MEMORANDUM OF UNDERSTANDING AMONG THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL, THE NEW JERSEY STATE PLANNING COMMISSION, AND THE OFFICE OF SMART GROWTH

This MEMORANDUM OF UNDERSTANDING, dated this 19th day of December, 2007 is entered into by and among the New Jersey Highlands Water Protection and Planning Council ("Highlands Council"), the New Jersey State Planning Commission ("SPC"), and the Office of Smart Growth to establish a cooperative planning process that will foster the legislative mandates outlined in both the Highlands Water Protection and Planning Act ("Highlands Act", N.J.S.A. 13:20-1 et seq.) and the State Planning Act (N.J.S.A. 52:18A-196 et seq.).

WHEREAS, the Legislature, in 1986, enacted the State Planning Act recognizing that New Jersey, the nation's most densely populated State, requires sound and integrated Statewide planning and coordination of Statewide planning with local and regional planning in order to conserve the State's natural resources, revitalize its urban centers, protect the quality of its environment, and provide needed housing and adequate public services at a reasonable cost while promoting beneficial economic growth, development and renewal; and

WHEREAS, the State Planning Act requires the SPC to develop, adopt, and periodically revise a State Development and Redevelopment Plan ("State Plan") which shall provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, and which shall identify areas for growth, agriculture, open space conservation and other appropriate designations to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth, and conservation; and

WHEREAS, the State Planning Act requires the SPC to establish a process for the endorsement of municipal, county and regional plans that are consistent with the State Plan; and

WHEREAS, the State Plan, in 2001, designated the New Jersey Highlands Region as a Special Resource Area based upon its unique characteristics and resources of statewide importance; and

WHEREAS, the Legislature, in 2004, enacted the Highlands Act recognizing that the Highlands Region is an essential source of drinking water, provides clean and plentiful drinking water for one-half of the State's population, contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

WHEREAS, the Highlands Act creates two areas within the Highlands Region – the Preservation Area, an area of the New Jersey Highlands with exceptional natural resource value that should be subject to stringent water and natural resource protection standards, policies, planning and regulation and the Planning Area, the area outside of the Preservation Area that should be part of a comprehensive planning approach that serves to protect the water and other significant resources of the entire Highlands Region while also accommodating appropriate patterns of development, redevelopment and economic growth; and

WHEREAS, the Legislature expressly excluded any land located within the boundaries of a regional center or town center, designated by the SPC, from the Preservation Area boundaries; and

WHEREAS, the Highlands Act creates the Highlands Council, a regional planning and protection entity, to develop, adopt and periodically revise a Regional Master Plan ("RMP"), after consulting with the SPC and other governmental entities, with a goal of protecting and enhancing the significant values of the resources of the Highlands Region; and

WHEREAS, the Highlands Act creates a bifurcated system for municipal and county conformance with the RMP (Plan Conformance) – mandatory Plan Conformance for any portion of a municipality and county located wholly or partially in the Preservation Area and voluntary Plan Conformance for the municipalities and counties with lands wholly in the Planning Area or for any portion of a municipality and county lying within the Planning Area; and

WHEREAS, under Plan Conformance, the Highlands Act requires municipalities and counties located wholly or partially in the Preservation Area to submit to the Highlands Council, within nine to fifteen months after the adoption of the RMP, such revisions of the municipal master plan and development regulations or county master plan and associated regulations as may be necessary for those portions of the municipality and County within the Preservation Area in order to conform them with the goals, requirements, and provisions of the RMP; and

WHEREAS, under voluntary Plan Conformance, the Highlands Act provides that municipalities and counties with lands in the Planning Area have the option to petition, at their discretion, the Highlands Council to revise their master plans and associated regulations, as applicable to the development and use of land in the Planning Area, to conform with the goals, requirements, and provisions of the RMP; and

WHEREAS, the Highlands Act establishes preservation goals for the RMP, for both the Preservation Area and Planning Area, to protect, restore, and enhance the quality and quantity of the waters of the Highlands, to preserve environmentally sensitive lands, to preserve lands needed for recreation and conservation, to promote brownfield remediation and redevelopment, to preserve farmland, historic sites and other historic resources, to preserve outdoor recreation opportunities, to promote water resource conservation, and to promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities (collectively "Highlands Resources"); and

WHEREAS, the Highlands Act establishes development goals, in the Preservation Area, to prohibit or limit, to the maximum extent possible, construction or development which is incompatible with the Preservation Area; and

WHEREAS, the Highlands Act establishes development goals, in the Planning Area, to encourage, consistent with the State Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and to discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from individual and cumulative adverse impacts; and

WHEREAS, the Highlands Act requires that the RMP include opportunities for development, redevelopment, and economic growth through the development of a smart growth component, based on the resource assessment; and

WHEREAS, 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 of benefits for voluntary receiving zones for any municipality within the seven Highlands Counties; and

WHEREAS, the Highlands Act requires the Highlands Council to identify areas within the Planning Area that are appropriate for development as voluntary receiving zones for a TDR program; and

WHEREAS, the Highlands Act requires the Highlands Council to set a goal of identifying areas within the Planning Area that may be appropriate for development as voluntary receiving zones for TDR that, combined together, constitute four percent of the land area of the Planning Area, to the extent that the goal is compatible with the amount and type of human development and activity that would not compromise the integrity of the ecosystem of the Planning Area; and

WHEREAS, the Highlands Council released the Highlands Draft Regional Master Plan ("draft RMP") on November 30, 2006, held public hearings throughout the Highlands Region, and received extensive public comment on the draft RMP; and

WHEREAS, the Highlands Act requires the Highlands Council to, within sixty days of adoption of the final RMP, submit the RMP to the SPC for plan endorsement exclusively for the Planning Area of the Highlands Region; and

WHEREAS, the State Planning Act and the Highlands Act mandate that the provisions of the State Planning Act not be construed to affect the plans and regulations of the Highlands Council for that portion of the Highlands Region lying within the Preservation Area; and

WHEREAS, the SPC began a revision to the State Plan with the release of a preliminary plan and commencement of cross-acceptance, a process for soliciting recommendations and objections from the counties, as negotiating entities for the municipalities, on the preliminary plan before the SPC adopts the revised State Plan; and

WHEREAS, the State Planning Act requires the SPC to solicit and give due consideration to the plans, comments and advice of the municipalities, counties, State agencies, Highlands Council and other regional entities when revising the State Plan; and

WHEREAS, the Highlands Council and the SPC recognize that the timing for completion of revisions to the State Plan and adoption of the final RMP may coincide; and

WHEREAS, pursuant to the State Planning Act, the SPC developed plan endorsement as the tool to bring municipal, county and regional plans into consistency with the goals, policies and strategies of the State Plan; and

WHEREAS, the State Planning Commission approved the publication of amended plan endorsement regulations and guidelines to assist municipalities, counties and regional agencies to achieve plan endorsement; and

WHEREAS, these regulations propose to authorize that any of the requirements of plan endorsement may be waived at the discretion of the Executive Director of the Office of Smart Growth, in consultation with the relevant State agencies, if the Director determines that a petitioner has satisfactorily completed the requirement, or has substantially complied with the intent of that requirement, as outlined in the Plan Endorsement Guidelines and related guidance documents; and

WHEREAS, the Highlands Act provides that any portion of a municipality or county located in the Preservation Area shall be exempt from the SPC's plan endorsement process; and

WHEREAS, the Highlands Act provides that for the municipalities and counties in the Planning Area, upon the SPC's endorsement of the RMP, any municipal master plan and development regulations or county master plan and associated regulations that have been approved by the Highlands Council shall be deemed the equivalent of having those plans endorsed by the SPC; and

WHEREAS, the Highlands Act requires the Highlands Council to consult with the SPC before approving, rejecting, or approving with conditions the revised plans and associated regulations of Planning Area municipalities and counties for lands in the Planning Area; and

WHEREAS, neither the Highlands Act nor the State Planning Act require municipalities and counties with lands in the Planning Area to seek Plan Conformance with the RMP through the Highlands Council or seek Plan Endorsement with the State Plan through the SPC; however, municipalities that have received substantive certification from the Council on Affordable Housing are required to obtain Plan Endorsement from the SPC or may obtain Plan Conformance from the Highlands Council; and

WHEREAS, it is mutually beneficial to the Highlands Council and the SPC to enter into this Memorandum of Understanding to develop a cooperative planning process that will enable each agency to carry out their respective statutory responsibilities; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance coordinated and comprehensive planning in the State, will result in greater predictability and transparency in planning with respect to meeting the mandates of the Highlands Council and the SPC and will benefit State agencies, counties, municipalities and the public.

NOW THEREFORE, in consideration of the principles, assurances and premises contained in this Memorandum of Understanding, the Highlands Council and the SPC hereby agree to the following:

A. <u>Coordination of Planning Process</u>

1. A cooperative planning process will be established and maintained among the Highlands Council, the SPC, the Office of Smart Growth ("OSG"), and their respective staff to

advance coordinated and comprehensive State and regional planning, and provide consistent planning policies on which municipalities and counties may rely.

2. The Highlands Council and its staff, the SPC, and OSG shall share all available information useful or necessary to achieve the objectives of this Memorandum of Understanding. The SPC and OSG shall provide the Highlands Council and its staff, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the Highlands Council to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through cross-acceptance, State Plan development and revision, and plan endorsement processes. The Highlands Council and its staff shall provide the SPC and OSG, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the SPC and OSG to carry out their responsibilities, including reports, recommendations and reviews generated through the development of the RMP and the review of Plan Conformance submissions.

3. The SPC, OSG, and the Highlands Council and its staff agree that coordinated participation by municipalities and counties will be encouraged to ensure that any information submitted to one agency shall be consistent with that submitted to the other.

B. Coordination on the State Plan

4. In preparing, maintaining and revising the State Plan, the SPC shall solicit and give due consideration to the plans, comments and advice of the Highlands Council. Prior to the adoption of each plan, the commission shall prepare and distribute a preliminary plan to the Highlands Council and shall conduct a joint public informational meeting with the Council for the purpose of providing information on the plan, responding to inquiries concerning the plan, and receiving informal comments and recommendations. In addition, the SPC and OSG shall provide the Highlands Council and its staff with copies of Final County Cross-acceptance Reports received from each of the seven Highlands Counties (Passaic, Bergen, Sussex, Warren, Morris, Hunterdon and Somerset (together the "Highlands Counties")), and copies of any municipal cross-acceptance reports received from any of the 88 municipalities in the Highlands Region.

5. The SPC and OSG shall invite the Highlands Council and its staff to interagency meetings to consider recommendations contained in Highlands Counties' Final Cross-Acceptance Reports.

6. After holding negotiation sessions pertaining to any of the Highlands Counties and any of the 88 municipalities in the Highlands Region, the SPC and OSG shall invite the Highlands Council and its staff to follow-up interagency meetings.

7. To address the pending revision of the State Plan and pending adoption of the RMP, the SPC shall incorporate by reference the adopted RMP into the State Plan for that portion of the Highlands Region lying in the Preservation Area such that the RMP for the Preservation Area constitutes the State Plan for this area. For that portion of the Highlands Region lying in the Planning Area, the SPC shall recognize the comprehensive planning in the RMP for this Special Resource Area and specify that the RMP for the Planning Area will be subject to Plan Endorsement review by the SPC.

C. Coordination on the RMP

8. During the development and preparation of the RMP and any revision thereto, the Highlands Council and its staff shall consult with the SPC and OSG and shall review the State Plan, Plan Endorsement rules, regulations and guidelines prior to submission of the adopted RMP to the SPC for endorsement.

9. During the development and preparation of the smart growth assessment component of the RMP and any revision thereto, the Highlands Council and its staff shall recognize centers designated by the SPC to identify opportunities for residential, commercial, and industrial development, redevelopment and economic growth in the Planning Area.

10. Within 60 days after adopting the RMP, the Highlands Council shall submit the RMP to the SPC for endorsement pursuant to the SPC's adopted rules, regulations and policies and SPC's review of the RMP shall be limited to the Planning Area only.

11. The Plan Development Committee of the Highlands Council, or similarly composed Committee of the Council, shall satisfy the requirement of Plan Endorsement to create a Plan Endorsement Advisory Committee. This Committee shall guide the Highlands Council through the plan endorsement process, and shall serve as liaison with OSG and the other state agencies as it prepares the RMP for endorsement.

12. The Highlands Council has conducted the equivalent of a self-assessment through the preparation of the Regional Master Plan and as a result, the requirement for a self-assessment is waived under Plan Endorsement with the exception of the requirement to perform an assessment of the consistency of petitioner's plans and implementation mechanisms with the goals, policies and strategies of the State Development and Redevelopment Plan.

13. The Highlands Task Force engaged the communities of the Highlands Region in preparing a vision for the future development of the Highlands Region as reflected in the Highlands Act. The Highlands Council has taken additional steps necessary to ensure broad interactive public participation including municipal and county outreach. As a result, the requirement for community visioning is waived under Plan Endorsement.

D. Coordination of Plan Conformance and Plan Endorsement

14. The Highlands Council and its staff shall provide the SPC and OSG with copies of all documents when a municipality or county with lands in the Planning Area submits a petition to the Highlands Council for Plan Conformance and shall consult with and consider any recommendation from the SPC before approving, rejecting, or approving with conditions the revised plans and associated regulations of a Planning Area municipality and county for lands in the Planning Area.

15. The SPC and OSG shall provide the Highlands Council and its staff with copies of all documents concerning any petition for Plan Endorsement that is received involving lands in the Highlands Planning Area and shall consult with and consider any recommendation from

the Highlands Council before approving, rejecting, or approving with conditions a petition for Plan Endorsement.

16. If the SPC or OSG receives a petition for Plan Endorsement from a municipality or county that falls partially within the Preservation Area and partially in the Planning Area, OSG and the SPC shall: a) advise the petitioner that Plan Conformance is required for lands in the Preservation Area and, b) for lands in the Planning Area, shall consult with and consider any recommendation from, the Highlands Council before approving, rejecting, or approving with conditions a petition for Plan Endorsement.

17. The SPC shall include in the Plan Endorsement process a requirement that any petitioner with land located in the Highlands Region submit a specific policy statement indicating the relationship of the proposed development to the final RMP and the coordination with the Highlands Council.

18. The Highlands Council shall include in the Plan Conformance process a requirement that any petitioner with land located in the Highlands Region submit a specific policy statement indicating the relationship of a master plan and implementation strategy to the State Plan.

19. Should a petitioner seek to reestablish or modify center designation or designate additional centers through Plan Endorsement, the SPC and OSG shall consult with and consider any recommendation from the Highlands Council before approving, rejecting, or approving with conditions a petition for Plan Endorsement.

20. Should a petitioner seek to reestablish or modify center designation or designate additional centers through Plan Conformance, the Highlands Council shall consult with and consider any recommendation from the SPC before approving, rejecting, or approving with conditions the revised plans and associated regulations of a Planning Area municipality and county for lands in the Planning Area.

E. Coordination of the Transfer of Development Rights

21. The Highlands Council and its staff shall provide notice to, and consult with, OSG when a municipality in the Highlands Region or in any of the Highlands counties expresses an interest in, or submits an application for, participation in the Highlands TDR program.

22. OSG shall provide notice to, and consult with, the Highlands Council and its staff when a municipality in the Highlands Region or in any of the Highlands counties expresses an interest in, or submits an application for, the participation in the State TDR program.

23. The Highlands Council and its staff shall work with the State Planning Commission to identify appropriate centers, designated by the State Planning Commission, as potential voluntary receiving zones for the Highlands Region TDR program when developing the Highlands TDR program, or revisions thereto, or working with municipalities participating in the Highlands TDR program.

F. Coordination of redevelopment approvals, grants, and other approvals

24. The Highlands Council and OSG shall cooperatively review and coordinate State infrastructure capital investment, community development and financial assistance in the Highlands Region in furtherance of the RMP.

25. OSG shall provide notice to the Highlands Council and its staff when a municipality in the Highlands Region seeks designation of an area in need of redevelopment, smart growth grants, or other approval from OSG.

26. OSG shall consult with the Highlands Council on applications received from any municipality in the Highlands Region regarding the designation of an area in need of redevelopment, smart growth grants, or other approvals from OSG.

27. The Highlands Council and its staff shall provide notice and consult with OSG on applications from any municipality partially or wholly in the Planning Area regarding Highlands planning grants or other relevant activities.

BE IT FURTHER AGREED that the Highlands Council, SPC, and OSG authorize this Memorandum of Understanding to be duly executed by their authorized representatives to be effective on the date of this Memorandum.

BE IT FURTHER AGREED that this Memorandum of Understanding shall remain in effect unless either agency determines with 60 days written notice to the other agency, to terminate the Memorandum of Understanding.

NEW JERSEY HIGHLANDS COUNCIL

By: _____

Title: Executive Director

NEW JERSEY STATE PLANNING COMMISSION

By: _____

Title: Secretary - State Planning Commission

OFFICE OF SMART GROWTH

By: _____

Title: Executive Director