- ♦ Appraisal Standards for Federal Land Acquisitions ("Yellow Book")
- ♦ Eminent Domain & Regulatory Takings, Update 2005

NJ Highlands Act, Value Impact Summary

Michael E. Holenstein has practiced Real Estate Appraisal and performed Consulting Services as his sole occupation beginning in 1987. Since completing his primary appraisal education, his essential focus has been the valuation of partial interests, real property rights, condemnation appraisal, subdivision analysis, tax appeals, general fee appraisal, and a variety of consulting services including acquisition and development, feasibility, financing, estate management and partnership interests. His work has satisfied a variety of functions including matrimonial, probate, tax appeal, condemnation, pollution contamination and other legal proceedings, financing requirements and general asset valuation. A partial list of appraisal assignments include:

Residences	Tax Appeals
Farms and Acreage	Partial Takings
Commercial Properties	Entire Takings
Industrial Properties	Feasibility Studies
Institutional Properties	Subdivision Analysis
Multi-Family Properties	Easement Valuation
Highest and Best Use	Easement Impact Valuation
Contamination Impact	Rights-of-Way
Islands	Review Appraisals

Expert Testimony:

- ◆ State of NJ Tax, Superior, & Administrative Law Courts; Morris, Sussex, and Warren County Tax Boards; Various Condemning Authority Commissioner Boards; Various Municipal Planning & Zoning Boards

Professional Affiliations&Community Service:

- ◆ Member – Foundation Board, Newton Memorial Hospital (2005 -)
- ◆ Member - Board of Directors, Metro-NJ Chapter, Appraisal Institute (1997-99)
- ◆ Member - Newton Rotary Club (1987-99)
- ◆ Member - Executive Board of Directors, Morris/Sussex Boy Scout Council (1992 - 1995, 1997)
- ◆ Member - Executive Board of Directors, Greater Newton Chamber of Commerce (1992 - 1997: President 1996 - 1997)
- ◆ Committeeman - Newton Economic Development Committee (1993 - 1996)
- ◆ Associate Member – Garden State & Bergen Multiple Listing Services (1987 -)

References:

Federal Acquisitions:

- ◆ Pamela McLay, National Park Service, 215-597-7700
- ◆ William McLaughlin, NPS, 215-597-4940
- ◆ Susan P. Russo, ARA, USDI, 413-253-8529
- ◆ Mary Ellen Bryant, Appraisal Services Directorate, 413-253-8529

Litigation Support Services:

- ◆ Lawrence B. Litwin, Esq., 973-538-4220 (Condemnation/General)
- ◆ Martin F. Murphy, Esq., Johnson, Murphy, Hubner..., 973-835-0100 (Condemnation, General)
- ◆ George P. Ljutich, Esq. (DAG), NJDOT, 609-292-5936 (Adversary in Condemnation)
- ◆ Thomas Olsen, Anthony DellaPelle, Esq, Mckirdy & Riskin, PC, 973-539-8900 (Condemnation)
- ◆ Jeffery D.Gordon, Esq., Archer & Greiner, PC, 609-580-3713 (Tax, General, Stigma Damages)

ADDENDA

Appreciation Study

Appreciation Study - Highlands Preservation Districts - Hunterdon, Morris & Warren Counties												
Yearly Directors Ratio changes from 2000 through 2006 for following Municipalities												
Year	Bloomsbury Boro		Lebanon Twp		Boonton Twp		Jefferson Twp		Mt Olive Twp		Oxford Twp	
2000	103.23	—	100.23	—	92.22	—	91.03	—	99.34	—	95.48	—
2001	96.91	6.5%	94.64	5.9%	85.46	7.9%	87.13	4.5%	95.66	3.8%	96.26	-0.8%
2002	89.88	7.8%	91.2	3.8%	78.71	8.6%	81.39	7.1%	90.72	5.4%	90.28	6.6%
2003	83.98	7.0%	83.64	9.0%	74.86	5.1%	74.98	8.5%	87.64	3.5%	82.22	9.8%
2004	74.89	12.1%	75.02	11.5%	67.95	10.2%	66.26	13.2%	80.47	8.9%	72.1	14.0%
2005	66.44	12.7%	69.67	7.7%	61.82	9.9%	58.82	12.6%	70.6	14.0%	64.49	11.8%
2006	59.13	12.4%	59.4	17.3%	55.72	10.9%	52.4	12.3%	59.7	18.3%	57.5	12.2%
Cumulative Appreciation for respective Municipalities from 2000 to 2006 is:												
74.6%		68.7%		65.5%		73.7%		66.4%		66.1%		
Avg Cum Appr, 2000 to 2006 = 0.69				Appreciated Value = \$220,504 x 1.69 = \$ 373,018								

Median Home Price Analysis Next page

NJ Highlands Act, Value Impact Summary

County & Municipality Demographics Data

County	2000 population	total households	persons/ household	Median SF Home Value	Municipality	2000 population	total households	persons/ household	Median SF Home Value
Bergen	884,118	330,817	2.64	\$ 250,300	Mahwah Tp	24,062	9,340	2.43	\$ 334,100
					Oakland Bo	12,466	4,255	2.88	\$ 245,300
Hunterdon	121,989	43,678	2.69	\$ 245,000	Alexandria Tp	4,698	1,535	2.95	\$ 274,100
					Bethlehem Tp	3,820	1,266	3.02	\$ 278,400
					Bloomsbury Bo	886	322	2.74	\$ 172,800
					Califon Bo	1,055	401	2.63	\$ 220,900
					Clinton	2,632	1,068	2.46	\$ 222,100
					Clinton Tp	12,957	4,129	2.82	\$ 283,900
					Glen Gardner Bo	1,902	805	2.33	\$ 170,700
					Hampton Bo	1,546	559	2.58	\$ 165,200
					Holland Tp	5,124	1,881	2.72	\$ 199,000
					Lebanon Tp	5,816	1,963	2.79	\$ 233,400
					Tewksbury Tp	5,541	1,986	2.79	\$ 461,200
					Union Tp	6,160	1,666	2.61	\$ 285,200
Morris	470,212	169,711	2.72	\$ 257,400	Boonton Tp	4,287	1,476	2.78	\$ 322,600
					Chester Tp	7,282	2,323	3.05	\$ 407,900
					Jefferson Tp	19,717	7,131	2.76	\$ 180,400
					Kinnelon Bo	9,365	3,062	3.06	\$ 354,000
					Montville Tp	20,839	7,380	2.80	\$ 346,600
					Mt Arlington Bo	4,663	1,918	2.42	\$ 183,700
					Mt Olive Tp	24,193	9,068	2.66	\$ 197,800
					Pequannock Tp	13,888	5,026	2.76	\$ 246,100
					Randolph Tp	24,847	8,679	2.86	\$ 329,800
					Riverdale Bo	2,498	919	2.68	\$ 210,200
					Rockaway Tp	22,930	8,108	2.82	\$ 206,200
					Roxbury Tp	23,883	8,364	2.84	\$ 207,400
					Washington Tp	17,592	5,755	3.02	\$ 279,300
Passaic	489,049	163,856	2.92	\$ 190,600	Bloomingdale Bo	7,610	2,847	2.63	\$ 177,000
					Ringwood Bo	12,396	4,108	3.00	\$ 193,400
					Wanaque Bo	10,266	3,444	2.86	\$ 172,100
					West Milford Tp	26,410	9,190	2.84	\$ 171,200
Somerset	311,600	108,984	2.69	\$ 235,000	Bedminster Tp	8,302	4,235	1.96	\$ 228,000
Sussex	144,166	50,831	2.80	\$ 157,700	Byram Tp	8,254	2,833	2.91	\$ 175,300
					Green Tp	3,220	1,046	3.07	\$ 182,500
					Hardyston Tp	6,171	2,319	2.66	\$ 152,300
					Hopatcong Bo	15,888	5,656	2.81	\$ 141,300
					Sparta Tp	18,080	6,225	2.90	\$ 222,700
					Vernon Tp	24,686	8,368	2.95	\$ 150,800
Warren	109,219	38,660	2.61	\$ 155,500	Allamuchy Tp	3,877	1,692	2.28	\$ 192,500
					Franklin Tp	2,768	972	2.84	\$ 176,200
					Greenwich Tp	4,365	1,421	3.07	\$ 233,300
					Harmony Tp	2,729	1,010	2.68	\$ 156,000
					Independence Tp	5,603	2,146	2.61	\$ 169,500
					Liberty Tp	2,765	980	2.79	\$ 169,600
					Lopatcong Tp	5,765	2,143	2.55	\$ 156,600
					Mansfield Tp	6,653	2,334	2.76	\$ 177,200
					Oxford Tp	2,307	886	2.60	\$ 125,200
					Pohatcong Tp	3,416	1,341	2.54	\$ 135,100
					Washington Tp	6,248	2,099	2.95	\$ 185,400
					White Tp	4,245	1,668	2.47	\$ 163,700

Municipalities with land area in Preservation District = 50

Median Home price (average) = \$ 220,504

Value Definitions

MARKET VALUE (unrestricted) is defined as:

"...the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is consummation of a sale as of a specified date and passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated
- (2) Both parties are well informed or well advised, and each acting in what he considers his own best interest
- (3) A reasonable time is allowed for exposure in the open market
- (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Source: Federal Register, vol. 55, no. 163, August 1990, pages 34228 and 34229 & USPAP, 2004 edition.

MARKET VALUE (restricted) is defined as:

Market value of a property (as defined above) but subject to the deed restrictions placed on the title of a property as set fourth in N.J.A.C.2:76-6.15. The deed restriction passes with the land in perpetuity regardless of the owner. This term may be synonymous with agricultural market value although in areas under heavy development pressure or in more exclusive gentrified areas an increment of value may be inherent for residential and/or recreational uses with agricultural use being secondary.

Source: The Dictionary of Real Estate Appraisal, 4rd Edition

DEVELOPMENT EASEMENT is defined as:

The Market Value of a property less the Market Value Restricted of that property is equivalent to the value of the Development Easement.

Source: The New Jersey Farmland Preservation Program Handbook

Act Rules re-adoption with comments & responses (excerpts)

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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
LAND USE REGULATION

Highlands Water Protection and Planning Act Rules

Readoption with amendments: N.J.A.C. 7:38

Proposed: December 19, 2005 37 N.J.R. 4767(a)

Adopted: , 2006 by Lisa P. Jackson,
Commissioner, Department of Environmental
Protection

Filed: , 2006 as R. d. with substantive
and technical change not requiring additional public
notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 13:20-1 et seq.; 13:1D-1 et seq.; 13:1B-15.128 et seq.; 13:9B-1 et
seq.; 23:2A-1 et seq.; 58:1A-1 et seq.; 58:10A-1 et seq.; 58:11-23 et seq.; 58:11A-1 et
seq.; 58:12A-1 et seq.; and 58:16A-50 et seq.

DEP Docket Number: 39-05-11/578

Effective Date:

Expiration Date:

The Department of Environmental Protection is readopting with amendments the
Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38. The proposal was
published on December 19, 2005. The comment period closed on February 17, 2006.

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Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on the proposal on January 25, 2006, at 4:00 P.M., at the Highlands Council offices in Chester, New Jersey. Susan Lockwood and Mark Mauriello were the hearing officers. Thirty-three people attended and 28 gave testimony. The hearing officers recommended that the proposal be adopted as proposed with the changes described below in the summary of responses to comments. The Department accepts the recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs
Attn: DEP Docket No. 39-05-11/578
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey, 08625-0402.

Summary of Public Comments and Agency Responses

The Department accepted comments on the proposal through February 17, 2006. One-hundred fifteen people provided individual written and/or oral comments. Four-hundred sixty-five people submitted form letters. The following individuals provided individual comments:

1. Anderson, Joanne
2. Anderson, John W.
3. Anderson, Wayne
4. Baker, Michael J.
5. Bartel, Constance
6. Best, Robert, E.
7. Best, Ruth M.
8. Bowman, Cynthia M.
9. Broadhurst, Ellen
10. Broadhurst, Hope
11. Broadhurst, Jeff

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12. Broadhurst, Tom
13. Buck, Susan
14. Canright, Mark
15. Christensen, Nancy
16. Collins, Jr., Thomas F. Vogel, Chait, Collins, and Schneider
17. Constantine, Diane M.; Sprint Spectrum and Nextel Corporation
18. Costa, Rosalind Pio
19. Davenport, Robert
20. Dilodovico, Anthony; Schoor Depalma
21. Donaldson, Lewis A.
22. Drysdale, Andrew
23. Drysdale, Lois
24. Dunn, Thomas W. Beattie Padovano representing Borough of Ringwood Planning Board
25. Farber, Joy; Association of New Jersey Environmental Commissions
26. Feller, Caroline E.
27. Filippone, Ella F.; Passaic River Coalition
28. Finke, Jean M.
29. Finke, Michael
30. Finke, Robert
31. Finke, Robert A.
32. Frey, Gertrude
33. Frey, Robert
34. Frey, Robert J.
35. Frey, Wilma; New Jersey Conservation Foundation
36. Gagne, Ed
37. Gagne, Penny
38. Gerish, Jay
39. Goger, Nicole
40. Gracie, Heather; Gracie & Harrigan Consulting Foresters, Inc.

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41. Harrigan, Christina; Gracie & Harrigan Consulting Foresters, Inc.
42. Kallessen, Steven; Gracie & Harrigan Consulting Foresters, Inc.
43. Kelsey, James; Planning Board, Independence Township
44. Kern, Jerry and Sandi
45. Kessler, James C.
46. Kessler, James E.
47. Klumpp, Hank
48. Kraham, Susan J.; NJ Audubon Society
49. Kruger, Anne L.; Passaic River Coalition
50. Kushner, Ross. Pequannock River Coalition
51. LaHue, Michael P.
52. LaHue, Robin; The Freedom Group, L.P.
53. Leavens, III, William B.
54. Lee, Art
55. Longo, Richard A.
56. Mackey, Devlen
57. Mackey, Holly
58. Mackey, Robert
59. Maidens, Melinda B.; JeffTer, Hopkinson and Vogel
60. McGroarty, Chuck; Planning consultant for Mount Olive Township
61. McGuinness, Michael G.; National Association of Industrial and Office Properties
62. Michalenko, Thomas
63. Minervini, William P.
64. Morawski, Stephen H.; Tennessee Gas Pipeline Company
65. Motyka, Richard J.
66. Myers, Aimee Ashley; Morris County Board of Agriculture
67. Newhouse, Dave
68. Newton, Damien
69. Nieuwenhuis, Richard; President, NJ Farm Bureau
70. O'Hearn, William; Highlands Coalition

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71. O'Neil, Elaine T.
72. Orcutt, Jon, Nancy Christensen, Damien Newton; Tri-State Transportation Campaign
73. Peifer, David
74. Post, Deborah A.
75. Purcell, Monique; NJ Department of Agriculture
76. Quinn, Deborah
77. Quinn, William
78. Race, Jean
79. Race, Sam
80. Richardi, Allen
81. Rinehart, John Y.
82. Rohrbacher, Peter J.
83. Sachau, Barb
84. Scrivo, Thomas P.; McElroy, Deutsch, Mulvaney & Carpenter, LLP
85. Shaw, Steven H.; Special Counsel to Warren County for the Board of Chosen Freeholders, Hunterdon and Warren Counties
86. Shepherd, David J.
87. Shope, David
88. Sigler, Carl
89. Simone, Erin E.; 91st State Agricultural Convention
90. Skowronsky, Kenneth
91. Skowronsky, Linda K.
92. Somers, Julia; Executive Director, Great Swamp Watershed Association
93. Sternman, Walter S.
94. Strassle, Edward
95. Stryeski, Nancy Baxter
96. Stumpp, Ilona
97. Sussek, Claire
98. Sussek, Greg
99. Tavella, Doug; Appalachian Forestry Service.

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this rulemaking are both for activities that are environmentally beneficial. Habitat enhancement activities result in more and better habitat for fish, wildlife and plant species. Stream bank stabilization helps to improve the health of a stream by eliminating sources of erosion and sedimentation that would otherwise have negative impacts on water quality both at the point of erosion and downstream. Further, while it may be true that all portions of all waters in the Highlands are not entirely accessible, recreation, including fishing, is a significant activity in the Highlands which will be positively affected by the types of activities covered by these two general permits. Consequently, the Department concludes that its general permits provide positive social impacts.

665. COMMENT: It is premature to state that there is a positive social impact from implementation of the rules. In addition, the positive or negative social affects must be characterized as "macro" (New Jersey proper) or "micro" relating to the communities within the preservation district. (85, 87)

RESPONSE: The Department is required to evaluate the social impact of every rule it proposes. Therefore, it cannot wait until the rule is in place to determine the social impact. The Department believes, however, that the social impact of the Highlands rules is positive in both the "macro" and "micro" sense, as described by the commenter. The Highlands rules further the goal of the Highlands Act to protect an essential source of drinking water and other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and many sites of historic significance. These benefits accrue to those who live in the preservation area as well as to others in New Jersey. Therefore, the rules have an overall positive social benefit.

666. COMMENT: There is no evidence presented that conclusively demonstrates that the rules provide a macro social impact that is not redundant in the context of prior-existing rules and regulations. Further, the degree to which an impact will be realized is wholly dependant upon presupposed eventualities that have not occurred since adoption of the

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Act and may, or may not, occur outside the preservation district. Implementation of TDR's is an excellent example. (85, 87)

RESPONSE: The Highlands Act consolidates aspects of several existing programs, strengthens their protections, and adds some unique protection provisions as well. The result is a law that requires one thorough and comprehensive review of a proposed major Highlands development. Therefore, the Department does not agree that the social benefits of the Highlands Act are redundant with prior existing rules. The timing of the Department's regulations and the Regional Master Plan (RMP), as dictated by the Act, made it impossible for the Department to await completion of the RMP and transfer of development rights program before proposing its regulations. Therefore, the Department must view the Act in its entirety and presuppose that all provisions of the Act will be implemented as directed by the New Jersey Legislature.

However, as stated in response to previous comments, the Highlands Act contains more than TDR provisions to reduce its impacts on property owners, including an extensive list of exempt activities, the exclusion of agricultural and horticultural uses from the definition of "major Highlands development" thus keeping these activities unregulated by the Department, the requirement that agencies seeking to acquire land for open space and farmland preservation obtain pre- and post Highlands appraisals and negotiate using the higher value, and the provision of a waiver for the taking of property without just compensation if a Highlands approval has been denied and the owner can recognize no alternative use for the property.

667. COMMENT: The rules presuppose under social doctrine that the rights of the general populace exceed the rights of the individual. The purported social benefits realized by segments of the general populace, in particular the users of water resources generating from within the Highlands, are garnered at the expense of the private property owners who either live within, or own land within, the Highlands Region proper. (85, 87)

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RESPONSE: The Department is required to evaluate the economic impact of every rule it proposes. Therefore, it cannot wait until the rule is in place to determine the economic impact. The Department believes, however, that the economic impact of the Highlands rules is positive in both the "macro" and "micro" sense, as described by the commenter. The Highlands rules further the goal of the Highlands Act to protect an essential source of drinking water and other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and many sites of historic significance, without the costs associated with water purification, wastewater treatment, flood control projects and other costly undertakings that would be required to accomplish such goals after land is developed. These benefits accrue to those who live in the preservation area as well as to others in New Jersey. Therefore, the rules have an overall positive economic benefit.

718. COMMENT: The "preliminary" affects of the Act and Act rules is ambiguous. Mechanisms intended by the Act to afford parity to affected property owners are not yet in place. These include TDR's. The effective implementation of TDR's is expected to take years with the market's acceptance of same being too speculative for credible consideration at this time. (85, 87)

RESPONSE: It is the Department's understanding that transfer of development rights (TDRs) programs will be implemented shortly after the Highlands Council adopts the Regional Master Plan, which the Department understands is expected to take place by December of 2006. The market will depend upon how the credits are assigned and the availability of receiving districts and that information is currently being discussed by the Highlands Council and with the public.

719. COMMENT: The net result of transferring development potential and associated economic impact value from the preservation district to areas outside the core is an effective transfer of property worth from owners within the preservation district to other private property owners. The order of magnitude for transferred value from one group of

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private individuals to another is demonstrated by the following model. The rules cite several different development and buildout scenarios as probable occurrences within the preservation area. These include that the potential dwelling units within the preservation area (at buildout) total 215,421 units (say 215,000). The independent analysis of Holzhauer & Holenstein, LLC (Real estate advisory services) supports that the 2006 median home value within the Highlands Region is reasonably \$373,000. The impact that the rules have on property owners within the preservation area is estimated as follows:

$$215,000 \text{ units @ } \$373,000/\text{unit} = \$80,195,000,000.$$

This calculation demonstrates an \$80 Billion loss in ratable base for Highlands preservation area municipalities. Further, the above depiction does not account for other forms of development, for example, commercial and industrial. It also does not make a distinction among dwelling units as may be developed with other than single family residential homes. The "average economic multiplier" for the U.S. is cited within the rules as being 2X. Therefore, the cost to local economies resulting from the failure to construct and sell 215,000 dwelling units is estimated as follows:

$$\$80.195\text{Billion} * \text{Factor (2X)} = \$160 \text{ Billion Dollars}$$

Given the methodology cited within the rules, the loss in sales and realty transfer tax, together with the lost jobs, and jobs spending multipliers results in the conclusion that the rules will have an astronomical impact on the economy and the ratable bases of the preservation area communities.

However, this statement is not necessarily true based on the same criticisms of the rules' cost-benefit analysis. The problem must be evaluated on a micro and macro basis. Therefore, it may be stated that Statewide, and over a period of time, the loss of ratable base, and the gross affects on the economy are likely to be negligible. The rules do not prevent development, the same are just redistributed. The absorption of the theorized dwelling units will be delayed due to the increased regulation and the time necessary to facilitate increased density potentials within "appropriate" areas for development but the gross demand for housing will eventually be met. What can be stated with certainty is that whatever economic benefit is received by areas outside the preservation area will

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come at the expense of the property owners and the local economies within the preservation area. (85, 87)

RESPONSE: For the reasons set forth at length in the economic impact analysis, the Department believes that the long-term statewide impact of the rules being readopted will be significantly positive rather than negligible or neutral. In terms of the asserted short-term redistributive impacts, the Department notes the following: (1) The commenters assume that the value of \$373,000 per home can be extrapolated to new housing. However, as the supply of housing increases, the price of new housing may decline as a result of supply and demand effects and because as new housing is built, the areas in which the construction takes place will, by definition, become more congested and therefore less attractive to subsequent homebuyers. (2) To the extent that development occurs outside the preservation area, the communities in the preservation area will not have to bear the costs of development, for example, the cost of new roads, water and sewer lines, schools, fire and police protection, etc. To the extent such costs are avoided, communities in the preservation area may experience no net fiscal impact. (3) Some portion of the new housing would likely be affordable housing, which would likely have a lower average price than the existing median cited by the commenters. (4) Any change in sales tax or realty transfer tax revenues is already reflected in the multiplier, and such changes would not constitute additional benefits or costs to communities in the preservation area. (5) The Department's rules contain several exemptions to permit single-family dwellings so the estimated loss of 215,000 units is an obvious overestimate. To date, the Department has confirmed 351 exemptions. (6) The Department's regulations may result in some level of reduction in value for landowners in the Highlands but does not deny all use. Consequently, municipalities will not assess these lots as having zero value. (7) A transfer of development program is yet to be developed and its potential positive impacts on property owners cannot be assessed.

For these reasons, the Department believes that any short-term redistributive impacts are likely to be significantly lower than the commenters project.

Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

SENATE BILL No. 1 and ASSEMBLY BILL No. 2635

(The "Highlands Water Protection and Planning Act")

LOCATION: Skylands Manor
Ringwood State Park
Ringwood, New Jersey

DATE: March 30, 2004
7:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Bob Smith, Co-Chair
Assemblyman John F. McKeon, Co-Chair
Assemblyman Michael J. Panter, Co-Vice Chair
Senator Henry P. McNamara
Assemblyman Robert M. Gordon
Assemblyman Reed Gusciora
Assemblyman Louis M. Manzo
Assemblyman Guy R. Gregg
Assemblyman John E. Rooney



ALSO PRESENT:

Judith L. Horowitz
Carrie Anne Calvo-Hahn
Lucinda Tiajloff
*Office of Legislative Services
Committee Aides*

Kevil Duhon
*Senate Majority
Committee Aide*
David Eber
Assembly Majority

Thea M. Sheridan
*Assembly Republican
Committee Aide*

***Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

What I was struck by today is, that in a lot of ways, I always think that we, kind of, live the same lives, we're just in different places. I heard people -- "Yeah, I was on the zoning board, but the new administration kicked me out because I was pro-development." Someone else got up and said, "Yeah, I'm the Republican, and we're with that group." And, you know, it's the same, regardless of whatever town or city your in, anywhere in the State of New Jersey.

The difference is that those that aren't within what we've designated to be the core -- and make mistakes -- like in my own community, in West Orange, where I'm the Mayor-- Our mistakes are translated, maybe, into a loss of the quality of life, maybe more traffic, air not as clean as it could be, probably extra taxes because of the school children that come in. And there's permutations of the debate over condos -- they're not going to have school children, we'll make money, whatever it might be. But if we make a mistake, that's where the transgression goes to, our own individual quality of life, ergo home rule.

If there are mistakes made by local government, relative to the core that's remaining, the entire State of New Jersey will suffer, not to mention Pennsylvania, New York. This implication goes beyond even New Jersey. And this is why, in a way, I pray for wisdom for all of us, as we go through this evaluative process, to make certain that we do the right thing, because we can't afford not to.

And with that, we look forward to working hard together. And thank you all, again.

———— I'm going to turn it over to Senator Smith. (applause)

SENATOR SMITH: Thank you, Chairman.

The Assembly Environment Committee and Chairman McKeon, have worked long and hard on this. And we're going to be working longer and harder. We've got a pretty hectic schedule ahead of this. But your comments tonight make all the difference in the world.

If there was one lesson tonight, it was the voice in the background from Tom Cruise, "Show me the money." (laughter) And Chairman McKeon and I pledge to you that we will show you the money. We're currently working with the Governor's Office to put together the dedicated and guaranteed source of funding so that the Highlands, which is making a sacrifice for the rest of the state, is properly compensated. We will show you the money.

And let us not lose track of the fact that this is a bill about water. It's about a lot of things, but it's the water supply for the future of the State of New Jersey. We can't have-- Are there any builders left in the room? There will be no residential housing if there's not water. There will be no building, no factories, no anything if there isn't a good, clean, sufficient water supply.

If you look at the Task Force's report, it indicated that the cost of water treatment is estimated to increase \$30 billion if we don't protect this water supply. What more do we need to know? How many times do we have to be hit in the side of the head with a 2x4? This is one of our last chances to keep New Jersey's future bright.

Now, some comments that you need to know: If you would like to supplement our record or send in comments that you'd like us to consider, please take this address: Assembly and Senate Environment Committees, State House Annex, P.O. Box--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Wait a minute.