



Comments : Highlands Regional Master Plan Monitoring Report / Reexamination Issues

REGIONAL MASTER PLAN:

GENERAL CONTENT

The Act requires that the smart growth component of the Regional Master Plan (RMP) identify existing developed areas capable of sustaining redevelopment activities and investment [N.J.S.A.13:20-11(6)(a)]. The identification of Existing Community Zones in the RMP only identifies areas that *may* have additional development potential, pending further study. The RMP falls short of identifying specific areas or sites that are actually capable of sustaining increased development/redevelopment. The first version of the RMP focused significantly on identifying areas where growth should not occur; any revision of the RMP should focus on identifying and expanding areas and sites where growth could occur.

The Act requires also that the smart growth component identify undeveloped areas in the Planning Area which are not significantly constrained by environmental limitations that are located near or adjacent to existing development and infrastructure that could be developed [N.J.S.A.13:20-11(6)(c)]. Specific undeveloped parcels with these characteristics should be identified in the RMP, including those that are *near or adjacent to, existing development and infrastructure that could be developed.* The Act calls for an identification of developable sites beyond sites already developed, i.e. areas where infrastructure is nearby but does not yet exist, where growth expansion may be accommodated in proximity to existing development. The RMP should be amended to include an analysis showing how Existing Community Zones might be logically expanded to accommodate local/regional economic and residential development needs. The Highlands Council should work with related municipalities on this analysis. Any proposals for additional or increased development should only be included if supported by the subject municipality; i.e. through master plan and/or ordinance reference.

The concept of “sustainable” economic development as identified in the RMP focuses on agriculture, eco- heritage and agri-tourism. These activities represent only a small part of the regional economy. Alone, they are incapable of producing the number and type of jobs necessary to sustain the population already existing in the region or maintain Highlands Region property values. And, as noted, while the RMP supports the concept of redevelopment, it fails to identify specific sites (greyfields, brownfields, underutilized properties, vacant infill properties, etc.) where this may occur.

The smart growth section of the RMP should amended to include specific brownfields, greyfields, underdeveloped areas, existing (not designated) town centers and commercial corridors where increased economic development/redevelopment may be accommodated, in both the Planning Area and the Preservation Area. The identification of a few “Highlands Designated Centers” is inadequate to address regional economic needs. The existing plan and regulations focus on preservation and the prevention of development; the RMP should be amended to identify specific areas and sites within the Highlands

Region, including the Preservation Area, where increased redevelopment, infill development and increased densities may be accommodated. Any locations recommended for growth should be coordinated with and vetted by the affected municipalities and should be consistent with their master plans and /or zoning ordinances.

The Act requires a transportation component of the RMP that shall include projects to promote a “sound and balanced transportation system” [13:20-11a(5)]. The RMP provides general support for mixed-use development and the concept of transit villages, but a balanced plan for meeting transportation needs in the region is not provided. The RMP does not adequately analyze present or future transportation needs of the region, the impact of additional traffic passing through the Highlands Region from and to employment centers within or outside the Highlands Region, or supply comprehensive recommendations for addressing those needs.

The introduction of the RMP should acknowledge that not all development or activity in the Highlands is subject to the provisions of the Highlands Act and therefore is not subject to the Highlands RMP or any other mandate, guideline, provision or standard of the Highlands Council. Activities that do not achieve the status of “Major Highlands Development” are exempted by the Act. The 17 specified exemptions from the Highlands Act are similarly not subject to the Highlands RMP or Highlands Council decisions. The Plan should acknowledge up front the limitations of the Highlands Council and those activities that are exempt from the RMP. The recognition of these exemptions is necessary for implementation of the Plan in both the Preservation Area and Planning Area. The RMP should acknowledge that municipalities are required to maintain their underlying non-Highlands plans and development regulations for developments that are exempt from the Act and the RMP.

The introduction should similarly describe the relationship of the Act and the RMP and the various related RMP requirements, e.g. Major Highlands Development, Highlands Applicability Determinations, Highlands Preservation Area Approvals, Highlands Resource Area Determinations, Waivers for Redevelopment, Takings. A partial discussion of these relationships is currently buried at the end of the document.

The RMP should include a side by side summation describing the standards and requirements **mandated for compliance with the Highlands Act** and the **additional standards and requirements and model implementation regulations created by the Highlands Council**.

REGIONAL ANALYSIS

The RMP currently calls for refined estimates on Net Water Availability (page 164). Water supply data and estimates of water utility capacity should be revisited as part of the RMP monitoring “reexamination”. The current plan relies on water supply allocation as an estimate of ultimate water utility capacity. Estimates should not be used to identify the actual safe yield of a water source as they may over-or under estimate this safe yield. The Council should continue to work with the NJDEP to determine safe yield in order to more accurately reflect actual versus perceived water deficits. The existing RMP uses

peak monthly demands from years 2000 through 2004 to project water use demand. The RMP (and associated Utility Capacity Technical Report) should be updated to reflect a broader and more recent range of demand estimates and to make changes to water capacity calculations as necessary.

With regard to the establishment of septic system baseline nitrate levels, the RMP states that the “existing sampling data for nitrates are insufficient to establish the variability of background nitrate levels thorough the Highlands Region, particularly in areas that have limited development and limited ground water quality data.” (page 89) Recognizing the deficiencies in the data, we expect the Council to welcome independent data that may be provided, even if such data shows errors in the original assumptions or an ability to increase the number of septic systems in the Region, particularly as the Council has developed a very conservative model in the development of allowable septic systems. As pertains to this issue, what has the Council done to increase or improve its data since the adoption of the existing RMP in 2008?

The discussion of the Highlands transportation system references the use of a “Highlands Sub-Area model” to determine existing vehicular travel patterns and traffic conditions in the Highlands. (page 98) The results of this modeling are not included in the RMP so there is no ability to review these in relation to RMP proposals. In addition, the base year for this modeling was 2002, suggesting that an update is appropriate.

In its description of zoning, the RMP states that “current zoning places more than two-thirds of non-residential floor space in areas that are inconsistent with the State Development and Redevelopment Plan.” (page 106) The State Development and Redevelopment Plan is 14 years out of date and its replacement, the State Strategic Plan has not been adopted by the State Planning Commission. The current draft plan eliminates the Planning Area concept entirely, opting for a criteria based evaluation of appropriate land use. The amended RMP should mention that the current State Plan is outdated and that the draft plan will be criteria based.

The discussion of landowner equity (pages 124-126) hinges largely on the promise of the Transfer of Development Rights concept included in the Act and unfulfilled promises of increased funding from Trenton for the preservation of lands in the Highlands Region. Since 2004, not one community anywhere in the State of New Jersey has chosen to become a “receiving community” for Highlands Development Credits, despite a number of communities conducting TDR cost benefit analysis with grants from the Highlands Council. The RMP should recognize that the concept of TDR to produce meaningful compensation has been a failure and at best, may someday play a minor role in addressing equity, and that a steady funding source dedicated to compensating Highlands Preservation Area landowners for the significant reduction in their properties’ value must be addressed by the State Legislature.

The Council should empower itself, to the extent possible, to grant waivers from the provisions of the RMP where issuing such a waiver can be shown to advance the public health and/or safety and/or promote the general welfare. The ability to grant waivers would be limited to requirements unique to the RMP. In revising the RMP, the Council

also has the power to recommend changes to the Act including the recommendation to expand the consideration of waivers from the Act on the basis of promoting the general welfare. Recommended changes to the Act are addressed later in this memorandum.

GOALS, POLICIES AND OBJECTIVES

Objective 1H3c - Concerning Land Preservation, the RMP proposes coordination with NJDEP regarding the review of applications for Green Acres diversions for consistency with the RMP. The language should be amended to ensure that coordination with the RMP is not used to discriminate against Green Acres applications of Planning Area municipalities not conforming to the RMP.

Policy 1H41 recommends establishment of dedicated sources of funding for land preservation and stewardship in the Highlands Region, including a Highlands water use fee. This statement should be expanded to direct that money from this or any such related fee be used exclusively for Highlands land preservation and compensation purposes.

Policy 1I2 requires conforming municipalities and counties to identify and delineate existing preserved open space, including easements. There is currently no comprehensive inventory of easements and few local governments maintain an easement inventory. The Council should develop this inventory or provide funding for its development.

Policy 2M2A supports the identification of “innovative technologies that may be appropriate for the design, installation, and maintenance of on-site wastewater treatment systems to minimize impairment to ground water or surface water quality due to elevated nitrate concentrations and other pollutant loads from septic systems provided the systems meet the minimum standards of N.J.A.C 7:9A.” Where innovative technologies are proposed that would improve septic treatment, the Council should permit the consideration of waivers for increased septic density in recognition of the use of improved and more expensive technologies.

Policy 3E1 – Under this policy, technical guidelines for the preparation of a Farmland Preservation Plan Element are to be developed by the Highlands Council for municipal and county master plans. Many counties, including Morris, have developed Farmland Preservation Plans in conformance with existing State guidelines. No county or other entity that has developed or is developing a plan in accordance with State standards should be required to amend or alter their plan based on the RMP. If there are special considerations in the Highlands Regions, the Highlands Council should work with the SADC to include such considerations in the State guidelines.

Objectives 5A2a and 5A2b support an increase in transferring freight by rail and the reactivation of abandoned freight lines. In keeping with these policies, the Highlands Council should also support the acquisition of associated rights of way necessary for new rail sidings for on and off loading, and support the issuance of waivers from the RMP and Highlands Act requirements to allow these necessary modifications to occur.

Goal 5B and Policies 5B1, 2 and 3 require the maintenance of the existing Highlands roadway system level of service without the use of infrastructure that could trigger additional development in areas “not appropriate for growth inducing land uses.” In Preservation Area and conforming Planning Area municipalities, roadway capacity improvements will not generate growth due to the extraordinary limitations and restrictions placed on all land development and natural resource disturbance. Regarding Policy 5B2 and 5B3, there is no need to examine the growth inducing impacts of roadway improvements in conforming areas since “inappropriate” growth impacts are eliminated by virtue of conformance with the multitude density and natural resource restrictions.

Goal 5D supports multi-modal transportation improvements provided there is no adverse impact to ecosystem integrity. This language should be changed to encourage a *minimized* adverse impact on ecosystem integrity and community character as **any** increase in transit or transportation infrastructure must have some impact. For example, adding new park and ride lots along major corridors such as Route 80 and Route 10 and expanding parking at existing transit stations is essential to increasing transit, but this may have some adverse impact to other goals in the RMP. The impacts of different improvements must be weighed against the various goals of the RMP.

A policy should be added at 5D and in the Transportation Programs section to provide specific support for the addition of passenger and freight rail infrastructure expansion, the reactivation / creation of additional train stations and maximization of new commercial development linked to freight rail. This would increase transit ridership, reduce mobile source pollution, and reduce truck traffic and associated congestion in the Highlands. Expansion of services would not be growth inducing due to other restrictions and policies contained in the RMP and NJDEP Highlands rules and regulations.

Objective 6G4b: requires counties to use a Highlands Build-out model or equivalent to prepare a utilities plan element of the county master plan and evaluate available development capacity based on lands, resources and utilities. To the extent this applies to the entire county, the Council should recognize that land use control is not the purview of counties. The Highlands Council (not counties) should evaluate available development capacity for all conforming areas, particularly as the Council will have the final review authority in these areas. In particular, the Council should identify where there is infrastructure in the Existing Community Zone that would allow increases in development/redevelopment, either as part of a RMP amendment or as a stand alone technical document. The availability of capacity should be matched to undeveloped and underdeveloped (as per local zoning) sites in the Existing Community Zones.

In Morris County, almost all County-owned lands in the Preservation Area are parks and recreation facilities or otherwise dedicated public use with no significant development potential. The development of a utilities plan element is unnecessary since any projects meeting Highlands disturbance thresholds in the Preservation Area must be submitted to the Council for its review.

Policy 6H3 requires conforming counties to include clustering into site development programs. Counties do not regulate private land development and county land development standards are limited to traffic and drainage.

Goal 6I Policies (1 – 3) require counties to include cluster requirements in their design regulations; however, county land development standards do not control the use of private land. County land development standards are limited to traffic and drainage.

Policy 6N5 requires counties to incorporate programs for community and neighborhood design that supports a variety of housing options, mixed uses, redevelopment, adaptive reuse of historic sites and structures and infill development in their master plans and development regulations. The Council needs to recognize that counties do not regulate local land use and amend the RMP to remove the mandates pertaining to county regulation of local land use and development.

Policy 6N6 requires counties to include community outreach and collaboration from the local population in the development of planning and design regulations. See comment re: Policy 6N5.

Policy 7A2 seeks to maximize preservation of Preservation Area properties outside the Existing Community Zone or a Highlands Redevelopment Area “with emphasis on properties with the highest Highlands “Conservation Priority scores.” This same language appears in the municipal model Highlands element. If conforming local or county government will be required to use these scores as part of the basis for selecting local open space or farmland preservation applications for approval, this should be clearly indicated in the RMP in unambiguous language.

Policy 7B7g calls for review and assessment of the Highlands TDR Program five years after adoption of the RMP. Has there been an evaluation of the Highlands TDR program? If so, the findings should be appended to a revised RMP.

Goal 8A.1 calls for the maintenance and expansion of the existing job and economic base by promoting appropriate, sustainable and environmentally compatible economic development throughout the Highlands Region. See comments on General Content. There is no true smart growth / economic component to the current Plan. Any revision should focus on identifying specific areas and sites where RMP / Act restrictions should may be lessened in order to accommodate reasonable growth consistent with municipal and use plans and zoning. The Highlands Region cannot be economically supported by tourism and agriculture alone.

General Goals / Objective / Policy Comment: The goals and objectives of the RMP should be reexamined with consideration of the different roles and powers of municipal government versus county government. Nearly all land use control is with municipal government. County development regulations are limited to impacts on county roads and drainage facilities.

PROGRAMS

Page 242 - Scenic Resources Tier, items 1-6 attempt to define appropriate “scenic” design characteristics for all lake communities in the Highlands. These one-size-fits all requirements may conflict with actual community character. Scenic standards for these areas need to be developed by municipal governments to address the unique character of each lake community; the Highlands Council should not be establishing these standards independently.

Page 249-250 The Efficient Use of Water – This section promotes improving efficiency of water use in Highlands Water deficit areas and in the Highlands Region. The section, however, does not address the need for conservation, recycling, reuse and updates to infrastructure **outside of the Region affecting Highlands water resources.** It does little to prevent further consumptive and depletive uses in the Highlands Region if municipalities and water users outside the region are not also required to conserve water. Even though these areas are outside the geographic authority of the Highlands Region, the Council should include in this section a clear support for water conservation measures by the end users of the water. Water conservation, recycling and infrastructure upgrades by the end users located outside the Highlands should be addressed since the consumers of the water are equally responsible for the impacts on Highlands water resources.

Page 293 – Historic Resources – A requirement of this section is that: “Counties shall, as a requirement of Plan Conformance, address historic transportation infrastructure within their county master plan and encourage them to develop a program to preserve the integrity of historic bridges that are part of their transportation system.” While preservation of such facilities may be desired, their treatment must ultimately hinge on public health, safety and welfare needs, including the need to safety accommodate changes in vehicular traffic. The RMP should acknowledge this is the primary consideration as pertains the use and maintenance of all county bridges.

Page 294 – Historic Preservation Education and Outreach – This section proposes that the Highlands Council develop or adapt a historic preservation manual for the use of Highlands municipalities. The Council should focus on its core mission, and instead of creating a new “Highlands” design manual, should provide grants to municipal historic commissions for use in developing community appropriate guidelines.

Page 302 – Overview of Transportation Projects Review – Item #5 requires review of “Growth-inducing impacts regarding new land use, new residents, and new permanent employment which could have secondary growth implications, or greatly expand transportation infrastructure capacity, especially in areas with high natural resource values and limited capacity to support human development.” Conforming municipalities and counties will be unable to develop land in a manner inconsistent with the RMP; therefore this review is unnecessary. See previous comment re: goal 5B.

Page 335-341 – Housing Affordability - The Council should work with COAH / and or the court appointed equivalent, to develop revisions to the affordable housing rules that

would enable greater flexibility and shared housing agreements between Highland Region communities on a voluntary basis to help them meet their affordable housing needs. The reduction on the availability of “developable” land and infrastructure capacity resulting from the Highlands Act, NJDEP Highlands Rules and Highlands RMP should be considered in the determination of housing obligations.

Pages 370 – 372 County Conformance – County conformance is only briefly described in the RMP; the majority of requirements are established in model elements, model regulations and other documentation created by the Council. The current process is overreaching and untenable and should be eliminated.

RECOMMENDED CHANGES TO THE COUNTY CONFORMANCE PROCESS:

- a) Recognizing that land use and development are almost exclusively the purview of municipal government, the Council should substantially reduce the requirements for county conformance. Changes should provide a method by which a county may acknowledge the Act and RMP without need for substantial County master plan amendments, the creation of new plan elements or the adoption of self-regulatory documents/ordinances. These changes are within the purview of the Highlands Council, since “conformance” is not defined by the Highlands Act, but instead has been defined by Highlands Council through its conformance process.
- b) The model Highlands elements for counties should be amended to *eliminate the requirement for counties to adopt further master plans, eliminate requirements for future county studies or other statements concerning the use or development of county owned lands and facilities and eliminate the requirement that the county adopt self-policing land use regulations/regulatory documents*. Conformance can be redefined by the Highlands Council to eliminate these requirements through amendment of the RMP and associated conformance documents. If these changes were made, a county could conform by simple acknowledgement of the Highlands Act and RMP via a concise master plan amendment. This change would eliminate the need to repeat each RMP goal and objective, or incorporate each current Highlands resource map in the RMP. This county amendment could defer to the RMP where county goals/plans conflict with the RMP for the Preservation Area. A county master plan could also incorporate the Highlands resource maps for the Preservation Area by reference.

Highlands conformance procedures that currently require the counties to prepare future plans, inventories and studies for full conformance are unnecessary and overreaching. The vast majority of county-owned lands are already dedicated to parks and recreation. County compliance with Highlands Act submission requirements gives the Council oversight to review and approve county projects in the Preservation Area (e.g. capital project, Major Highlands Development). As part of this review, the Council has the opportunity to request additional environmental or capacity-based information for specific projects proposed by the county. The Council already maintains an interactive mapping database of critical

Highlands resources which can be used by counties to inform the design of recreation or other similar projects on county land, where applicable. The county should not be expected to conduct further environmental studies and inventories for all county-owned lands.

- c) Concerning the Model Regulations for the Development of County Lands and Facilities; these are not development regulations *associated with the county master plan* as referenced in the Highlands Act, but a mechanism created by the Council to require counties to self-regulate use of their lands. The Act already requires that county capital projects be submitted to the Council for review and approval; requiring the adoption of self-policing regulations is both unnecessary and duplicative. As an alternative, the county could acknowledge in a master plan amendment, the Highlands Model *Standards* for the Development of County Land and Facilities in the Preservation Area, provided these are modified to eliminate the reference to county commitment to engage in further plans, studies or inventories. The master plan amendment would also acknowledge the *revised* RMP (as noted above). The standards would be used as *a guide* by the county when considering any qualifying capital project, in much the same way that the county must consider DEP standards (e.g. Freshwater Wetland regulations) when currently developing property. The reporting requirements of the Act will ensure that the Council has the opportunity to make sure Preservation Area standards are maintained.

The Council has already recognized that the adoption of bulk land use ordinances and regulations is not always necessary. The Council has allowed the use of “checklist” ordinances by municipalities in lieu of bulk land use “overlay” ordinances when development potential is severely limited. (See [Municipal Preservation Area Checklist Ordinance](#)) Given that the majority of county-owned properties in Morris County are preserved parklands with severely limited development potential, an amended, but similar approach may be applied to county lands. Again, the Act already requires the submission of capital projects and Major Highlands Developments to the Highlands Council for its review and approval. This would eliminate the requirement for the county to adopt bulk ordinances for the self-regulation of county-owned property.

Note: The county is not required to adopt and incorporate NJDEP standards within its land development standards, or enact formal agreements to conform its actions to NJDEP requirements. Also, Highlands conformance standards do not require municipalities to adopt similar regulations for the use and development of municipally-owned land. Municipal lands are no more bound to local zoning laws than county lands are bound to county development standards.

- d) The Highlands Council model resolution requires a “completeness” review for development applications to the county. The Council should be aware that the County Planning Enabling Act (N.J.S.A 40:27-1 et seq.) does not provide authority to the county to adopt a completeness checklist for the review of development applications. The county planning board must render a decision

within 30 days of receipt of an application. If the County does not issue a report within 30 days, the application is automatically approved, unless a 30 day extension is obtained from the municipality with the approval of the applicant (N.J.S.A. 40:27-6.7). The County does not have authority to withhold action pending action by the DEP or Highlands Council.

The Morris County Planning Board receives applications for review through its municipalities. Municipal submission requirements for conforming municipalities should be amended to ensure applications in the Preservation Area are only submitted to the county via municipalities. Municipalities have the power to withhold review pending receipt of checklist items and it is with the municipalities that Highlands checklist requirements should reside.

SUGGESTED CHANGES TO THE HIGHLANDS ACT

While the Council has no direct ability to change provisions of the Highlands Act, the Highlands Council has the power to include recommended changes to the Act within its report concerning the RMP monitoring program, or within an amended RMP. The Council should take this opportunity to reflect on the eleven years of direct experience implementing the Act and consider what changes should be made based on this experience.

Expand Exemptions to address other public needs.

Implementation of the Act restricts the ability of municipal and county governments to address public purposes for which they are responsible. The “Exemptions” section of the Highlands Act should be expanded to exempt all lands owned by local and county governments that are used to address public needs. Specifically:

Exempt Municipal and County Lands, Government Facilities

Millions of dollars have been invested in obtaining land to meet regional and local recreation needs of Highlands Region residents. Highland standards, (particularly those related to impervious coverage, stream buffers and linear development) have the potential to make creation of even minimal recreation facilities and related accessory uses on these tracts exceptionally difficult. An exemption should be provided to reinstate the public investment in these areas and allow them to be used as intended, i.e. to advance the general welfare. Adherence to existing non-Highlands NJDEP regulations offer sufficient environmental protections for these recreational use areas.

Similarly, government facilities and structures, emergency services and related activities should be exempted. Local governments should not be impeded in their ability to serve required public needs and provide public services. These services and associated facilities/operations cannot be “transferred” to other areas and still serve their communities. Needed public improvements must not be stopped, hindered and made more costly to local taxpayers by Highlands regulations. Adherence to existing

non-Highlands NJDEP regulations provide sufficient environmental protections for these public use/public service areas.

All publicly owned lands, facilities and activities of local and county government or other public/quasi-public entities (included first responders), including, but not limited to, libraries, recreation facilities, fields and structures, parks, community centers, senior citizen centers, accessory structures, and municipal complexes should be exempted from the provisions of the Highlands Act.

Other Potential Exemption amendments: Schools, special needs and affordable housing

Schools located in the Preservation Area must be allowed to expand to serve existing and future needs. The creation of education facilities to serve existing and anticipated development, the improvement of inadequate structures and the elimination of overcrowded schools are of paramount importance in our communities.

When in compliance with local zoning, Highlands regulations should not restrict special accessory housing designed to meet the needs of our elderly. The elder population continues to rise, including the very old and frail. Of both economic and moral necessity, homes are being expanded to include accessory dwellings to accommodate aging parents in dignity while maintaining a mutual sense of independence. Those creating legal ECHO (Elder Cottage Housing Option) housing, mother-daughter apartments or other such accommodations designed for parents and children coping with these responsibilities should not be burdened by the NJDEP with additional fees, loss of homeowner exemptions or bureaucratic red tape.

Similarly, group homes designed to meet the needs of the developmentally disabled, victims of domestic violence and community residences for the terminally ill are already recognized by law as worthy of special consideration and are treated as “single family dwellings” in our communities. The difficulties and costs borne by the nonprofit and charitable organizations is creating these facilities should not be added to by the NJDEP simply because they may be technically defined as “multi-family”. Current Highlands rules may allow the NJDEP to exclude or impede the development of these special homes, creating an uncertainty that is already impacting group home providers.

Consider the exemption of municipal and non-profit projects that provide 100% low and moderate income housing.

Allow Override Opportunity

The Act presently requires within the Preservation Area that any capital or other project of a State entity or local government unit that involves the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more shall be submitted to the Council for review. In the case of a project of a State entity, if

the Council disapproves the project, the head of the appropriate principal department of State government with primary responsibility for the project may override the Council's disapproval upon making a written finding, which shall be submitted to the council and the Governor, that the project is necessary for public health, safety, or welfare.

An blanket exemption for local and county government lands would most efficiently serve the overall public interest; however if this is not provided, municipal and county governments should at least be given the same right of appeal to the Governor for projects necessary for the public health safety and general welfare. The current Highlands waiver process does not allow the “general welfare” as a condition for consideration, which needlessly restricts the considered review and possible accommodation of other legitimate public welfare concerns by municipal and county governments.

Focus on the core mission of the Act – Water Protection and related Planning.

The complexity of regulation and cost of conformance may be reduced if the Highlands Act were to be amended to focus on its core issue, the protection of water resources and associated smart growth/preservation land use policies. Historic Preservation, Scenic Resources, Transportation policy etc, are important, but efforts to address these issues and others in the Act detract from the core mission of the Act and the Highlands Council. The burden on the Council and on local government would be lessened if the Act and RMP focused on water supply and quality. There are other state agencies that can address non-water issues that the Council can work with cooperatively.

Increase flexibility for Transportation Improvements.

Reconsider the prohibition of new travel lanes in the Highlands. Much of the Highlands Region, including portions of the Preservation Area, is highly developed. Even if all new development were halted, traffic through the Highlands will still increase from the rising number of intra and interstate commuters who cross the Highlands each day. Since further development in the Highlands Preservation Area is strictly controlled by the Act, the presence of enhanced transportation infrastructure would not result in increased density or sprawl development in the Preservation Area. Restrictions on roadway improvements that result in new capacity lanes should be reexamined and greater flexibility considered to address the existing traffic concerns within the Region, recognizing that pass through traffic is likely to increase even if development in the Region itself is halted.

Increase flexibility to grant waivers from the Highlands Act and RMP.

Waivers from the provisions of the Act are currently permitted for 1) public health and safety, 2) redevelopment and 3) to avoid a taking. Section c.12:20-33 b.(1) should be amended to allow waivers necessary to protect the public health, safety *and welfare*, which would mirror the Municipal Land Use Law and provide greater flexibility to the

Highlands Council and the NJDEP in addressing unique land use conditions as they occur.

While the extension of sewers to serve certain areas may be prohibited by the Highlands Act, it is within the power of the Highlands Council to include recommended changes to the Act within the RMP. The RMP should support economic expansion through the extension of sewers as necessary to areas that are already substantially developed, but without sewer service. The extension of infrastructure would be particularly appropriate in areas that are commercially and industrially zoned, contain existing commercial/industrial development, with nearby undeveloped/underdeveloped infill sites, commercial corridors and existing mixed use communities. The RMP could also suggest the extension of sewer service be allowed to serve older, relatively high density residential communities in the both the Planning and Preservation Area. There are older residential areas, originally developed on septic systems that due to age and small lot sizes, would be better served by sewer. The RMP should recognize communities where sewer service would correct potential/existing septic system problems.

The NJDEP and the Planning Area

The Act requires the NJDEP to adopt rules, regulations, environmental standards and permitting procedures for the Preservation Area of the Highlands, stating specifically that they should not be applied in the Planning Area. (C.13:20-31) The clear intent was that the Act and the RMP apply to the Preservation Area only unless a municipality or county in the Planning Area chose to voluntarily conform.

However, the NJDEP adopted Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38 et seq.), which also include an intent by the NJDEP to not issue “any approval, authorization or permit” for the *Planning Area* where the Department determines that it would be incompatible with the resource protection goals of the RMP [7:38-1.1 (h)]. This restriction is inconsistent with the intent of the Highlands Act.

No state agency, including the NJDEP, should be allowed to amend its permitting or regulatory policies to require consistency with the RMP in the Planning Area or apply amended provisions unless a Planning Area municipality has voluntarily conformed to the RMP, and then, only for as long as the municipality agrees to maintain that conformance. Morris County’s position in this was expressed in Freeholder Resolution #35 in July of 2008.

Stormwater Management/Pervious Pavement

As part of the low impact development program, the RMP recommends the use of pervious pavement to improve groundwater recharge. (Page 346) Since the Highlands Act and the NJDEP Highlands rules treat pervious pavement as impervious surface, the RMP should recommend a change in the Highlands Act and NJDEP definition of impervious surface that would support the use of pervious pavement. Under the current definitions, there is no benefit to be gained by a developer for its use, so it is unlikely to be employed, despite the advantages noted in the RMP.