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Resolution No. 2020-12
Page 1 of 9

Date: November 4, 2020
Patron: Thomas Wright

RESOLUTION

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

This MEMORANDUM OF UNDERSTANDING, dated this day of 2020 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 Planning Advocacy (formerly known as the Office of Smart Growth) to update and continue the cooperative planning protocols established under the preceding Memorandum of Understanding among the same (dated December 19, 2007), created for the purpose of furthering 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 provides a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, and which identifies 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 ("Plan Endorsement"); and

WHEREAS, on October 29, 2019, Governor Phil Murphy enacted Executive Order 89, that among other things, requires the State Planning Commission to incorporate climate change considerations as a mandatory requirement for Plan Endorsement; 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; that it provides clean and plentiful drinking water for over 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 establishes two distinct areas within the Highlands Region: the Preservation Area, an area with exceptional natural resource value to be subject to stringent water and natural resource protection standards, policies, planning and regulation; and the Planning Area, an area intended to 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 created 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 primary goal of protecting and enhancing the significant resources of the Highlands Region; and

WHEREAS, the Highlands Act created a bifurcated system for municipal and county conformance with the RMP, "Plan Conformance," which is mandatory for any portion of a municipality or county located in the Preservation Area, and voluntary for lands in the Planning Area; and

WHEREAS, the Highlands Act required 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, master plan and regulatory revisions as necessary to conform them with the Preservation Area goals, requirements, and provisions of the RMP; and

WHEREAS, the Highlands Act provides that municipalities and counties with lands in the Planning Area have the option to petition the Highlands Council at any time with master plan and regulatory revisions as necessary to conform them with the Planning Area 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 for the Preservation Area that 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 for the Planning Area that 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 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 both 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 a 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 State; 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 (N.J.S.A. 13:20-13.L) extends the benefits of the Highlands TDR program to municipalities located outside the Highlands Region, where either, such municipalities have received Plan Endorsement from the SPC, or proposed receiving zones have been designated as appropriate by the SPC in coordination with the Highlands Council; 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, after holding a series of public hearings throughout the Highlands Region and receipt and consideration of extensive public comment, the Highlands Council adopted the Highlands Regional Master Plan ("RMP") on July 17, 2008; and

WHEREAS, pursuant to the Highlands Act (N.J.S.A. 13:20-8), the Highlands Council undertook a reexamination of the Highlands RMP, concluding a lengthy and public process by formal release of the "Highlands Regional Master Plan Monitoring Program Recommendation Report," on October 18, 2018; and

WHEREAS, pursuant to N.J.A.C. 5:85-7.6, the Executive Director of the State Planning Commission may waive certain requirements of its Plan Endorsement process; and

WHEREAS, pursuant to N.J.S.A. 52:18A-206, the State Planning Commission shall rely on the adopted plans and regulations of the Highlands Council in developing the State Development and Redevelopment Plan; and

WHEREAS, on July 18, 2019 the Highlands Council adopted an Amendment to the RMP setting forth revised Plan Conformance Procedures for conformance with the Highlands Act and the RMP, and set forth procedures for designation of Highlands Centers by the Highlands Council; and

WHEREAS, the State Planning Act and the Highlands Act mandate that the provisions of the State Planning Act shall 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, 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 Highlands Council provides, in accordance with the Highlands Act (N.J.S.A. 13:20-18(b)), grants for the assessment and preparation of municipal and county planning program revisions as necessary to conform them to the RMP, said assessment being similar to the SPC requirement that petitioners for Plan Endorsement complete a self-assessment report; 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 deemed RMP-consistent by the Highlands Council shall be deemed the equivalent of having those plans endorsed by the SPC; and

WHEREAS, the Highlands Act provides that any municipality or county in the Highlands Region, for which the Highlands Council has deemed the master plan and associated regulations to be in conformance with the RMP, shall qualify for the same State aid, planning assistance, technical assistance, and other benefits and incentives that may be awarded or provided by the State to municipalities or counties that have received Plan Endorsement from the SPC (N.J.S.A. 13:20-18); and

WHEREAS, N.J.S.A. 52:18A-203(b) recognizes the Highland's Council endorsement of municipal master plans and land use ordinances (via its Plan Conformance process); 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, it is mutually beneficial to the Highlands Council and the SPC to enter into this Memorandum of Understanding to ensure continuation of the cooperative planning process already established between the two entities, to further enhance the ability of each agency to carry out its statutory responsibilities, and to strengthen the potential for joint responsiveness to State initiatives and Governors' Executive Orders pertinent to the activities of each agency, such as Executive Order No. 89 establishing a Statewide Climate Change Resilience Strategy; and

WHEREAS, the cooperative planning process sought 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. Coordination of Planning Process

1. The cooperative planning process established between the Highlands Council, the SPC, the Office of Planning Advocacy, and their respective staffs shall be maintained and enhanced to continue to advance coordinated and comprehensive State and regional planning and to provide consistent planning policies upon which municipalities and counties may rely.

2. The Highlands Council, SPC, Office of Planning Advocacy, and their respective staffs shall continue to share all available information useful or necessary to achieve the objectives of this Memorandum of Understanding. The SPC and the Office of Planning Advocacy shall provide the Highlands Council and its staff, in a timely manner, such reports, petitions, recommendations or reviews as are necessary for the Highlands Council to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through the SPC processes of Cross-Acceptance (to the extent it may continue to apply), State Plan development and revision, and Plan Endorsement. The Highlands Council and its staff shall provide the SPC and the Office of Planning Advocacy, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the SPC and the Office of Planning Advocacy to carry out their responsibilities, including reports, recommendations and reviews generated through the development of the RMP and the review of municipal and county submissions for Plan Conformance.

3. The SPC, the Office of Planning Advocacy, and the Highlands Council agree that coordinated participation by municipalities and counties in the processes of each agency 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 Highlands RMP

1. The Highlands Council shall re-submit the RMP, along with any and all amendments, to the SPC with a request for Plan Endorsement as to all Planning Area aspects (in accordance with N.J.S.A. 13:20-8) pursuant to the SPC's adopted rules, regulations and policies; all parties recognizing that as written, said rules, regulations and policies currently apply to municipal planning programs and not specifically to endorsement of regional plans.

2. In accordance with the State Planning Rules (N.J.A.C. 5:85 et. seq.) and in recognition of the extensive public comment and input on the development and adoption of the RMP, the RMP Monitoring Program and Recommendation Report, and RMP Amendments, the SPC or its Executive Director, as required by SPC rules, shall waive the requirements of N.J.A.C. 5:85 7.9 – 7.11.

3. In accordance with N.J.S.A. 52A:18-206, which provides that the State Planning Commission shall rely on the adopted plans and regulations of the Highlands Council in developing the State Development and Redevelopment Plan, the SPC shall, as expeditiously as possible, review the RMP with respect to the Highlands Planning Area and ensure that it is given full consideration for Plan Endorsement during a public meeting of the SPC held in accordance with all applicable SPC rules, regulations and policies.

4. During the development of any revision to the RMP pertinent to the Planning Area, the Highlands Council and its staff shall consult with the SPC and the Office of Planning Advocacy and shall review the State Plan, the SPC's endorsement of the RMP, and the Plan Endorsement rules, regulations and guidelines prior to submission of any such revision to the SPC for endorsement.

C. Coordination of Plan Conformance and Plan Endorsement

1. The Highlands Council, the SPC, and the Office of Planning Advocacy agree that where submission requirements for Plan Conformance and Plan Endorsement overlap (e.g., specific components of the Highlands Council's Initial Assessment and the SPC's Self-Assessment (required by N.J.A.C. 5:85-7.9)), the parties shall each accept the same item, and wherever consistent with the Highlands Council Plan Conformance grant program, funding for such items may be provided through the Highlands Council.

2. When a municipality or county submits a complete petition to the Highlands Council for Plan Conformance of Planning Area lands, the Highlands Council shall provide the SPC and the Office of Planning Advocacy with copies of all documents and shall consult with and consider any recommendation from the SPC before approving, rejecting, or approving with conditions the revised plans and associated regulations.

3. The SPC and the Office of Planning Advocacy shall provide the Highlands Council and its staff with copies of all documents concerning any petition for Plan Endorsement involving lands of the Highlands Planning Area and shall consult with and consider any recommendation from the Highlands Council regarding said petition before its approval, rejection, or approval with conditions.

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

5. The SPC shall pursue rulemaking to amend the Plan Endorsement process to include a requirement that any petitioner with land located in the Highlands Region submit a specific policy statement indicating the relationship of its master plan and any proposed development to the goals, policies, and objectives of the RMP and its coordination with the Highlands Council.

6. If required, the Highlands Council shall pursue an amendment to its Plan Conformance process to include a requirement that any petitioner submit a specific policy statement indicating the relationship of its master plan and implementation strategy to the State Plan.

7. Should a petitioner seek to extend SPC Center Designation or designate additional centers through Plan Endorsement, the SPC and the Office of Planning Advocacy shall consult with and consider any recommendation from the Highlands Council before approving, rejecting, or approving with conditions such petition for Plan Endorsement.

8. Should a Planning Area petitioner seek designation of a Highlands Center through Plan Conformance, the Highlands Council shall consult with and consider any recommendation from the SPC regarding such petition before its approval, rejection, or approval with conditions.

9. TUpon SPC endorsement of the RMP, the State Planning Commission agrees that Highlands Council certification of any municipality or county planning program as entirely conforming to the RMP, shall be deemed equivalent to SPC Plan Endorsement. Similarly, Highlands Centers having certified plans and implementing land use ordinances, shall, while subject to all Highlands Council approving conditions and requirements, be deemed equivalent to designated SPC Centers.

D. Coordination of the Transfer of Development Rights

1. The Highlands Council and its staff shall provide notice to and consult with the Office of Planning Advocacy when a municipality in the Highlands Region or in any of the Highlands counties expresses an interest in, or applies for, participation in the Highlands TDR program.

2. The Office of Planning Advocacy 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 applies for, participation in the State TDR program.

3. The Highlands Council and the State Planning Commission agree to work cooperatively to establish a consistent methodology to assess proposed TDR receiving zones and determine which shall be designated "appropriate," pursuant to the Highlands Act (N.J.S.A. 13:20-13.I, for municipalities outside the Highlands Region), and to seek and take advantage of any opportunities available to the agencies jointly or independently, to incentivize the Highlands TDR program.

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

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

2. The Office of Planning Advocacy shall provide notice to the Highlands Council and its staff when a municipality in the Highlands Region seeks Planning Advocacy grants or other approvals from Office of Planning Advocacy.

3. The Office of Planning Advocacy shall consult with the Highlands Council on applications received from any municipality in the Highlands Region regarding Planning Advocacy grants, or other approvals from the Office of Planning Advocacy

BE IT FURTHER AGREED that the Highlands Council, State Planning Commission, and the Office of Planning Advocacy 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: _____

NEW JERSEY STATE PLANNING COMMISSION

By: _____

Title: _____

OFFICE OF PLANNING ADVOCACY

By: _____

Title: _____