



FOR DISCUSSION PURPOSES ONLY



Highlands Water Protection and Planning Council

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SECOND ROUND OF THE HIGHLANDS PARTNERSHIP
Addressing Housing Needs and Obligations in the Highlands

During the first set of regional meetings conducted by the Highlands Council in May this year, municipalities and counties repeatedly raised the issue of meeting housing needs, including affordable housing obligations, as one of the primary issues of concern in the Highlands Region. In accordance with the Highlands Water Protection and Planning Act (“Highlands Act”), the Highlands Council created an advisory process for elected and appointed representatives of Highlands communities, the “Partnership”, to provide input into the crafting of the Regional Master Plan.

The Highlands Council prepared a Partnership Report to discuss the major issues (see <http://www.highlands.state.nj.us/OutReach.html>) raised by local Partnership representatives. While the Partnership Report was designed to capture local concerns, the following abstract on housing needs and obligations has been prepared for distribution at the second set of Partnership meetings on October 18th, October 19th, and October 20th in order to provide some insight into the actions taken to date by the Highlands Council and the issue the Council is considering regarding housing in the Highlands.

Grants to plan for Affordable Housing Obligations

The Highlands Council has taken the initiative to directly address affordable housing obligations in the Highlands Region by approving a \$600,000 grant program. This grant program provides cost sharing opportunities to all 88 municipalities in the Highlands Region to encourage and fund the planning efforts necessary to address affordable housing obligations. To date, \$282,500 in grants has been approved by the Highlands Council for 31 municipalities in the Highlands Region.

Providing a grant program for municipalities in the Highlands Region is important because many are required to submit a revised affordable housing plan before December 20, 2005 in order to remain under the jurisdiction of the Council on Affordable Housing (“COAH”). Municipalities in the Highlands Region were sent a grant application package for two grant programs. The first grant program authorizes a planning grant of up to \$7,500 to reimburse municipal expenses needed to meet the December 20, 2005 third round deadline established by COAH. Grants are also available to address third round obligations for those municipalities where the substantive certification is set to expire at a later date.

In addition, the Highlands Council has approved a planning grant program for up to \$12,500 for those municipalities which presently do not have an approved substantive certification from COAH. This grant is important in order to provide an incentive to those municipalities that have, for various reasons, not prepared a fair share affordable

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housing plan. The Highlands Council has also included a grant program for the evaluation of innovative designs, green building initiative, and rehabilitation projects for affordable housing in Highlands municipalities. This program will provide municipalities with model design layouts which may be used to foster the creation of affordable units.

Housing as an element of the Regional Master Plan

The Highlands Council is presently in the midst of the preparation of the Regional Master Plan (“RMP”). Municipal conformance with the RMP requires the submission of revisions to the municipal master plans and land use ordinances. Implicit in this submission is the need to revise the Housing Element of the municipal master plan. The Highlands Council is presently considering which elements and standards of the RMP will be required submissions for conformance with the RMP (“Plan Conformance”). The Highlands Council may decide that affordable housing planning is a required element of Plan Conformance but that the method of conformance will be entirely within the discretion of the municipality. On the other hand, the Highlands Council may decide to require regional solutions to affordable housing obligations. Before resolving these issues, the Highlands Council is seeking municipal, county and public input.

In addition to soliciting input on affordable housing issues, the Highlands Council is seeking input on the need to address a full range of housing needs for the Highlands Region. This includes the needs to address low and moderate income ranges as well as middle and upper income housing needs. In addition, the RMP should address a variety of housing types such as rental housing, multi-family housing, age-restricted housing, and supportive and special needs housing. The Highlands Council welcomes input on the mechanisms that can be incorporated into the RMP to address the need to have a full range of variety and choice in housing opportunities in the Highlands Region.

Impact of the Highlands Act on Affordance Housing Obligations

The Legislature specifically addressed affordable housing obligations in the Highlands when it included language in the Highlands Act stating that the Act shall not affect the protections of substantive certifications or judgments of repose issued before the Highlands Act.¹ Accordingly, the Legislature preserved the immunity from builder’s remedies for those municipalities which have addressed their affordable housing obligations.

The Highlands Act also includes a provision that provides for a coordinated implementation of COAH’s review of affordable housing obligations where COAH is to consider the Highlands RMP prior to making final determinations for all of the 88 municipalities in the Highlands Region.² The Legislature recognized the potentially profound impact on housing and population projections that may result from the creation of a plan that is premised on the sustainability of the Highlands ecosystem and a

¹ “Nothing in this act shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to the date of enactment of this act.” N.J.S.A. 13:20-23.b.

² “The Council on Affordable Housing shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the ‘Fair Housing Act,’ P.L.1985, c. 222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999.” N.J.S.A. 13:20-23.a.

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comprehensive approach to the protection of the water and other natural resources of the Highlands Region.³ Accordingly, the Highlands Council and COAH are coordinating their respective planning and oversight responsibilities for the Highlands Region.

It is clear that municipal plans for affordable housing may require modification after the development of the resource assessment in the RMP in June of 2006. The impact of the RMP on a municipal Housing Element and Fair Share Plan will vary depending on the degree of Highlands resources within each municipality. Those municipalities entirely within the Preservation Area or those having a large portion of land within the Preservation Area will likely require an amended Housing Element and Fair Share Plan. For the Planning Area, conformance with the RMP is voluntary and thus the impact of the RMP on a Housing Element or Fair Share Plan will be dependant upon the municipal interest to come into conformance with the RMP.

Once the Highlands Council adopts the RMP, there is a mandatory planning process for each municipality and county located wholly or partially in the Preservation Area. Revisions to municipal master plans and development regulations and revisions to county master plans and associated regulations are required for land in the Preservation Area in order to conform them with the goals, requirements, and provisions of the RMP. The Legislature included a grant funding process in the Highlands Act in order to provide financial assistance for the revisions to master plans and land use ordinances.

In the Planning Area, the Highlands Act creates a voluntary process where municipalities and counties have the option to petition the Highlands Council for Plan Conformance. It is important to note that for both the Preservation Area and Planning Area, obtaining Plan Conformance approval from the Highlands Council is deemed to have the equivalent legal effect as having those plans endorsed by the State Planning Commission. This issue is important to those municipalities that have received a grant of substantive certification from COAH and are required to obtain initial Plan Endorsement by the three-year anniversary review. Because the Highlands Act specifies that Plan Conformance is equivalent to Plan Endorsement, municipalities in the Planning Area will have the option of either Plan Endorsement through the State Planning Commission, if they choose not to petition for conformance with the RMP, or Plan Conformance through the Highlands Council.⁴

³ The Highlands Act creates a master planning process that prioritizes the protection and enhancement of the natural resources in the Highlands Region. N.J.S.A. 13:20-10. The RMP must first conduct a resource assessment in order to establish the extent and intensity of land use controls that are necessary to maintain the ecological values of the Highlands Region. N.J.S.A. 13:20-11. This resource assessment will “determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain.” N.J.S.A. 13:20-11. Based on this resource assessment, the RMP must then address a smart growth component which assesses the “opportunities for appropriate development, redevelopment, and economic growth” and includes a land use capability map identifying areas for protection, development, and redevelopment. N.J.S.A. 13:20-11.

⁴ It is important to note the distinction between Initial Plan Endorsement and Plan Conformance. Initial Plan Endorsement provides a means to ensure that fundamental planning documents, including the master plan, are coordinated with the State Plan. Plan Conformance requires a more detailed conformance with the RMP where the master plan and any associated land use regulations conform with the goals, requirements, and provisions of the RMP.