

**DRAFT FOR CONSIDERATION AT THE DECEMBER 16, 2010 MEETING
OF THE HIGHLANDS COUNCIL**

**RESOLUTION 2010-
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR
THE COUNTY OF PASSAIC, STATE OF NEW JERSEY**

WHEREAS, the New Jersey Highlands Region (Highlands Region) is an area of over 859,358 acres that consists of 88 municipalities in parts of seven counties – Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren; and

WHEREAS, the New Jersey Legislature found that the Highlands Region is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the population of the State of New Jersey, and also contains other exceptional natural resources such as clean air, contiguous forest lands, agricultural lands, wetlands, pristine watersheds, and habitat for fauna and flora, as well as sites of historic significance and recreational opportunities; and

WHEREAS, the Legislature found that the Highlands Region also provides a desirable quality of life and place where people live and work, that it is important to ensure the economic viability of Highlands communities and that residential, commercial, and industrial development, redevelopment, and economic growth in certain appropriate areas of the Highlands are also in the best interests of all the citizens of the State, providing innumerable social, cultural, and economic benefits and opportunities; and

WHEREAS, the Legislature found that the Highlands Region contains agricultural lands in active production and that these lands are important resources of the State that should be preserved, that the agricultural industry in the Region is a vital component of the economy, welfare, and cultural landscape of the Garden State and that maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible; and

WHEREAS, the Legislature found that the pace of development in the Highlands Region has dramatically increased, that the Region, because of its proximity to rapidly expanding suburban areas, is at serious risk of being fragmented and consumed by unplanned development and that the existing land use and environmental regulation system cannot protect the water and natural resources of the Highlands against the environmental impacts of sprawl development; and

WHEREAS, deeming protection of the Highlands Region an issue of State level importance, the Legislature enacted the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Act), to establish a regional approach to land use planning for the Highlands Region to replace the uncoordinated land use decisions of 88 municipalities, seven counties and a myriad of private landowners; and

WHEREAS, the Highlands Act delineates two areas in the Highlands Region: a Preservation Area, containing approximately 415,000 acres, and a Planning Area, containing approximately 445,000 acres; and

WHEREAS, the Legislature created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council) to advance a new regional approach to land use planning and to prepare a Regional Master Plan to protect and

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enhance the significant values of the Highlands resources throughout the entire Highlands Region;
and

WHEREAS, the Preservation Area is an area with exceptional natural resource value that should be subject to stringent water and natural resource protection standards, policies, planning and regulation; and

WHEREAS, the Planning Area is the area outside of the Preservation Area that should likewise 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 found that such a new regional approach to land use planning shall be complemented by increased standards more protective of the environment established by the New Jersey Department of Environmental Protection (NJDEP) for development in the Preservation Area of the Highlands; and

WHEREAS, the Legislature found that this comprehensive approach should be guided, in heart, mind, and spirit, by an abiding and generously given commitment to protecting the incomparable water resources and natural beauty of the New Jersey Highlands so as to preserve them intact, in trust, forever for the pleasure, enjoyment, and use of future generations while also providing every conceivable opportunity for appropriate economic growth and development to advance the quality of life of the residents of the Highlands Region and the entire State; and

WHEREAS, Sections 8 and 10 of the Highlands Act mandate that the Highlands Council prepare and adopt the Regional Master Plan with the goal of protecting and enhancing the significant values of the resources in the Highlands Region; and

WHEREAS, Section 10 of the Highlands Act establishes goals for the Regional Master Plan for both the Preservation Area and Planning Area, including 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; 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 Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development,

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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, Sections 11 and 12 of the Highlands Act specifically require that the Regional Master Plan be comprised of (a) a Resource Assessment that seeks to determine the amount and type of human development and activity that can be sustained by the Highlands Region's ecosystem while maintaining the Region's overall ecological values; (b) a Financial Component that details the costs of implementing the Regional Master Plan, and details the sources of revenue for covering those costs; (c) a Local Participation Component that provides for the maximum feasible local government and public input; (d) a Coordination and Consistency Component that details the ways in which local, State, and federal programs and policies may be best coordinated to promote the goals, purposes, policies, and provisions of the Regional Master Plan; (e) a Transportation Component that provides a plan for transportation system preservation; (f) a Smart Growth Component that assesses opportunities for appropriate development, redevelopment, economic growth and a transfer of development rights program, and includes a Land Use Capability Map; (g) a Land Use Capability Map for the Preservation Area and a comprehensive statement of policies for the development and use of land in the Preservation Area; and (h) a statement of policies, including a preservation zone element that identifies zones within the Preservation Area where development shall not occur in order to protect water resources and environmentally sensitive lands and which shall be permanently preserved through use of a variety of tools, including but not limited to land acquisition and the transfer of development rights and minimum standards governing municipal and county master planning and development regulations; and

WHEREAS, after a careful analysis of the best available scientific and planning data and consultation with State, federal and local agencies pursuant to the Highlands Act, the Highlands Council adopted Resolution 2008-27 approving the Regional Master Plan on July 17, 2008 and, pursuant to the Highlands Act requirement for gubernatorial review, the Regional Master Plan thereafter became effective on September 8, 2008; and

WHEREAS, the Highlands Act creates a bifurcated system for county conformance with the Regional Master Plan – mandatory Plan Conformance for any portion of a county located wholly or partially in the Preservation Area and voluntary Plan Conformance for the counties with lands in the Planning Area; and

WHEREAS, Section 14 of the Highlands Act expressly requires mandatory Plan Conformance where counties, located wholly or partially in the Preservation Area, must revise and conform their county master plan and associated regulations, as they relate to development and use of land in the Preservation Area, with the goals, requirements and provisions of the Regional Master Plan within 15 months of adoption thereof, or December 8, 2009; and

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WHEREAS, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any county with lands in the Planning Area may voluntarily revise and conform their county master plans and associated regulations, as they relate to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan at any time; and

WHEREAS, pursuant to Sections 14 and 15 of the Highlands Act, the Highlands Council shall approve, reject, or approve with conditions the revised plan and associated regulations, as it deems appropriate, after public hearing, within 60 days after the date of submission thereof; and

WHEREAS, the Highlands Act provides that an approval of a Petition for Plan Conformance entitles the conforming county with specific benefits including: planning grants, technical assistance, state aid, priority for projects, tax stabilization funds, a strong presumption of validity and extraordinary deference in the event of legal challenge, and legal representation; and

WHEREAS, the Highlands Council approval of Resolution 2008-27 adopting the Regional Master Plan included the adoption of the Highlands Plan Conformance Guidelines that outlines the procedures, schedule, planning assistance, and benefits available for the submission of a Petition for Plan Conformance; and

WHEREAS, the Plan Conformance Guidelines provides a process for Basic Plan Conformance requiring the submission of plans and regulations that are immediately necessary to ensure protection of the Highlands resources and resource areas with more complex tasks to be completed in accordance with an Implementation Plan and Schedule as a condition of Plan Conformance; and

WHEREAS, Section 18 of the Highlands Act obligates the Highlands Council to establish a grant funding program to reimburse counties for reasonable expenses associated with Plan Conformance; and

WHEREAS, on December 18, 2008, the Highlands Council approved Resolution 2008-73 to provide grant funding for the Highlands counties to cover the reasonable expenses associated with revisions to master plans, development regulations or other regulations to conform them to the Regional Master Plan; and

WHEREAS, under Resolution 2008-73, the Highlands Council authorized the Executive Director to develop and implement a process for the solicitation and distribution of the Plan Conformance Grants in a total amount not to exceed \$7.5 million and up to \$50,000 allocation for each individual county for Basic Plan Conformance; and

WHEREAS, the Bylaws of the Highlands Council authorizes the Executive Director, as chief administrative officer, to approve contracts and issue payments up to \$25,000; and

WHEREAS, as directed, the Executive Director developed the Plan Conformance Grant Program, a program that splits Plan Conformance into the following tasks for administering the authorized

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grant funding: Task A: Environmental Resource Inventory, Task B: Highlands Element for County Master Plans, Task C: Highlands Regulations for Development of County Lands and Facilities, and Task D: County Petition for Plan Conformance; and

WHEREAS, in the County of Passaic 78,789 acres are in the Preservation Area and 5,063 acres are in the Planning Area; and

WHEREAS, on January 11, 2010, Passaic County submitted a Petition for Plan Conformance including one resolution for all lands lying in the Preservation Area; and

WHEREAS, on April 26, 2010, the Executive Director deemed the Petition for Plan Conformance administratively complete, and on April 29, 2010, posted the Petition documents on the Highlands Council website and thereafter commenced staff review of the Petition for consistency with the Regional Master Plan; and

WHEREAS, on August 2, 2010, the Executive Director provided Passaic County with a Draft Consistency Review and Recommendations Report, which provides the staff's assessment of the Petition for Plan Conformance, the level of conformance with the Regional Master Plan, and recommendations for any further actions necessary for Plan Conformance; and

WHEREAS, the Executive Director provided Passaic County with a deliberative county response period allowing Passaic County to review and respond to the Draft Consistency Review and Recommendations Report; and

WHEREAS, on November 17, 2010, the Executive Director completed the Final Draft Consistency Review and Recommendations Report, and posted a Public Notice, the Final Draft Consistency Review and Recommendations Report, and the complete Petition documents on the Highlands Council website for a public review and comment period with written comments due on or before December 3, 2010; and

WHEREAS, on December 10, 2010, the Executive Director posted the Final Consistency Review and Recommendations Report and Highlands Implementation Plan and Schedule on the Highlands Council website which addressed issues raised during the public comment period; and

WHEREAS, on December 16, 2010, the Highlands Council held a public hearing on Passaic County's Petition for Plan Conformance and provided an opportunity for public comment; and

WHEREAS, the Highlands Council accepts the recommendation of the Executive Director as stated in the Final Consistency Review and Recommendations Report; and

WHEREAS, according to the Highlands Act and the Plan Conformance Guidelines, Passaic County's compliance with an approved Final Consistency Review and Recommendations Report, the Highlands Implementation Plan and Schedule, the Highlands Plan Conformance Guidelines and

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APPROVAL OF THE PETITION FOR PLAN CONFORMANCE FOR
THE COUNTY OF PASSAIC, STATE OF NEW JERSEY

the Highlands Act shall maintain Passaic County's status as conforming to the Regional Master Plan and all statutory benefits associated with Plan Conformance; and

WHEREAS, the Plan Conformance Guidelines recognizes that conformance in the Planning Area is voluntary under the Highlands Act, and provides that the period of an approval of a Petition for Plan Conformance shall be for a period of no more than six (6) years, or until one (1) year after the Highlands Council adopts its six-year reexamination of the Regional Master Plan, whichever time period is the shorter; the periods provided herein allowing time for the submittal and processing of petitions for a re-examination of Plan Conformance before the Highlands Council; and

WHEREAS, the Plan Conformance Guidelines provides that no amendment to any master plan or development regulations applicable to the development and use of land in Passaic County shall be effective until Passaic County has submitted such amendment to the Highlands Council and such amendment has been found by the Council to be in conformance with the Regional Master Plan, or the Executive Director has notified Passaic County that such amendment does not affect the Highlands Council's prior finding of Plan Conformance; and

WHEREAS, the Plan Conformance Guidelines provides that following the receipt of any amendment to Passaic County's master plan or development regulations, the Executive Director is required to determine whether or not the amendment raises a substantive issue with respect to the conformance of the county master plan or development regulations with the Regional Master Plan, and

WHEREAS, the Plan Conformance Guidelines provides that if the Executive Director determines no such substantive issue is raised with respect to an amendment, the Executive Director shall certify such fact and notify the Clerk of Passaic County and the Highlands Council, and shall provide notice on the Highlands Council website, and such amendment shall thereupon take effect in accordance with its terms and applicable law; and

WHEREAS, the Plan Conformance Guidelines provides that if the Executive Director determines that an amendment raises a substantive issue with respect to the conformance of the county master plan or development regulations to the Regional Master Plan, the amended county master plan or development regulations shall be reviewed in accordance with the Plan Conformance Guidelines; and

WHEREAS, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

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NOW, THEREFORE, BE IT RESOLVED that the Highlands Council hereby approves Passaic County's Petition for Plan Conformance with conditions as set forth in the Final Consistency Review and Recommendations Report and the Highlands Implementation Plan and Schedule; and

BE IT FURTHER RESOLVED that the Executive Director is authorized to make any amendments and publically release the Final Consistency Review and Recommendations Report, Highlands Implementation Plan and Schedule, and amend the Plan Conformance Grant Agreement consistent with direction from the Highlands Council, to properly effectuate the intent of the Council and thereafter execute the Report and Schedule on behalf of the Council; and

BE IT FURTHER RESOLVED, that Passaic County is hereby entitled to the statutory benefits associated with Plan Conformance as detailed in the Highlands Act, the Regional Master Plan and the Plan Conformance Guidelines, so long as Passaic County remains in conformance with the Regional Master Plan and to the extent such funds are made available by the State; and

BE IT FURTHER RESOLVED, the Executive Director is authorized, consistent with direction from the Council, to oversee and monitor Passaic County's compliance with this Resolution and to take any and all action necessary in coordination with the Highlands Council.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 16th day of December, 2010.

Jack J. Schrier, Acting Chairman