



# The New Jersey Highlands Water Protection and Planning Council



2008 Annual Report



JON S. CORZINE  
Governor

## State of New Jersey

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



JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

### *A Message from the Chairman and Executive Director*

Dear Friend of the New Jersey Highlands:

It is with great pleasure that we present to you the New Jersey Highlands Water Protection and Planning Council's Annual Report for 2008.

It was a year of tremendous progress and accomplishments. It began with public comments and hearings on the Highlands Regional Master Plan – *Final Draft* and ended with the Council's initiation of a \$7.5 million grant program to fund the activities of the 88 Highlands municipalities and seven counties considering conformance to the adopted Plan. We believe it was a very positive year for the future of water, the natural resources and the people of the Highlands Region.

The Highlands Council's major accomplishment in 2008 was the release of the Highlands Regional Master Plan which took effect on September 8, 2008, following its adoption by the Council on July 17<sup>th</sup> and Governor Jon S. Corzine's approval on September 5<sup>th</sup>. Also on September 5<sup>th</sup>, the Governor issued Executive Order 114 which provided further protection for the Highlands Region, guidelines for other state agencies to work with the Highlands Council and seed money for the Highlands Development Credit Bank.

On October 30<sup>th</sup>, the Highlands Council entered into a Memorandum of Understanding with the Council on Affordable Housing that clarified and simplified the process for Highlands municipalities seeking to comply with the mandates of both agencies. As a result, a majority of Highlands municipalities were granted an extension of nearly one year to file their Third Round Fair Share Housing Plans.

Additional accomplishments by the Highlands Council in 2008 include:

- The Council held 20 meetings in 2008 to discuss and resolve a variety of issues concerning completion and implementation of the Plan. All meetings, as well as those of various Council subcommittees held throughout the year, provided opportunities for input from the Highlands Council staff, State agency representatives and the public.
- Following the release of the Highlands Regional Master Plan – *Final Draft* in November of 2007, the Council convened an additional public comment period which lasted until February 28, 2008 and held three additional public hearings for the people of the Highlands, legislators, state agencies, and others with a stake in the future of this Region to voice their opinion on the revisions to the Plan. In all, the Council received more than 4,000 public comments on the *Final Draft* from over 1,000 individuals and entities.

- The Council staff attended numerous public meetings in more than 40 Highlands municipalities to present information about the Regional Master Plan and grants programs available through the Highlands Council, and to answer questions from local officials and members of the public.
- The Highlands Council jointly held an information session on November 10<sup>th</sup> with the New Jersey League of Municipalities that was attended by planners and professionals representing two-thirds of the municipalities in the Highlands Region.
- The Highlands Council created an Initial Assessment grants program, and distributed nearly \$735,000 in Initial Assessment Grants in 2008.
- The Highlands Council created the Highlands Development Credit Bank, and Highlands Council Member Scott Whitenack was appointed Chairman.
- The Highlands Act was the subject of several legal challenges in 2008. On December 9<sup>th</sup> a unanimous ruling by the Supreme Court of New Jersey upheld the constitutionality of the Act.

The year ahead promises to be challenging and exciting as the seven counties and 52 municipalities with lands in the Preservation Area must submit petitions to bring those lands into conformance with the Regional Master Plan by December 8, 2009. The Highlands Council will also distribute up to \$7.5 million to those municipalities and counties, and to Planning Area communities that have filed a non-binding Notice of Intent to conform to the Regional Master Plan, as part of its Plan Conformance Grants Program. The first phase of the Plan Conformance process is already underway as 73 of the 88 municipalities in the Highlands Region have submitted a Notice of Intent.

The adoption of the Highlands Regional Master Plan in 2008 represents the end of the beginning for realizing the vision and mandate of the Highlands Act. Implementation of the Plan is the challenge facing the Highlands Council in 2009. Protection of the resources of the Highlands Region is critical not just to the residents of the region, but also to those residents elsewhere in the state who depend on the Highlands for drinking water. The Council is already at work on the next step toward protecting New Jersey's future.

Sincerely,



John Weingart, Chairman  
New Jersey Highlands Council




Eileen Swan, Executive Director  
New Jersey Highlands Council



# Highlands Water Protection and Planning Council

**Chairman John Weingart**  
(D-Stockton, Hunterdon County)  
Associate Director  
Eagleton Institute of Politics  
Rutgers University

**Vice Chairman Jack Schrier**  
(R-Mendham, Morris County)  
Morris County Freeholder,  
Councilman, Mendham Township

**Treasurer William Cogger**  
(R-Chester Twp., Morris County)  
Mayor, Chester Township

**Kurt Alstede**  
(R-Chester, Morris County)  
Founder, Alstede Farms

**Elizabeth Calabrese**  
(D-Wallington, Bergen County)  
Bergen County Freeholder

**Tracy C. Carluccio**  
(I -East Amwell, Hunterdon County)  
Deputy Director,  
Delaware Riverkeeper Network

**Tim Dillingham**  
(I -Hopewell, Mercer County)  
Executive Director,  
American Littoral Society

**Janice Kovach**  
(D-Clinton Town, Hunterdon  
County)  
Former Council Member,  
Town of Clinton

**Mimi Letts**  
(D-Parsippany, Morris County)  
Former Mayor, Parsippany

**Deborah Pasquarelli**  
(R-Greenwich, Warren County)  
Former Committee Member,  
Greenwich Township

**Erik Peterson**  
(R-Milford, Hunterdon County)  
Hunterdon County Freeholder

**Glen Vetrano**  
(R-Hampton, Sussex County)  
Sussex County Freeholder

**Tahesha Way**  
(D-Wayne, Passaic County)  
Passaic County Freeholder

**Scott Whitenack**  
(D-Morristown)  
Former Chairman, Morristown  
Planning Board

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## *2008: The Year in Review*

### **Approval of the Highlands Regional Master Plan**

The primary accomplishment in 2008 by the New Jersey Highlands Water Protection and Planning Council was the completion and adoption of the Highlands Regional Master Plan. This comprehensive document lays out the goals, policies and objectives which, when implemented, will ensure that the mandates of the Highlands Act are

met. The Regional Master Plan was adopted July 17<sup>th</sup> by the Highlands Council at their 74<sup>th</sup> public meeting and was approved September 5<sup>th</sup> by Governor Jon S. Corzine. It took effect on September 8<sup>th</sup>.

The Highlands Region is an area of 859,358 acres located in the northwest part of the State, encompassing 88 municipalities in seven counties (Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren). In addition to supplying the drinking water to approximately



SEPTEMBER 5<sup>th</sup>, 2008 — Governor Jon S. Corzine approves the Highlands Regional Master Plan at Spruce Run Reservoir. Standing from left: Highlands Council Member Debbie Pasquarelli; New Jersey Department of Environmental Protection Commissioner Lisa Jackson; Highlands Council Member Erik Peterson; Highlands Council Treasurer William Cogger; Highlands Council Vice Chairman Jack Schrier; Highlands Council Member Janice Kovach; Highlands Council Member Tahesha Way; Highlands Council Member Elizabeth Calabrese; and Highlands Council Member Mimi Letts. Not pictured: Highlands Council Chairman John Weingart and Highlands Council members Kurt Alstede, Tracy Carluccio, Tim Dillingham, Glen Vetrano, and Scott Whitenack.

64 percent of the state's residents, the Highlands Region also contains large tracts of forests, working farms, and critical wildlife habitat.

The Highlands Water Protection and Planning Act divided the Region into two almost equal sections – the Preservation Area (414,959 acres), where conformance to the Highlands Regional Master Plan is mandatory and protections developed by the New Jersey Department of Environmental Protection took effect immediately, and the Planning Area (444,398 acres), where conformance to the Regional Master Plan is voluntary. Of the 88 municipalities in the Highlands Region: 5 are entirely in the Preservation Area, 36 are entirely in the Planning Area and 47 have lands in each area. To date, 73 of the 88 municipalities have filed a Notice of Intent to conform to the Highlands Regional Master Plan. While this Notice of Intent is non-binding in the Planning Area as specified by the Highlands Act, this impressive degree of participation amounts to over 90% of the lands in the Highlands Region.

As mandated in the Highlands Act, the Highlands Council developed a comprehensive Regional Master Plan to protect,

enhance and restore the significant natural resources of the Highlands Region. Most importantly, the Highlands Act requires that the Council safeguard the Highlands Region's water resources, which provide more than half of New Jersey with clean drinking water. The Regional Master Plan evaluates how best to protect the natural and cultural resources of the Highlands Region while striving to accommodate a sustainable pattern of regional growth. It provides a consistent framework upon which to base future land use decisions in a manner that fosters regional cooperation and community participation.

In preparing the Regional Master Plan, the Highlands Council first performed a resource assessment of the Highlands Region as mandated by the Highlands Act. For many of the Region's natural resources, the Highlands Council utilized a watershed-based assessment to evaluate resource integrity and protection needs. Because water moves downstream, any activity that affects the water quality, quantity, or rate of movement at one location can affect locations downstream. The watershed boundaries used for the analysis in the Regional Master Plan were 14-digit Hydrologic Units (i.e., subwatersheds or HUC14s). There

are 183 HUC14 subwatersheds that are located partially or entirely within the Highlands Region.

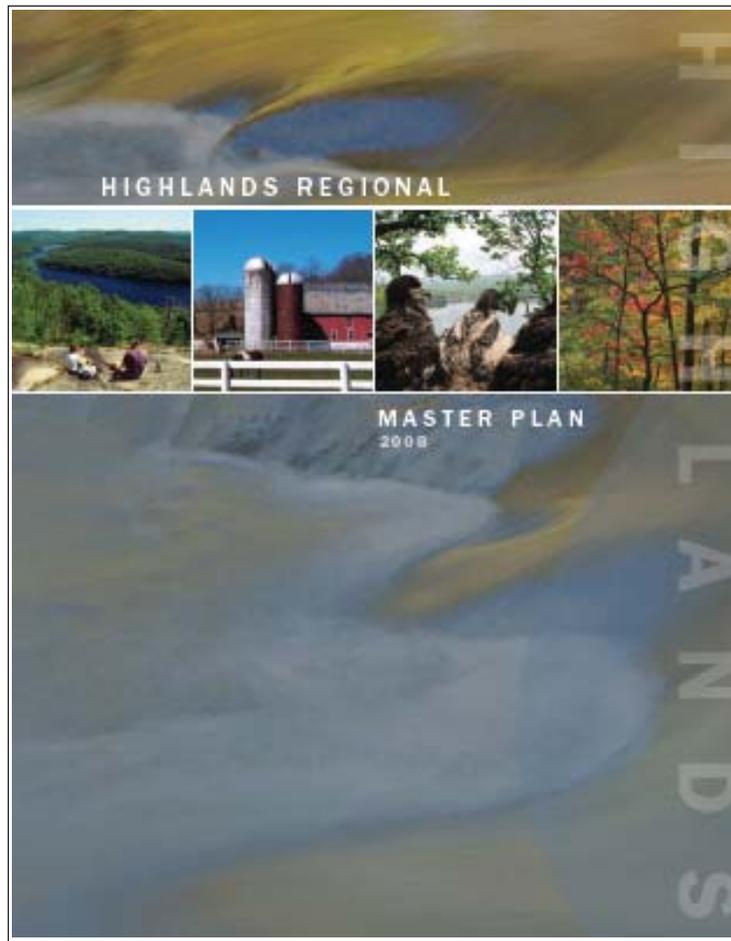
The Highlands Council analyzed the natural water sustainability of the Highlands Region to determine the amount of water required to protect aquatic ecological integrity and the amount “available” for water supply, and commercial, industrial, or agricultural uses. The analysis entailed using stream base flows as a surrogate for water sustainability because the protection of base flow is critical to maintaining healthy aquatic ecosystems and protecting potable surface water supplies, particularly during periods of drought. Base flow is the amount of ground water seepage into a stream, providing most of the natural stream flow during dry periods.

Furthermore, the Highlands Council utilized the results of the water resources assessment to identify those lands within the Highlands Region with significant natural and ecological resources. Indicators were used to measure the relative quality of a particular resource, such as ground water recharge, watershed condition, open waters and riparian areas, forests, critical habitat, and slopes. Areas with significant agricultural lands and important farmland soils were also evaluated. A determination was made as to their quality and importance to the Highlands Region.

Following the resource assessment, the Highlands Council used capacity-based planning to determine the amount and type of development that could be supported in the Preservation Area and the Planning Area to accommodate appropriate economic growth while ensuring the sustainability of the resources in the Region. Areas were identified based upon existing patterns of development with particular emphasis on areas that are currently served by existing water and wastewater infrastructure.

These findings were used to develop the Land Use Capability Map Series. Because of the tremendous amount of data collected, the Highlands Council created a series of maps comprising of 1) the Land Use Capability Zone Map, 2) the Land Use Capability Water Availability Map, 3) the Land Use Capability Public Community Water Systems Map, 4) the Land Use Capability Domestic Sewerage Facilities Map, and 5) the Land Use Capability Septic System Yield Map.

For the **Land Use Capability Zone Map**, 21 indicators were used to characterize the Highlands Region and to assign the most appropriate overlay zone classification. The Council combined regional planning with the best avail-



able science and geographic information systems (GIS) technology to create three Primary Overlay Zones: the Protection Zone, the Conservation Zone, and the Existing Community Zone. These overlay zones distinguish between resource constrained lands, where development will be limited (Protection Zone), and those lands characterized by existing patterns of human development where, dependent on municipal planning, land or capacity constraints, additional growth may or may not be appropriate (Existing Community Zone). The Conservation Zone identifies those areas with a high concentration of agricultural lands and associated woodlands and environmental features, where a primary goal is to support continued agriculture. In the Conservation Zone, development potential may exist to the extent it is not limited by available infrastructure to support that development (e.g. water availability), the existence of concentrated environmental resources that are easily impaired by development, or the protection of important agricultural resources.

The final Regional Master Plan was released after two drafts, one in November 2006 and a second in November 2007, each followed by an extended public comment period and numerous public hearings. More than 4,000 comments from

Overlay Zone Designation

Zone

- Protection
- Conservation
- Existing Community

Sub-Zone

- Existing Community Constrained
- Conservation Constrained
- Lake Community
- State Wildlife Management Areas and Federal Wildlife Refuges

Lakes Greater Than 10 Acres

Highlands Region

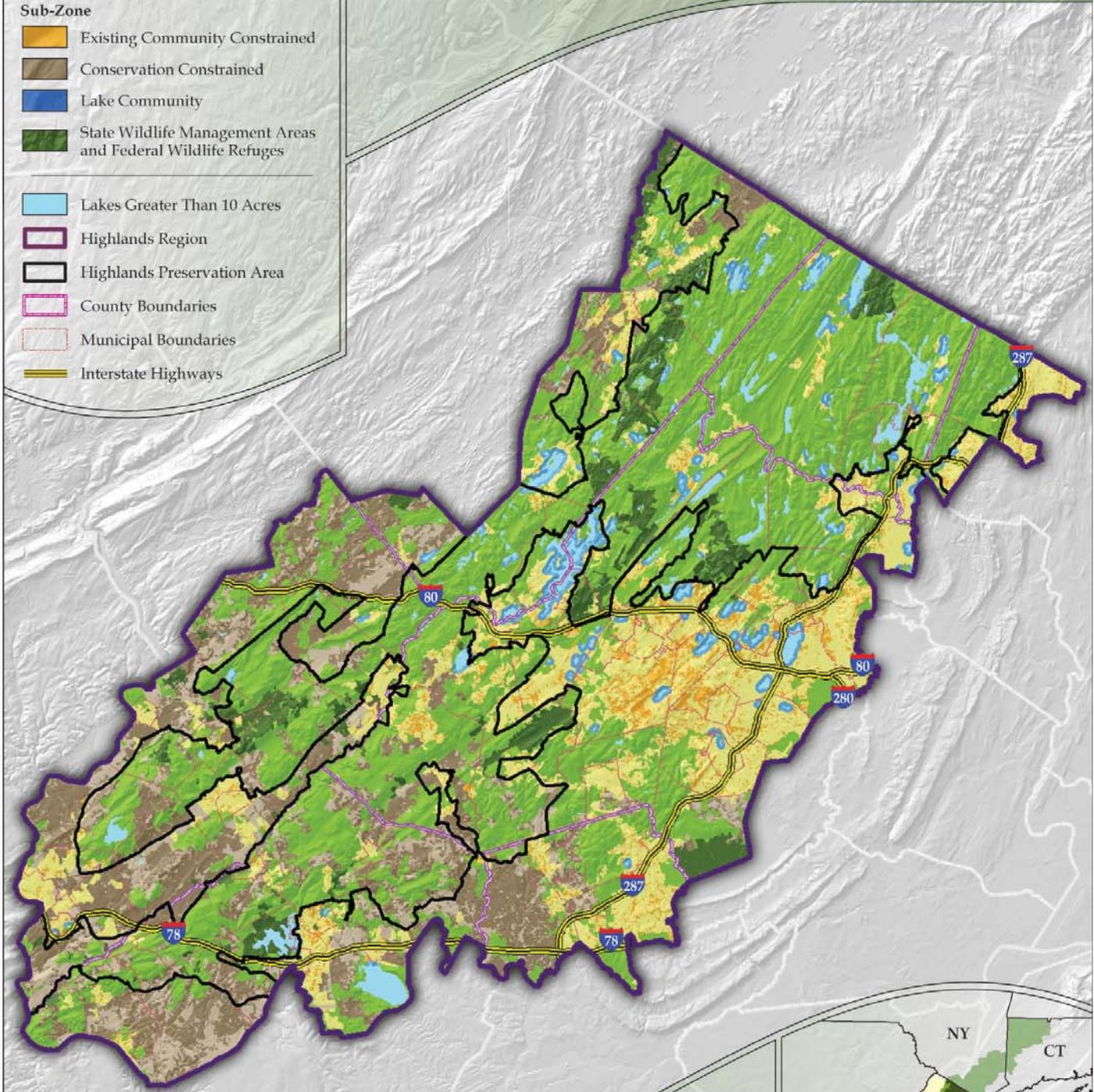
Highlands Preservation Area

County Boundaries

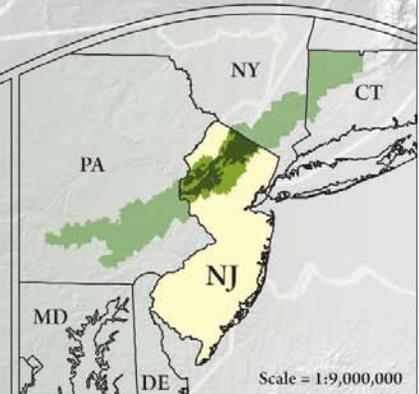
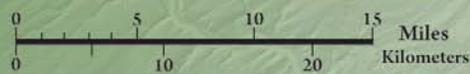
Municipal Boundaries

Interstate Highways

LAND USE CAPABILITY ZONES



Scale = 1:555,000



Scale = 1:9,000,000



over 1,000 respondents and groups were received during the planning process. Renowned land use expert Charles L. Siemon, Esq., from Siemon and Larsen, congratulated the Highlands Council on the preparation and adoption of the Plan that “I believe is important, not just to the region and the state, but to the rest of the nation who already, or will soon, face the difficult challenges of striking a reasoned balance between competing interests with regard to this nation’s most precious resources.”

## **Executive Order 114**

On September 5, 2008 – the same day he approved the Highlands Regional Master Plan – Governor Jon Corzine issued Executive Order 114 to further protect the resources of the Highlands Region.

In Executive Order 114, Governor Corzine supported the reauthorization of the Garden State Preservation Trust for the purchase of open space; earmarked \$10 million as “seed money” for the Highlands Development Credit Bank; directed the Department of Environmental Protection to restrict permits for new developments that drain water from undeveloped regions in the Highlands Planning Area where water is deficient; and directed the

Highlands Council and Council on Affordable Housing to work together to provide reasonable extensions and ensure the protection of Highlands Region.

As a result of Executive Order 114, the Highlands Council approved a Memorandum of Understanding with the Council on Affordable Housing (COAH) on October 30<sup>th</sup> to establish a cooperative planning process to meet the constitutional and legislative mandates of the Highlands Water Protection and Planning Act and the Fair Housing Act.

Pursuant to the Memorandum of Understanding, Highlands Region municipalities that adopted a Notice of Intent to conform to the Highlands Regional Master Plan and submitted a resolution to COAH received an extension to submit their Third Round Fair Share Housing Plans to COAH until December 9, 2009. Conforming municipalities will have their projections for affordable housing adjusted to be consistent with the Regional Master Plan. Highlands Council will use the municipal Build Out analysis under the RMP to determine build out and projected fair share obligation.

In addition, under Chapter 46, the July 17, 2008, amendment to the Fair Housing Act, up to 50 percent of a Highlands

Region municipality's affordable housing obligation can be shared with other willing municipalities in order to conserve environmentally sensitive lands or to take advantage of transportation hubs or existing infrastructure.

## Regional Build Out Analysis

In June, the Highlands Council released its analysis of development potential in the Highlands Region, illustrating the positive impact the Regional Master Plan would have on protecting lands to ensure a healthy and plentiful water supply. The analysis found there are approximately 230,000 developable acres in the Highlands Region – 123,000 acres in the Planning Area and 106,000 in the Preservation Area.

Without the Highlands Act, the analysis found there is the potential for approximately 47,600 new homes in the Highlands Region, but if all 88 municipalities conform to the Highlands Regional Master Plan, that number is reduced to approximately 12,300 homes. In addition, full compliance would reduce the amount of new impervious surface in the Highlands Region by 68 percent compared to the results without the Highlands Act. The analysis also found that, without the Highlands Act, 27 percent of the projected water demand and 15 percent of the projected wastewater utility demand could not be supported by relevant watershed and utilities.

In 2009, conforming municipalities will conduct a local build out analysis developed by the Highlands Council and based on the Regional Master Plan, using their own planning professionals and working with the Highlands Council staff.

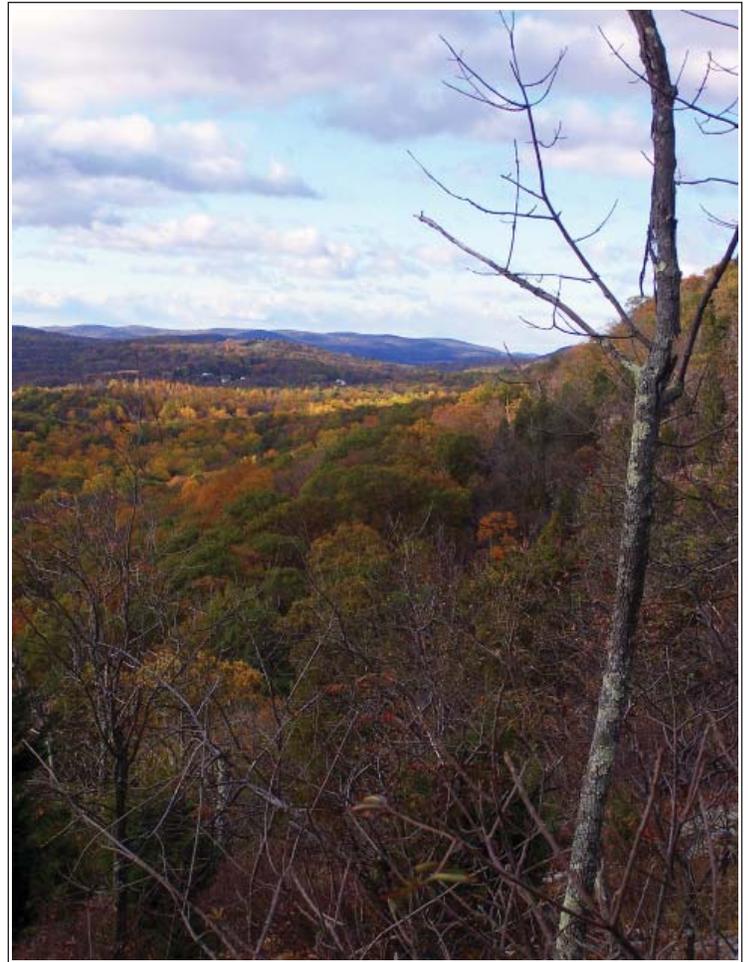
## New Grant Programs Introduced

A critical element in the Highlands Act is the creation of the Highlands Protection Fund, which provides state grants to municipal and county governments to fund the process of updating local master plans, zoning ordinances, and other land use regulations in order to come into conformance with the Highlands Regional Master Plan. Since 2004, the Highlands Protection Fund has included State appropriations for compliance and incentive planning in the amount of \$4.4 million per annum. The Highlands Council Planning Grant funding has a current balance of over \$21 million. The Highlands Council has intentionally retained as much of the planning grant allocation as possible for the Plan Conformance process. In 2008, the Highlands Council

created two major grant programs with a total of \$9 million in funding:

**Initial Assessment Grant Program** – The Initial Assessment Grants Program funds preliminary municipal and county Plan Conformance activities. These grants will allow local jurisdictions to engage their professionals to assess the requirements and benefits of Plan Conformance. The Highlands Council allocated \$1.5 million for the Initial Assessment Grant Program; nearly half that amount, \$735,000, was distributed in 2008. To date, the total amount awarded is more than \$1 million to 70 Highlands municipalities.

**Plan Conformance Grants Program** – The Highlands Council created the 2009 Plan Conformance Grants Program to assist municipalities and counties with expenses related to conformance with the Highlands Regional Master Plan. Under this program, municipalities and counties can be reimbursed for up to \$100,000 in expenses related to 2009 Plan Conformance activities. The Highlands Council designated up to \$7.5 million from the Highlands Protection Fund for this program.





Prior to 2008, the Highlands Council approved the following grants: Municipal Partnership Pilot Project (\$450,000); COAH Planning (\$600,000); County Zoning & Parcel Analysis (\$250,000); County Digital Elevation Analysis (\$250,000); County Wastewater Capacity Analysis (\$250,000); County Approved Project Analysis (\$400,000); Sustainable Agriculture (\$450,000); and TDR Feasibility (\$1,000,000), with a total of \$3,650,000 in grant funding.

## New Website Mapping Tools

In 2008, the Highlands Council unveiled new website mapping tools. The **Consistency Review Tool** (<http://maps.njhighlands.us/hgis/cons/>) allows users to access much of the same data used by the Council in its planning and analysis of the Highlands Region. The **Highlands Interactive Map** (<http://maps.njhighlands.us/hgis/>) allows users to see an area of the Highlands or an individual parcel (selected by address or by block and lot), with various Highlands features turned on or off to create a

customized map. And the **Property Search Tool** (<http://maps.njhighlands.us/>) was updated to allow users to view topographical details and to identify properties within 200 feet or 300 feet from the outer edge of a selected parcel, which can be used by municipal officials to identify property owners who must be notified of proposed developments or other announcements. These web tools make use of freely distributed open source software, such as Google Maps and Windows Live, to minimize the cost to the taxpayers and present a familiar interface to users.

## Highlands Development Credit Bank

The Highlands Development Credit Bank was established by the Highlands Council on June 26, 2008. Under the provisions of the Highlands Regional Master Plan, the Highlands Development Credit Bank serves as the regional clearinghouse for information with regards to the Highlands



NOVEMBER 10<sup>th</sup>, 2008 — Highlands Council Executive Director Eileen Swan addresses attendees at an information session with the New Jersey League of Municipalities. The session was held at the Highlands Council office in Chester Township.

Transfer of Development Rights Program; the administrator and official recording agency for the Highlands TDR Program; and a buyer and seller of Highlands Development Credits. Governor Corzine provided a crucial stimulus to the Highlands Development Credit Bank with Executive Order 114 which allocated \$10 million in seed money for the Bank. Highlands Council member Scott Whitenack serves as Bank Chairman. Also serving on the Bank Board are Susan E. Craft; Dale Davis; Michael Halpin; Kenneth H. Klipstein; Theodore J. Maglione; Erik Peterson; Ralph Siegel; and John Weingart.

## Outreach

The Highlands Council held 20 public meetings in 2008. A public comment period preceded every voting matter on the agenda; in addition, an open public comment period was held prior to the conclusion of each meeting. The Highlands Council staff also discussed the Highlands Act and the Highlands Regional Master Plan with municipal officials and members of the public at 30 public municipal meetings in 2008. Highlands Council staff also met with municipal officials and professional planners at 29 “staff to staff” meetings in 2008.

In addition, the Highlands Council and the New Jersey

League of Municipalities held a joint information session at the Highlands Council offices on November 10<sup>th</sup>. The meeting was attended by dozens of planners and professionals representing two-thirds of the municipalities in the Highlands Region.

## Legal Challenges

The Highlands Act was upheld in two key legal decisions in 2008. On January 18, Superior Court Judge Paul Innes dismissed a lawsuit filed by Warren County and nine residents that challenged the validity of the Highlands Act, alleging it violated the equal protection and due process guarantees of the New Jersey Constitution.

On December 9, the Supreme Court of New Jersey unanimously affirmed the constitutionality of the Highlands Act by upholding the 2007 decision of the Appellate Division, which upheld the 2005 decision by Superior Court Judge Theodore Bozonelis. The Supreme Court found that the Highlands Act did not violate the protections in the New Jersey and United States Constitutions regarding due process, equal protection and taking of property without just compensation.

**New Jersey Highlands Water Protection and Planning Council**  
**Statement of Activities and Financial Report for the period ending December 31, 2008**

**General Operating Budget FY08 - July 1, 2007 through June 30, 2008**

**REVENUES:**

State of New Jersey Appropriation FY08	\$ 2,500,000.00
Balance from FY07	\$ 322,276.48
<b>TOTAL</b>	<b>\$ 2,822,276.48</b>

**EXPENDITURES:**

Salaries	\$ 1,677,849.15
Materials and Supplies	\$ 45,548.73
Other Operating Expenses	\$ 239,334.06
Maintenance and Repairs	\$ 218,097.95
Equipment, Additions, and Improvements	\$ 151,993.57
Balance through June 30, 2008	<u>\$ 489,453.02</u>
<b>TOTAL</b>	<b>\$ 2,822,276.48</b>

**General Operating Budget for Portion of FY09 - July 1, 2008 through December 31, 2008**

**REVENUES:**

State of New Jersey Appropriation FY09	\$ 2,400,000.00
Highlands Balance from FY08	\$ 489,453.48
Miscellaneous Revenues & Reimbursements	<u>\$ 4,500.00</u>
<b>TOTAL</b>	<b>\$ 2,893,953.02</b>

**EXPENDITURES:**

Salaries	\$ 789,695.50
Materials and Supplies	\$ 20,797.41
Other Operating Expenses	\$ 87,186.93
Maintenance and Repairs	\$ 98,626.60
Equipment, Additions, and Improvements	\$ 20,086.45
Balance through June 30, 2009	<u>\$ 1,877,560.13</u>
<b>TOTAL</b>	<b>\$ 2,893,953.02</b>

**Regional Master Plan Budget for Portion of FY09 - July 1, 2008 through December 31, 2008**

**REVENUES:**

Balance From FY08	<u>\$ 1,448,656.06</u>
<b>TOTAL</b>	<b>\$ 1,448,656.06</b>

**EXPENDITURES:**

Contracts Paid to Date	\$ 169,490.18
Balance on Approved Contracts	\$ 522,962.47
Balance through June 30, 2009	<u>\$ 756,203.41</u>
<b>TOTAL</b>	<b>\$ 1,448,656.06</b>