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CONSULTING REPORT
LIMITED-RESTRICTED FORMAT

IMPACT OF
HIGHLANDS WATER PROTECTION AND PLANNING ACT
AND ACT RULES
ON PROPERTY VALUE WITHIN THE
PRESERVATION DISTRICT

PROJECT REFERENCE

HIGHLANDS REGION

NJ HIGHLANDS PRESERVATION AREA

PREPARED BY

MICHAEL E. HOLENSTEIN, MAI, CTA
SCGREA; NY, NJ-RG01234, PA-GA1733-R

REPORT DATE

SEPTEMBER 1, 2007

FOR

BOARD OF CHOSEN FREEHOLDERS
WARREN COUNTY
%
HUESTON McNULTY, PC
ATTORNEYS AT LAW
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September 1, 2007

Hueston McNulty, PC
Attorneys at Law
256 Columbia Turnpike, Suite 207
Florham Park, NJ 07932

Attn: Stephen H. Shaw, Esq., as Warren County Special Counsel, Highlands Litigation
Re: Appraisal & Consulting Services, Impact of the Highlands Act & Act Rules, Warren Co, NJ

Dear Mr. Shaw:

I understand that your Firm is Special Counsel to Warren County (the "Client") in prospective litigation related to passage of the Highlands Act Legislation (the "Act") and associated Rules (the "Act Rules").

In accordance with your request, I have prepared this consulting report for use by the Client, its Subsidiaries, and Assigns as an outline of expert testimony to be conducted by Michael E. Holenstein, MAI in connection with this work.

The "purpose" of the work is to demonstrate the impact that the Act and Act Rules have had on the value of property located within the Preservation District. The function ("use") of the work is to provide the Client with litigation support services.

Thank you for this opportunity to have continued our service to the Warren County Board of Chosen Freeholders.

Respectfully submitted,
HOLZHAUER & HOLENSTEIN, LLC
By:

_____MEH via Electronic 10/10/07_____
MICHAEL E. HOLENSTEIN, MAI, CTA
SCGREA: NY, NJ-RG01234, PA-GA1733R

MEH/tps
Enclosures
File #1073-10-07 Summary

INTRODUCTION

The Highlands Act

The Highlands Act established two distinct areas of influence identified as the Preservation District and the Planning District. This report addresses the impact that the Act and ensuing Act Rules manifest on property values within the Preservation District.

The Act Rules

It is assumed that the reader has access to a copy of the "complete" Highlands Water Protection and Planning Act Rules, circa November 2006,

(www.nj.gov/dep/rules/rules/njac7_38_2006_1204complete.pdf)

and the "Readopted Rule"

(www.nj.gov/dep/rules/adoptions/njac7_38_20061204.pdf)

and is otherwise generally familiar with the Highlands Act and the body of land within NJ encompassed by the Highlands.

Act-Rules & Impacts

Discussion of the Act and Act Rules requires some convention to avoid confusion and excessive rhetoric.

Basis understandings relied upon within this document include:

1. That when presenting or discussing issues (pro or con) regarding the Act and Act Rules, the presenter must define the scope of influence under which their comments are being made. Specifically, comments must be discussed in the "macro" sense (Statewide NJ) or the "micro" sense (political and neighborhood subdivisions within the State, or smaller). Generally speaking, the Act and Act Rules are directed to a scope of influence intended to be "macro" in the sense of characterizing impacts and benefits to the State of NJ as a whole.

2. Because the market for real estate is dynamic, findings and conclusions must either be expressed as of a date certain (e.g. a "value opinion") or as a general affect that is likely to fluctuate over time (e.g. a "trend opinion"). Opinion regarding "impacts" might reasonably stated as point specific or as a general trend or as a wasting "stigma".

3. That the Highlands Act does not restrict development in a macro sense. In other words, while development may be restricted within the Preservation District (a more "micro" effect), the Act and Act Rules do not specifically prevent development outside the Preservation District.

4. The Act and Act Rules are apparently intended to re-direct development from the Highlands Preservation area to "appropriate" areas of the State. Reliance is placed on regional planning and transfer of development rights ("TDR's") to facilitate re-direction of growth.

5. That the Act and Act Rules do not facilitate or insure that any area outside the Highlands will accept any, if not all, the redirected growth.

6. The impact that the Act and Act Rules have on property use, utility, function, and hence value, has dramatically different impact and ramification when viewed in a macro and micro sense.

7. The impact that the Act and Act Rules have on NJ economics is dramatically different when viewed in a macro and micro sense.

Scope of Work

Holzhauer & Holenstein, LLC ("H&H") is retained by Hueston McNulty, PC on behalf of the County of Warren to assist with:

1. Critical review of the proposed Highlands Water Protection and Planning Act Rules (December 19, 2005) as readopted, and

2. Assessing the impact that the Highlands Act Legislation has on property value within the constituent communities located within the Highlands Preservation District.

Warren County is identified as the "Client" and "Intended User" of these appraisal services. This document is identified as a Consulting Report. Reliance on the report is restricted to the Client, its Affiliates, and Assigns. The appraisal services rendered by H&H are intended to form the basis for expert testimony before judicial and quasi-judicial bodies within the State of New Jersey.

The purpose of this consulting report is stated under #'s 1&2 above. The function ("use") of the consulting report is to provide the Client with litigation support services and to provide the Intended Users with professional interpretation and opinion regarding the Act and Act Rules.

This document is characterized under USPAP as a "Consulting Service/Report". To the extent that the report requires appraisal opinion and/or conclusions, it is identified as a Limited Appraisal in Restricted Report format (USPAP 2-2c). No specific departures from USPAP are invoked. Case study material and evaluations are generally complete appraisals specific to the identified subject properties.

Special Assumptions & Limiting Conditions

1. It is assumed that the Act Rules accurately constitute the representations, findings, and conclusions of the NJ Department of Environmental Protection (the "Department") as preparer and the Act Rules are consistently prepared, or are intended to be consistently prepared, in accordance with the statutory requirements for a State rule.

2. That the Department has conducted appropriate due diligence when relying upon the studies and findings reported by others.

3. That the Department's responses to public comment (regarding the draft rules) are intended to reiterate, clarify, and ratify the firmly founded and correct findings, conclusions, and convictions of the NJDEP that form the substantive basis for the Act Rules.

Inspection, Land & Premises

Michael E. Holenstein, MAI, principal of H&H, LLC, has continually practiced real estate appraisal and consulting services within the NJ Highlands Region for the last 20 years. General familiarity with the region is represented. The cumulative results of approximately 200 independent appraisals are referenced. These properties were individually inspected IAW preparation of those appraisals. Approximately 80 of the appraisals cited were prepared by outside firms reporting to either the State or County Agricultural Development Boards. H&H, LLC is certified to prepare these reports and has prepared approximately 120 of the same within the last 5 years. Familiarity with the property inspection process is represented.

FINDINGS & CONCLUSIONS

Structure of Review

During February 2006, H&H, LLC was retained by this Client to conduct a review of the then proposed Act Rules. Specifically, H&H, LLC was retained to conduct:

1. Critical review of the proposed Highlands Water Protection and Planning Act Rules (December 19, 2005), and

2. Assess the impact that the Highlands Act Legislation has on property value within the constituent communities located within the Highlands Preservation District.

The Act Rules section reviewed by H&H, LLC is found from Page 186 of 372, "Social Impact", through Page 266 of 372, "Agriculture Industry Impact".

The methodology and convention employed to conduct the work was to sequentially address facts, verbiage represented as fact, and findings and conclusions beginning on Page 186 of the proposed Act Rules and ending after Page 372. Periodic direct reference was made to the Act Rules text by citation; independent findings and analysis were inserted where appropriate.

The Holzhauer & Holenstein, LLC report (February 14, 2006) is included herewith by reference.

Act Rules Review

The following paragraphs are excerpts of detailed commentary prepared and submitted by H&H, LLC as subsequently responded to by the Department and recorded within the Act-Rules "re-adoption" text document (www.nj.gov/dep/rules/adoptions/njac7_38_20061204.pdf).

Despite the comments made by H&H and 114 other Commentators, NJDEP has apparently readopted the Act Rules with no substantive changes. Certain of the H&H Comments & Department Responses are listed following. H&H rebuttal comment is included as the same pertains to the Scope of Work associated with this document.

Initially, within the H&H February 14, 2006 report under the heading:

"Social Impact"

H&H Comment: There is no evidence presented (insert: *within the Act Rule Document*) that conclusively demonstrates that the Act Rules provide a macro social impact that is not redundant in the context of prior-existing rules and regulations. Further, the degree to which an impact will be realized is wholly dependant upon presupposed eventualities that have not occurred since adoption of the Act and may, or may not, occur outside the Preservation District. Implementation of TDR's is an excellent example.

NJDEP Response: To Comment # 666 (Page 457) as above:

> *"The Highlands Act consolidates aspects of several existing programs, strengthens their protections, and adds **some** unique protection provisions as well…"*

H&H Rebuttal: Upon review it is evident that the Department does not have a credible response to Comment #666. The assertion that the Act "adds some unique protections provisions" rings hollow. Given the scope and context of the Act and Act Rules together with the resources available to the NJDEP, it is incumbent upon NJDEP to come up with something better than "some unique protection provisions" as support for the Act and Act Rules as not being redundant in the context of the prior existing rules and regulations. As NJDEP has not produced the said examples and proofs it is left to the Reader to garner that the Act and Act Rules are wholly or largely redundant.

Initially, within the H&H February 14, 2006 report under the heading:

"Economic Impact"

H&H Comment:

The net result of transferring development potential and associated economic impact value from the Preservation District to areas outside the core is an effective transfer of property worth from owners within the Preservation District to other private property owners. The order of magnitude for transferred value from one group of private individuals to another is demonstrated by the following model:

The Act Rules cite several different development and buildout scenarios as probable occurrence with the Preservation District. These include (@ Page 217) that the potential dwelling units within the PD (at buildout) total 215,421 units (say 215,000).

H&H independent analysis (attached) supports that the 2006 median home value within the Highlands region is reasonably supported @ $373,000. The impact that the Act-Rules have on property owners within the PD is estimated as follows:

215,000 units @ $373,000/unit = $80,195,000,000.

This calculation demonstrates an $80 Billion loss in ratable base for Highlands PD municipalities.

Further, the above depiction does not account for other forms of development, e.g. commercial and industrial. It also does not make a distinction among dwelling units as may be developed with other than SFR homes.

The "average economic multiplier" for the US is cited within the Act-Rules (@ Page 208) as being Factor = 2X. Therefore, the cost to local economies resulting from the failure to construct and sell 215,000 dwelling units is estimated as follows:

$80.195Billion * Factor (2X) = $160 Billion Dollars

Given the methodology customarily cited within the Act-Rules, the loss in sales and realty transfer tax together with the lost jobs, and jobs spending multipliers results in the conclusion that the Act-Rules will have an astronomical impact on the economy and the ratable bases of the PD communities.

However, this statement is not necessarily true based on the same criticisms of the Act-Rules presentation of cost/benefit analysis. The problem must be evaluated on a micro and macro basis.

Therefore, it may be stated that Statewide, and over a period of time, the loss of ratable base, and the gross affects on the economy are likely to be negligible. The Act and Act-Rules don't prevent development, the same are just redistributed.

The absorption of the theorized dwelling units will be delayed due to the increased regulation and the time necessary to facilitate increased density potentials within "appropriate" areas for development but the gross demand for housing will eventually be met.

What can be stated with certainty is that whatever economic benefit is received by areas outside the Preservation District will come at the expense of the property owners and the local economies within the PD.

NJDEP Response: To Comment # 719 (Page 492) as above:

In the interests of clarity, the H&H Rebuttal comments are inserted in the Response text as **"Blue Bold"**.

"For the reasons set forth at length in the economic impact analysis, the Department believes that the long-term statewide impact of the rules being readopted will be significantly positive rather than negligible or neutral."

When making an argument or asserting a claim, it is inappropriate to assert that the argument or claim is, of itself, sufficiently self evident that it overcomes objection. Comment #719 challenges the Department's claims, assertions, and purported facts. It is therefore "no argument or explanation" to say, *ipse dixit* that the argument or purported facts are either self evident or correct.

"In terms of the asserted short-term redistributive impacts, the Department notes the following:

1. *The commenters assume that the value of $373,000 per home can be extrapolated to new housing. However, as the supply of housing increases, the price of new housing may decline as a result of supply and demand effects and because as new housing is built, the areas in which the construction takes place will, by definition, become more congested and therefore less attractive to subsequent homebuyers."*

There is no question that the unit, $373,000/house, can be relied upon as it is the average of the reported median home prices for all homes sold within the Preservation District communities (50) during the cited time period adjusted for general property appreciation (only) to the date of the report (2006). Does the Department intend by their comment to assert that the unit of $373,000 is too low? The probability is that new housing costs will continue to exceed old housing costs consistent with the movements of the market during the post WWII era.

As for an assertion that the "price of new housing may decline as a result of supply and demand effects", this comment belies the very fundamental of supply and demand. There has not been a single instance of sustained oversupply in the last 60 years. When supply exceeds demand, builders stop building. It is certainly true that there are periodic instances when the market corrects but there is not a single instance of declining values within the Highlands or proximate locations over any 10-year period since the end of WWII. There is also no evidence that the cost of developing homes (bricks & mortar) has declined in support of the Department's illusion that new housing would cost less than existing housing.

As to the issue of congestion affecting desirability, we have only to look at the trends in real estate development within the more suburban counties to the east. There will always be those who want to live in the country but it is the Department's own findings that cite that persons "prefer to live in neighborhoods…." the very like of which would have been built in the Highlands pursuant to Town & Country planning.

2. *"To the extent that development occurs outside the preservation area, the communities in the preservation area will not have to bear the costs of development, for example, the costs of new roads, water and sewer lines, schools, fire and police protection, etc. To the extent that such costs are avoided, communities in the preservation area may experience no net fiscal impact."*

It was my apparent misconception that, under the format used by the Department to present the Act Rules, that a savings of costs equals a benefit. Further, that those costs are appropriately viewed to assess "natural value" as the present value of the cost savings for a period of 25 years discounted @ 5%. Following the Department's logic (when universally applied), the "benefit" to the preservation area property

owners is no les than $1,127 Billion dollars calculated as the present value of $80Billion/year for 25 years @ 5%/annum.

This rebuttal comment is provided to demonstrate the Department's arbitrary application of its supporting logic and to demonstrate the utterly ridiculous use of similar application to assert a "benefit" based on "natural value" as differentiated from the more tangible and generally accepted term "market value".

3. *"Some portion of the new housing would likely be affordable housing, which, would likely have a lower average price than the existing median cited by the commenters".*

Under COAH, it is absolutely likely that some of the new units will be low to moderate. However, it is in the nature of averages to include the highs and lows. The Department's response lacks the illumination associated with an ability to average a series of numbers and is hence not credible.

4. *"Any change in sales tax or realty transfer tax revenues is already reflected in the multiplier, and such changes would not constitute additional benefits or costs to communities in the preservation area."*

So noted.

5. *"The Department's rules contain several exemptions to permit single-family dwellings so the estimated loss of 215,000 units is an obvious overestimate. To date, the Department has confirmed 351 exemptions."*

The Department's inability to be specific about the numbers and types of exemptions as differentiated from stating "some exemptions" highlights the utterly picayune relief that the exemptions offer affected property owners. The 351 confirmed exemptions reflect 0.20% (that's 1/20th of a percent) impact on the cited numbers. The reader is reminded that the number of units cited (@ 215,000) was taken directly from the Act Rules document (@ page 215) and was rounded down from the stated build-out numbers of 215,421 units. The confirmed exemptions (351) fall firmly within the rounding error (421) of the analysis and are therefore inconsequential.

6. *"The Department's regulations may result in some level of reduction in value for landowners in the Highlands but does not deny all use. Consequently, municipalities will not assess these lots as having zero value."*

The Department's acknowledgement that "some level of reduction in value" may be experienced is cavalier at best. The Department is the lead organization in the acquisition of open space and easements within the State of NJ. The Act itself calls for a special evaluation scheme to be implemented to insure that property owners attempting to voluntarily sell their land or easements to the State of NJ are paid "pre-Act" values. These acquisitions demonstrate that the value of development rights

differs widely among impacted properties but that in many cases (as later cited herein) the damage is from 60% to 90% of pre-Act values.

Further, the Department's regulations clearly do not deny all use but the uses allowed may not be economic. This condition may change over time. Pursuant to the definition of an "uneconomic remainder", where a partial taking results in an uneconomic remainder the taking is tantamount to the fee. This condition may eventually result in the Department's Rules affecting a regulatory taking except as may (in the discretion of the issuing agency) be averted by Highlands Preservation Area Approval waiver (NJAC 7:36-6.4).

7. *"A transfer of development program is yet to be developed and its potential positive impacts on property owners cannot be assessed."*

For these reasons, the Department believes that any short-term redistributive impacts are likely to be significantly lower than the commenters project.

The H&H, LLC February 14, 2006 Report was predicated on a general perception that the Act and Act Rules did not limit development *per se* but rather facilitated its transfer to "appropriate" areas within the State.

It has since become clear that, while implementation of TDR's and voluntary cooperation among communities may facilitate the effective transfer of (a portion of) the lost development units, that there is, in all practicality the strong probability that most of the 215,000 "lost" units will never be located within NJ.

Given this probability, the H&H conclusion that,

"…the Act-Rules will have an astronomical impact on the economy and the ratable bases of the PD communities."

is irrefutable. The notion (held by H&H) that the value associated with lost and gained development potentials was being redistributed by the Department is evidently not appropriate. It may therefore be conclusively stated that, to the degree that development potentials are not able to be transferred, the worth of the same will be lost to the State of NJ as differentiated from just lost by the Preservation District Communities.

Regardless of the eventual disposition of the transferred or lost worth, it may be reliably stated that the communities and landowners within the Preservation District will lose property value and economic worth in the range of $160 Billion dollars.

End discussion of H&H February 14, 2006 report and the Department's responses to Commentator comments regarding the then proposed Act Rules.

Impact on Property Value

The Client has requested that the Act and Act Rules be evaluated for their impact on property values. For the purpose of analysis, "property" is separated into "premises" (buildings and supporting land) and "land" where the term is intended to mean vacant land or land having a Highest and Best Use for redevelopment as though vacant.

Impact on Premises:

The impact that the Act and Act Rules have had on premises is diverse.

Generally speaking, the Law of Supply & Demand supports that where demand exists and a commodity's availability is limited, its value will increase. It may therefore be reasonably stated that existing homes within the Highlands Preservation District should be expected to increase in value at least commensurate with the general market as a whole.

To the extent that an existing home requires renovation or expansion, the Act and Act Rules contain a complex series of exemptions that facilitate work of this type. As each case is specific, the impact of the Act and Act Rules on individual premise is too specific for general comment herein.

Impact on Land:

The impact that the Act and Act Rules have on vacant land is extremely complex. There are many variables including human elements that collectively render each property unique. In the context of this appraisal and consulting assignment it is incumbent upon H&H to elucidate such areas as may be sufficiently common to facilitate generalization.

The first demonstration, identified as "**Development Rights Study**" deals with the value of development rights as a percentage of gross property values.

The second demonstration, identified as "**Warren County Development Rights Summary**" deals with the value of development rights as a percentage of gross property values but also offers insight relative to the difference in impact experienced by properties within and beyond the Preservation District.

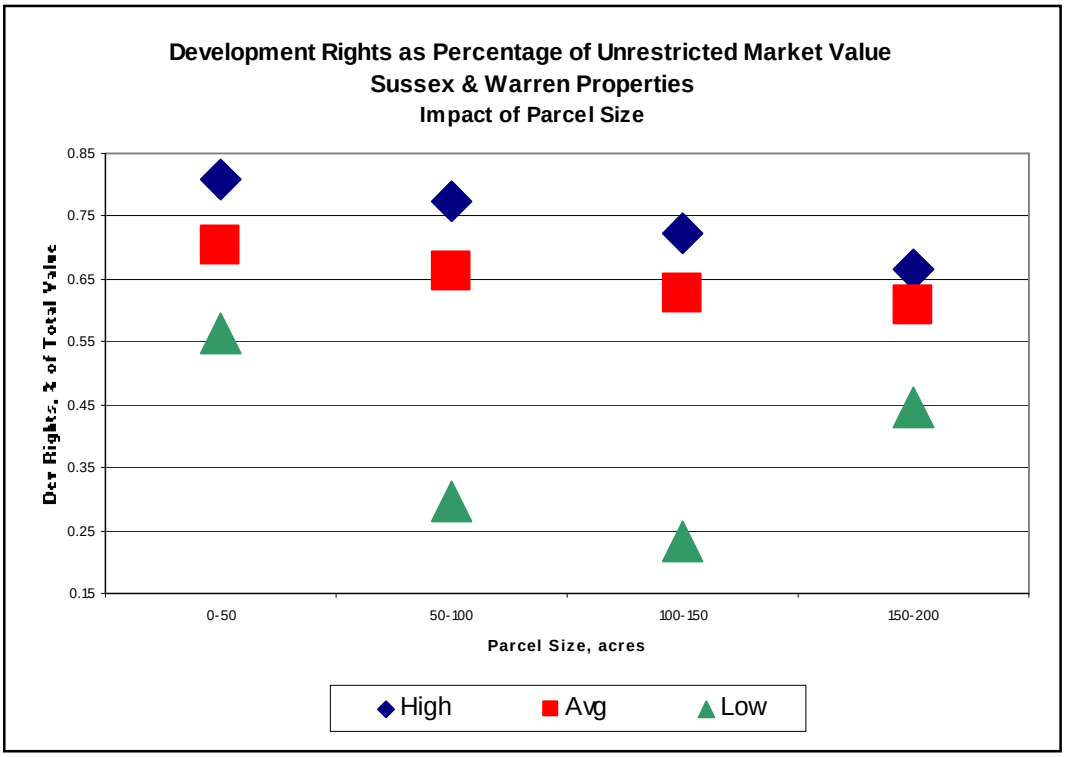
Development Rights Study:

This study was conducted to provide a pictorial demonstration referencing the impact of various factors on the value of Development Rights being acquired through the Farmland Preservation Program. The study utilized data developed through direct appraisal of properties by Holzhauer & Holenstein, LLC within Warren and Sussex Counties for the State Agricultural Development Committee and for private clients. The study covered the years 2002 through 2005, though the bulk of the data was developed between 2003 and 2004.

Development Rights Value is calculated as the mathematical difference between "Unrestricted Market Value" and "Restricted Market Value" as defined (addenda) consistent with the NJ Farmland Preservation Program Appraisal Standards.

Within the following point graph, the Development Rights Value was expressed as a percentage of Unrestricted Market Value for each parcel appraised. The graph is further differentiated to compare the relationship of Parcel Size and the DRV/Unrestricted Market Value percentage figures.

The data was initially sorted based on parcel size and then grouped as to acreage ranges from 0-50 acres, 50-100 acres, 100-150 acres, and 150 to 200 acres. Within these groupings, the maximum, minimum and average values were determined. The following graph indicates the range of percentage value attributable to development rights when sorted as a function of parcel size:



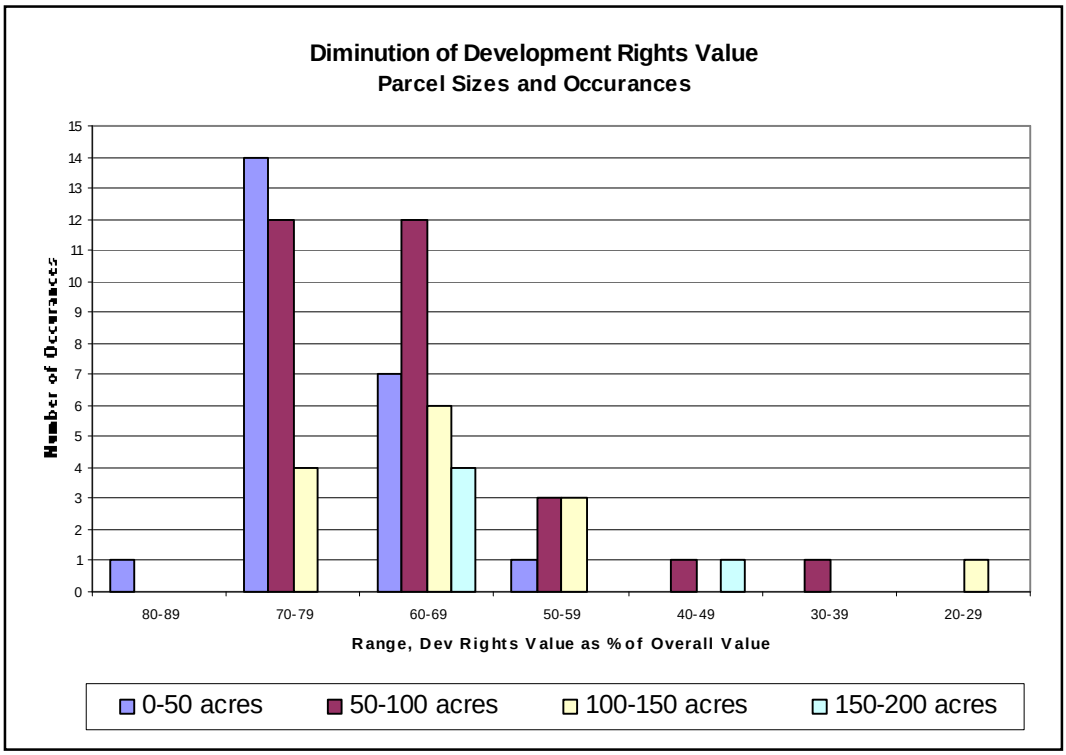
The graph indicates that a distribution of values is established within the various parcel size ranges.

H&H understanding of this data supports that the range among percentage values for a given group of properties (grouped by size) is due primarily to the quality of the parcels with respect to soils, topography, wetlands and the permitted density as determined by zoning and legislative restrictions.

The graph further indicates that development rights value, as a percentage of gross unrestricted value, tends to trend downward as gross parcel sizes become larger.

The graph supports a conclusion that development rights value as a function of unrestricted market value ranges from an approximate high differential of 65% to 80% to low differential of 20% to 55% with the average of all parcels studied ranging from 60% to 70%.

The previous graph prompted the question as to how the data points are distributed. In response, the following bar chart was developed:



The chart depicts the number of occurrences or distribution within the various percentile ranges for the studied parcels. The trend is confirmed that development rights value as a percentage of unrestricted market value tends to decrease as parcel size increases. Further, it is evident that most of the properties surveyed fell within the 60% to 80% range.

Conclusion: This study, based on appraisals and analysis that either pre-date the Highlands Act or were performed for the SADC completely independent of the Act and/or Act Rules clearly depicts that approximately 60% to 80% of property value is attributable to development rights. As these development rights were eradicated by the Act and Act Rules, it follows that the sample properties typically would lose 60% to 80% of their pre-Act value in response to the Act.

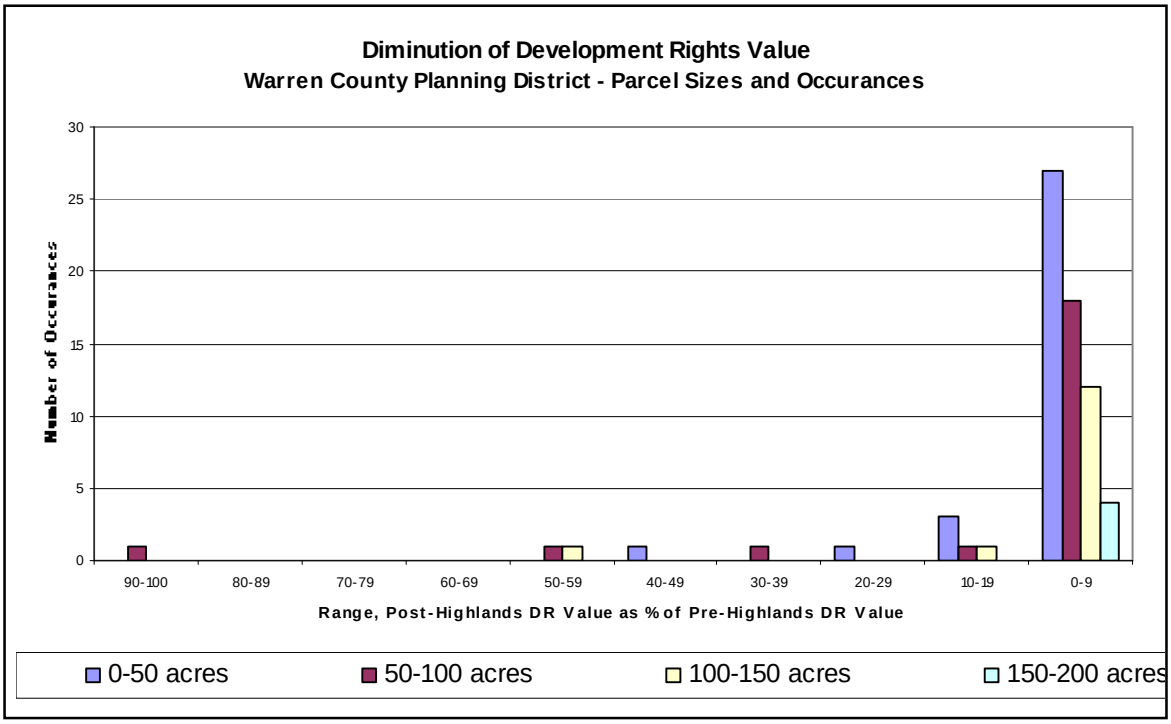
Warren County Development Rights Summary

Following are two point graphs and four bar charts demonstrating statistical data gleaned from a sample of 60 appraisals, 24 of which address property located within the Preservation District and 36 of which address property located beyond the Preservation district (mainly in the Planning District).

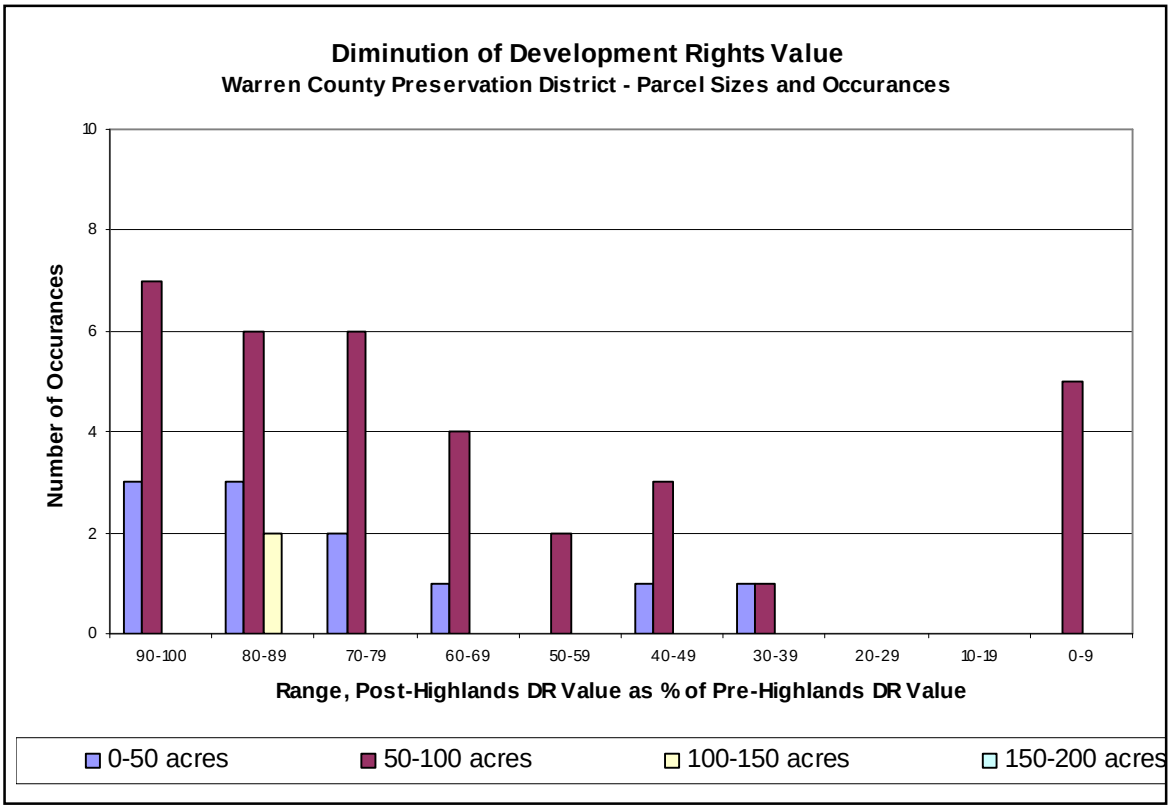
These appraisals were commissioned by the Warren County Department of Land Preservation ("WCDLP") for the 2006, 2007 and 2008 ADC acquisition rounds. The appraisals were hence conducted during 2005, 2006, and 2007. H&H, LLC prepared seven of the 60 appraisals.

The basic data reported by these charts and graphs has been compiled by WCDLP in a cursory report titled "Property Value Analysis". The source copy is maintained within my files.

The interesting aspect of this data that differs from previous studies is its point in time (well after passage of the Act) and that WCDLP compiled the data separately for lands within the Preservation District and beyond the same. Comparison of the differences among properties and appraisal results is demonstrated by the immediately following "compilation" bar charts (two).



The above chart demonstrates that, of the properties surveyed **outside the Preservation District**, the Act and Act Rules marginally affected the value of imputed development rights with the largest occurrence falling below 10%. This data indicates that lands outside the Preservation District are not significantly affected by the Act or Act Rules. This bar chart is contrasted with the following chart that depicts the same data for properties located **within the Preservation District**.



The above chart demonstrates that the imputed value of development rights for property located within the Preservation Area is severely affected by the Act and Act Rules.

Essentially, the greatest number of occurrences demonstrates a loss in development rights' value from 60% to 90% and the majority of properties surveyed experienced a loss in development rights value from 70% to 99%.

Interim Conclusion

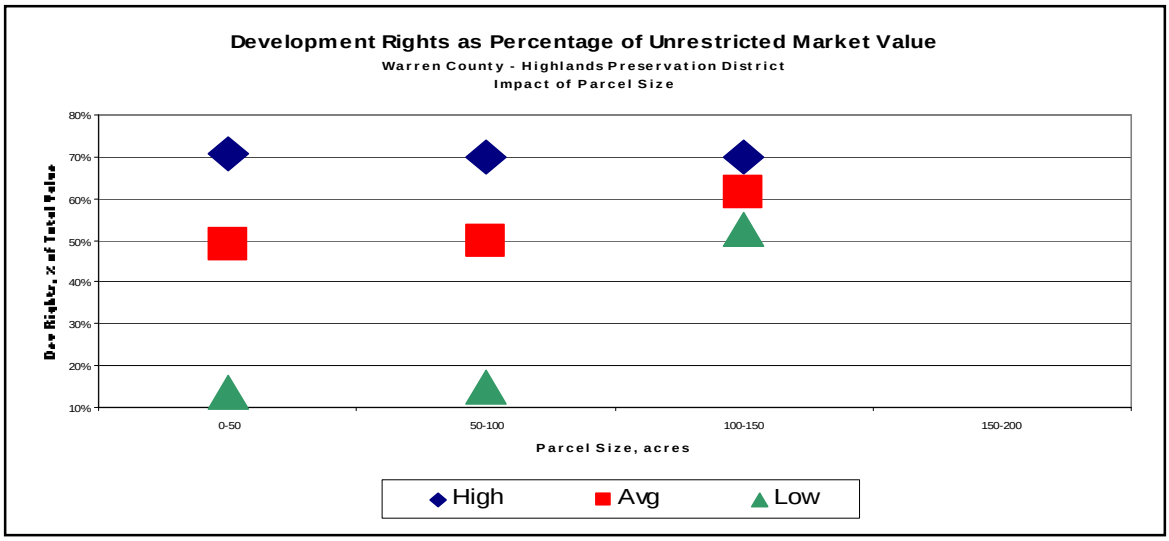
When comparing property located within the Preservation District to lands in the Planning District and beyond, it is evident that, if an allowance for "other factors" of 10% is applied to the data, it may be reasonably concluded that the Act and Act Rules are typically responsible for a loss of development rights value ranging from 60% to 89% of the pre-Act value.

****

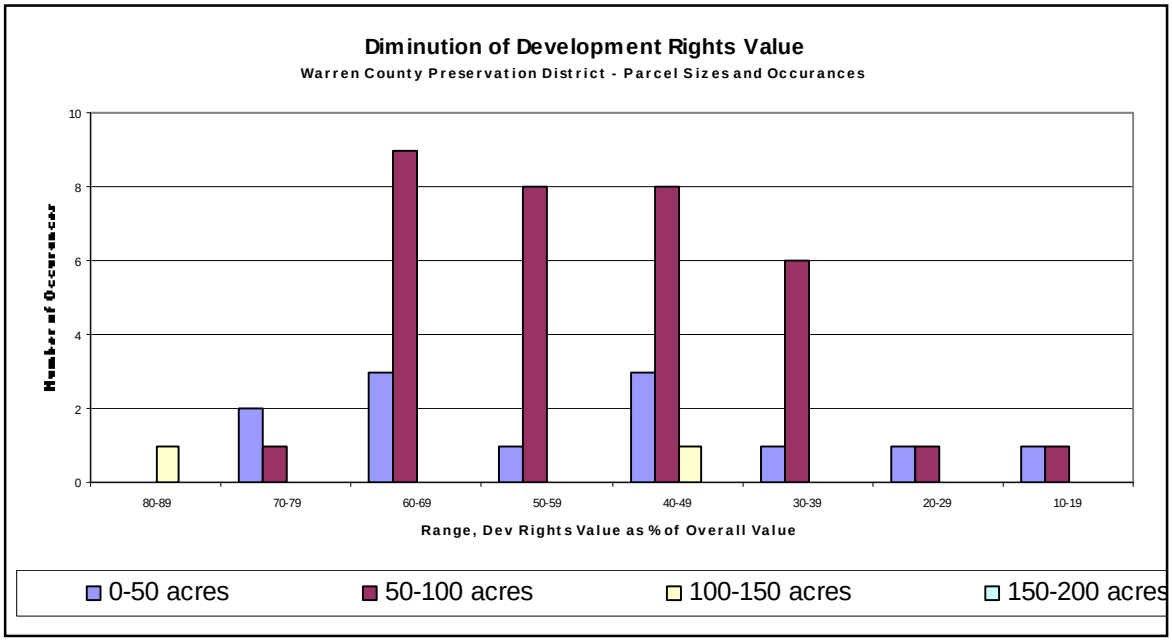
Continuing:

The following two point graphs and bar charts depict the "raw" data relied upon within the immediately preceding bar graphs.

The first point graph (below) demonstrates the array of data for surveyed properties located within the Highlands Preservation District. This data is based on appraisals conducted during 2005, 2006, & 2007 that employ the "Lookback Provision" of the Act which requires that property be appraised pursuant to the rules and regulations in effect as of January 1, 2004. Under the Lookback Provision, the development rights eradicated by the Act are still part of the bundle of rights appraised.

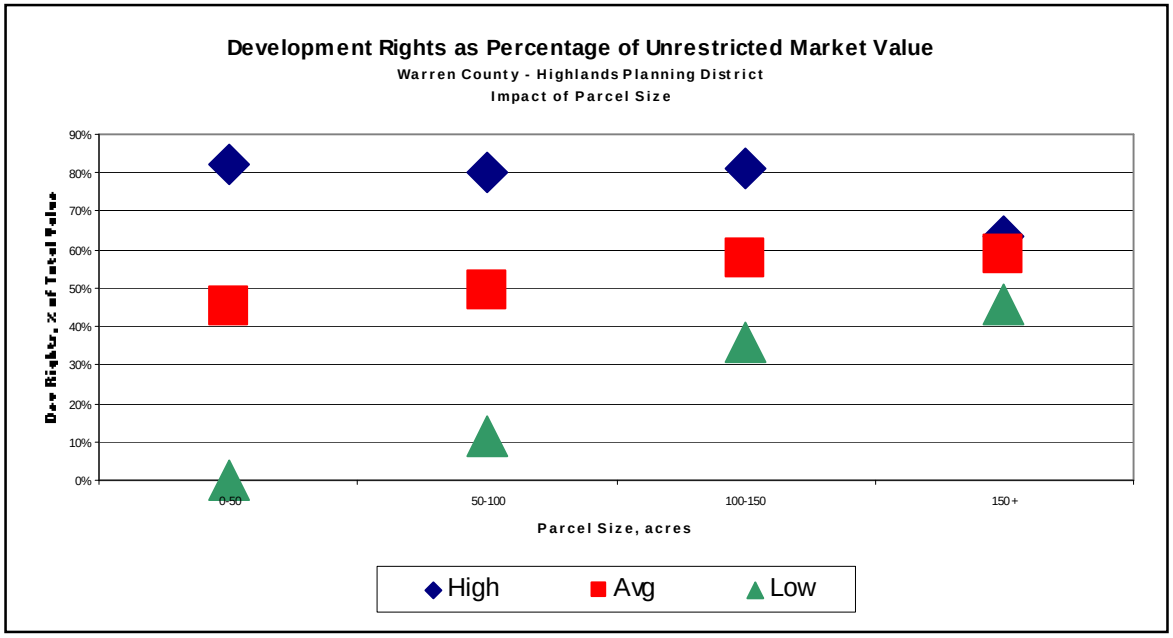


This data demonstrates that the value of development rights as a function of Unrestricted Market Value ranges from 0% to 80%. The data is distributed within the bar chart, following:

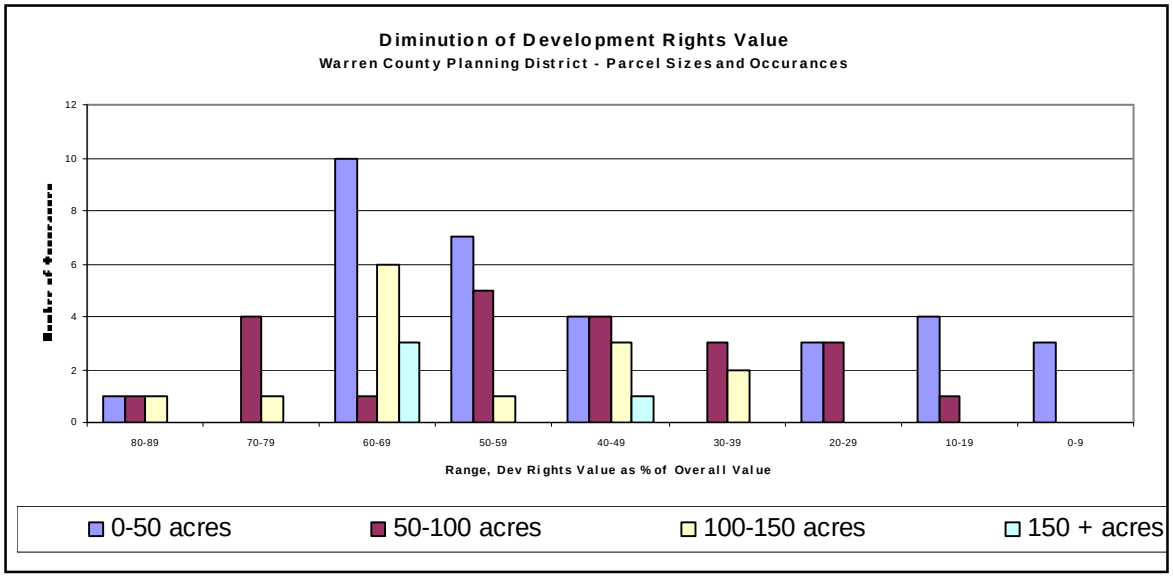


The bar chart depicts that in the post-Act years (2005-2007) that the residual value of property (net of development rights) has increased. The corresponding incremental value of property value attributable to the worth of development rights typically ranges from 30% to 70% and the frequency of occurrence is more evenly distributed to the middle of the chart.

This next point graph demonstrates the array of data for survey properties located within the Highlands Planning District and beyond. This data is also based on appraisals conducted during 2005, 2006, & 2007 that employ the "Lookback Provision" of the Act. As previously noted, the Lookback Provision only affects the results of these appraisals by a factor typically less than 10%.



This data demonstrates that the value of development rights as a function of Unrestricted Market Value ranges from 0% to 80%. The data is distributed within the bar chart, following:



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RECONCILLIATION
& FINAL CONCLUSIONS

Introduction

The Act and Act Rules are complicated.

The real estate encountered within Northern NJ, in particular, the Preservation and Planning Districts, is diverse.

A fundamental axiom of real estate appraisal practice is that land has value and improvements contribute to value.

The value of land is based on its economic utility for some purpose.

The economic utility of land is base on its physical, functional, and legal uses. The use that demonstrates the highest value is said to be the "Highest & Best Use".

When land that is physically and functionally suited to development is legally prohibited from development, it will be less valuable than other land having the same physical and functional characteristics that is not legally prohibited from being developed.

The Act and Act Rules legally prohibit many of the heretofore legally permitted uses of land at the previously prescribed densities within the Highlands Preservation District.

Reconciliation

Comments # 666 & # 719 and associated Department Responses were presented above because the same represent candid objection to the Act and Act Rules and objective evidence of the Act and Act Rules' impact on property values. These estimates were developed using the Department's figures and the Department's methodology and the comments have been reviewed by the Department with responses published; the Department's responses have been rebutted.

The Client has requested an opinion of the gross diminution in property values experienced by the Preservation District in response to the Act and Act Rules.

Accepting that the direct impact on lost development (land & buildings for 215,000 units of housing) is reasonably stated as of 2006 @ $80 Billion Dollars, the question becomes what portion of that figure is simply attributable to the land.

A "Builder's Cost Ratio" ("BCR") is a rule of thumb relied upon when developing property. Simply stated, a builder will target land as a percentage of the finished residential unit sale price. For residential housing in suburban and rural areas similar to the Preservation District, an acceptable BCR typically ranges from approximately 25% to 35%. Within more heavily suburban areas, the scarcity (and hence cost) of land will typically force the BCR to levels of 45%.

This form of cursory analysis is supported by the actions of typical market participants and, most of the residential housing data loaded for all the CAMA systems currently on file within the State's listing of Class 2 properties (perhaps 1,000,000 entries).

Application of a BCR to practical circumstances includes that if a finished residential unit sells for $100,000 the contributory value of the land will range from $25,000 to $35,000.

Adopting the most conservative estimate of BCR application @ 25% and the estimated total cost of lost development @ $80 Billion Dollars, it is evident that the implicated loss in land value is approximately $20 Billion Dollars net of any consideration for the residual value of land that is impacted by the Act and Act Rules.

The residual value of lands impacted by the Act and Act Rules is well supported by independent evaluation as ranging from 70% to 80% of pre-Act values.

I conclude that the residual value of lands within the Preservation District is reasonably stated at approximately 25% of pre-Act values and that the resultant loss in property value within the Preservation District *due to the Act and Act Rules* (as of 2006) is reasonably estimated @ $15 Billion Dollars (75% of $20 Billion).

Summary of Conclusions

1. Based on information provided by the Department as supplemented by the independent investigation and analysis of H&H, LLC, effective 2006, approximately **$80 Billion Dollars** of real estate development will not occur within the Preservation District.

2. A portion of the $80 Billion in development will be transferred from the Preservation District to other areas within NJ deemed "appropriate" by NJDEP that otherwise indicate an interest in "taking on" additional development. The balance of the development dollars will apparently not be invested in NJ.

3. Based on the Department's analysis and methods of presenting data, the $80 Billion loss in development will have a $160 Billion Dollar impact on the economy of the Highlands Preservation District Communities. To the extent that the development is never conducted in NJ, the impact may eventually apply to NJ in a macro sense.

4. Of the $80 Billion Dollar impact experienced by the Preservation District Communities, approximately $15 Billion Dollars is directly attributable to a diminution in land value. This loss in land value is borne by, and in many cases has a devastating affect upon, the constituent owners of property within the Highlands Preservation District.

5. On average, vacant and minimally improved properties located within the Preservation District have lost 70% to 80% of value depending upon many factors. The principal considerations in estimating loss to specific property are the property's physical and functional characteristics, particularly gross size.

CERTIFICATION

This consulting report is certified to the Intended Users only; it is restricted for use by the Client & Intended User(s) to assist with professional interpretation and opinion regarding the Act and Act Rules. I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional work.
3. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.
5. As an appraiser I am acting in an independent capacity; the appraisal assignment is not based upon a requested minimum valuation, a specific valuation, or approval of a loan.
6. My analyses, opinions and conclusions were developed, and this appraisal has been prepared in conformity with the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.
7. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
8. As of the date of this report the undersigned has completed the requirements of the continuing education program of the Appraisal Institute and Appraisal Foundation.
9. I am generally familiar the Highlands Region properties by type and location.
10. No one provided significant professional assistance to the report signatory with respect to the reported conclusions.
11. That I am in compliance with the Competency Provision of USPAP and have sufficient education and experience to perform an appraisal of the subject property.
12. That my opinions regarding the Act-Rules are as reported within the body of this letter-report.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, the firm with which he is connected, or any reference to the Appraisal Institute or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent and approval of the undersigned.

MEH via Electronic 10/10/07

MICHAEL E. HOLENSTEIN, MAI, CTA
SCGREA: NY, NJ-RG01234, Pa-GA1733-R

ASSUMPTIONS AND LIMITING CONDITIONS

1. No survey of the subject property has been prepared by the appraiser. I assume no responsibility for matters legal in character nor do I render any opinion as to the title, which is assumed to be good and marketable unless otherwise stated.

2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

3. The sketches, drawings, photos and photocopies within this report are included to assist the reader in visualizing the property. No responsibility in connection with these exhibits or the referenced work of others is assumed.

4. The information furnished by others including but not limited to surveys, maps, site plans, building plans, leases, and income information as footnoted within this report, is believed to be reliable and is verified whenever possible. However, no warranty is given for its accuracy.

5. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.

6. It is assumed that all applicable zoning regulations and use restrictions have been complied with and that the subject property is a legal, conforming use within the zone unless non-conformity has been otherwise stated and considered within the report.

7. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based unless otherwise stated. This assumption specifically includes the requirements of the Industrial Site Recovery Act (ISRA), if applicable, and assumes the ability to convey the property with free title.

8. It is assumed that the utilization of the land and improvements is within the property's lines and that there is no encroachment or trespass relative to adjoining lands.

9. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

10. Any value estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the reports.

11. Any value estimates provided in this report are as of the date specified based upon the prevailing market conditions and are subject to fluctuations in accordance with such factors.

12. Unless otherwise stated in this report, the existence of hazardous substances, latent or subsurface defects, or environmental conditions, which may or may not be present on or about the property was not observed by the appraiser nor brought to the attention of the appraiser. The appraiser has no knowledge of the existence of such materials/conditions on or in the property. The appraiser, however, is not qualified to detect such substances/conditions. The presence of substances such as, but not limited to, asbestos, urea-formaldehyde foam insulation, radon gas, fuel leaks, lead-based paints or other potentially hazardous materials or conditions such as sink holes, earthquake faults, underground caverns or streams, may affect the value of the property. The value estimate is predicated on the assumption that there is no such material or condition on or in the property or in close proximity to the property that would cause a loss in value. No responsibility is assumed for any such materials or conditions, nor for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

13. The value estimate is further predicated upon the assumption that there are no endangered species habitat, historical/archeological/cultural sites, burial grounds, or critical natural features within the boundaries of this property.

14. The data used in this report has been secured from sources considered reliable and has been verified to the extent possible by this appraiser; however, correctness is not guaranteed.

15. Possession and use of this report by the Client may be governed by the Freedom of Information Act. Procedurally, the report is prepared as a complete document for the stated use by the stated user. Unintended users and users that do not possess proper appraisal qualifications are advised that the data, methodology, conclusions, and opinions provided by the report may not be applicable or reliable if used outside the stated context. The possession and use of this report and all conclusions to value is strictly governed by the professional relationship between client and appraiser.

16. Failure to satisfy any and all outstanding appraisal fees pursuant to the agreed scope of the assignment shall render all conclusions and certifications null and void.

PROFESSIONAL QUALIFICATIONS OF
MICHAEL E. HOLENSTEIN, MAI, CTA, SCGREA

Business & Education:

Current ♦ HOLZHAUER&HOLENSTEIN, LLC ; Principal Member (1998-)

Prior ♦ LIN-HOLZ ADVISORY GROUP, LLC ; Principal Member (1997&1998)
Employed by R.L.Holenstein, MAI as an Appraiser and Licensed R.E. Agent (1987-1996)

2001 ♦ State of New York Certified General Real Estate Appraiser (SCGREA #46000039750)

1999 ♦ Commonwealth of Pennsylvania Certified General Real Estate Appraiser (SCGREA #GA1733R)

1995 ♦ Designated as a Member of the Appraisal Institute (MAI), Member #10824.

1993 ♦ New Jersey State Certified General Real Estate Appraiser (SCGREA #RG01234)

♦ Certified by the State of New Jersey as a Tax Assessor (CTA)

1989 ♦ Graduated Upsala College Cum Laude with BA and BS degrees in Business & Management

1987 ♦ Licensed by the State of New Jersey as a Real Estate Salesperson

1983-87 ♦ United States Marine Corps, Active Duty Status. Stationed in the Continental U.S. and Asia. Occupational specialties included Air Frames Structural Mechanic (MOS-6143), CDI (Collateral Duty Inspector), and NDI (Non-Destructive Inspector). Promoted meritoriously four times to E5. Awarded Navy Achievement Medal in December, 1986 in recognition for outstanding service while stationed in South Korea, ten Meritorious Masts, three Letters of Commendation, Certificate of Commendation and selected as Outstanding Marine NCO, 1st Marine Aircraft Wing.

Seminars/Conferences:

- NJAC, Tax Bd. Commissioners & Administrators; Annual Education Seminar/Conference, (1995 -)
- Metro NJ Chapter, Appraisal Institute, Annual Princeton Conference, (1987 -)
- Dynamics of Office Building Valuation - Appraisal Institute
- Condemnation Appraisal Practices Seminar - Appraisal Institute
- ACOE Wetlands Delineator Courses - Rutgers Extension
- Attacking/Defending Appraisals in Litigation - Appraisal Institute
- Appraiser as an Expert Witness - Appraisal Institute

- Handling Eminent Domain & Regulatory Taking Cases
- Land Use Law Conference
- Advanced Expert Witness Deposition Tactics NJ
- Appraisal Consulting: A Solutions Approach for Professionals
- NJ Real Estate Title law, Problems & Solutions
- Keys to Effective Witness Examination, NJ
- Appraisal Standards for Federal Land Acquisitions (“Yellow Book”)
- Eminent Domain & Regulatory Takings, Update 2005

Michael E. Holenstein has practiced Real Estate Appraisal and performed Consulting Services as his sole occupation beginning in 1987. Since completing his primary appraisal education, his essential focus has been the valuation of partial interests, real property rights, condemnation appraisal, subdivision analysis, tax appeals, general fee appraisal, and a variety of consulting services including acquisition and development, feasibility, financing, estate management and partnership interests. His work has satisfied a variety of functions including matrimonial, probate, tax appeal, condemnation, pollution contamination and other legal proceedings, financing requirements and general asset valuation. A partial list of appraisal assignments include:

Residences	Tax Appeals
Farms and Acreage	Partial Takings
Commercial Properties	Entire Takings
Industrial Properties	Feasibility Studies
Institutional Properties	Subdivision Analysis
Multi-Family Properties	Easement Valuation
Highest and Best Use	Easement Impact Valuation
Contamination Impact	Rights-of-Way
Islands	Review Appraisals

Expert Testimony:

- State of NJ Tax, Superior, & Administrative Law Courts; Morris, Sussex, and Warren County Tax Boards; Various Condemning Authority Commissioner Boards; Various Municipal Planning & Zoning Boards

Professional Affiliations&Community Service:

- Member – Foundation Board, Newton Memorial Hospital (2005 -)
- Member - Board of Directors, Metro-NJ Chapter, Appraisal Institute (1997-99)
- Member - Newton Rotary Club (1987-99)
- Member - Executive Board of Directors, Morris/Sussex Boy Scout Council (1992 - 1995, 1997)
- Member - Executive Board of Directors, Greater Newton Chamber of Commerce (1992 - 1997: President 1996 - 1997)
- Committeeman - Newton Economic Development Committee (1993 - 1996)
- Associate Member – Garden State & Bergen Multiple Listing Services (1987 -)

References:

Federal Acquisitions:

- Pamela McLay, National Park Service, 215-597-7700
- William McLaughlin, NPS, 215-597-4940
- Susan P. Russo, ARA, USDI, 413-253-8529
- Mary Ellen Bryant, Appraisal Services Directorate, 413-253-8529

Litigation Support Services:

- Lawrence B. Litwin, Esq., 973-538-4220 (Condemnation/General)
- Martin F. Murphy, Esq., Johnson, Murphy, Hubner…, 973-835-0100 (Condemnation, General)
- George P. Ljutich, Esq. (DAG), NJDOT, 609-292-5936 (Adversary in Condemnation)
- Thomas Olsen, Anthony DellaPelle, Esq, Mckirdy & Riskin, PC, 973-539-8900 (Condemnation)
- Jeffery D.Gordon, Esq., Archer & Greiner, PC, 609-580-3713 (Tax, General, Stigma Damages)

ADDENDA

Appreciation Study

Appreciation Study - Highlands Preservation Districts - Hunterdon, Morris & Warren Counties

Yearly Directors Ratio changes from 2000 through 2006 for following Municipalities

Year	Bloomsbury Boro		Lebanon Twp		Boonton Twp		Jefferson Twp		Mt Olive Twp		Oxford Twp	
2000	103.23	--	100.23	--	92.22	--	91.03	--	99.34	--	95.48	--
2001	96.91	6.5%	94.64	5.9%	85.46	7.9%	87.13	4.5%	95.66	3.8%	96.26	-0.8%
2002	89.88	7.8%	91.2	3.8%	78.71	8.6%	81.39	7.1%	90.72	5.4%	90.28	6.6%
2003	83.98	7.0%	83.64	9.0%	74.86	5.1%	74.98	8.5%	87.64	3.5%	82.22	9.8%
2004	74.89	12.1%	75.02	11.5%	67.95	10.2%	66.26	13.2%	80.47	8.9%	72.1	14.0%
2005	66.44	12.7%	69.67	7.7%	61.82	9.9%	58.82	12.6%	70.6	14.0%	64.49	11.8%
2006	59.13	12.4%	59.4	17.3%	55.72	10.9%	52.4	12.3%	59.7	18.3%	57.5	12.2%

Cumulative Appreciation for respective Municipalities from 2000 to 2006 is:

74.6%	68.7%	65.5%	73.7%	66.4%	66.1%

Avg Cum Appr, 2000 to 2006 = 0.69 Appreciated Value = $220,504 x 1.69 = $ 373,018

Median Home Price Analysis
Next page

County & Municipality Demographics Data

County	2000 population	total households	persons/ housesold	Median SF Home Value	Municipality	2000 population	total households	persons/ housesold	Median SF Home Value
Bergen	884,118	330,817	2.64	$ 250,300	Mahwah Tp	24,062	9,340	2.43	$ 334,100
					Oakland Bo	12,466	4,255	2.88	$ 245,300
Hunterdon	121,989	43,678	2.69	$ 245,000	Alexandria Tp	4,698	1,535	2.95	$ 274,100
					Bethlehem Tp	3,820	1,266	3.02	$ 278,400
					Bloomsbury Bo	886	322	2.74	$ 172,800
					Califon Bo	1,055	401	2.63	$ 220,900
					Clinton	2,632	1,068	2.46	$ 222,100
					Clinton Tp	12,957	4,129	2.82	$ 283,900
					Glen Gardner Bo	1,902	805	2.33	$ 170,700
					Hampton Bo	1,546	559	2.58	$ 165,200
					Holland Tp	5,124	1,881	2.72	$ 199,000
					Lebanon Tp	5,816	1,963	2.79	$ 233,400
					Tewksbury Tp	5,541	1,986	2.79	$ 461,200
					Union Tp	6,160	1,666	2.61	$ 285,200
Morris	470,212	169,711	2.72	$ 257,400	Boonton Tp	4,287	1,476	2.78	$ 322,600
					Chester Tp	7,282	2,323	3.05	$ 407,900
					Jefferson Tp	19,717	7,131	2.76	$ 180,400
					Kinnelon Bo	9,365	3,062	3.06	$ 354,000
					Montville Tp	20,839	7,380	2.80	$ 346,600
					Mt Arlington Bo	4,663	1,918	2.42	$ 183,700
					Mt Olive Tp	24,193	9,068	2.66	$ 197,800
					Pequannock Tp	13,888	5,026	2.76	$ 246,100
					Randolph Tp	24,847	8,679	2.86	$ 329,800
					Riverdale Bo	2,498	919	2.68	$ 210,200
					Rockaway Tp	22,930	8,108	2.82	$ 206,200
					Roxbury Tp	23,883	8,364	2.84	$ 207,400
					Washington Tp	17,592	5,755	3.02	$ 279,300
Passaic	489,049	163,856	2.92	$ 190,600	Bloomingdale Bo	7,610	2,847	2.63	$ 177,000
					Ringwood Bo	12,396	4,108	3.00	$ 193,400
					Wanaque Bo	10,266	3,444	2.86	$ 172,100
					West Milford Tp	26,410	9,190	2.84	$ 171,200
Somerset	311,600	108,984	2.69	$ 235,000	Bedminster Tp	8,302	4,235	1.96	$ 228,000
Sussex	144,166	50,831	2.80	$ 157,700	Byram Tp	8,254	2,833	2.91	$ 175,300
					Green Tp	3,220	1,046	3.07	$ 182,500
					Hardyston Tp	6,171	2,319	2.66	$ 152,300
					Hopatcong Bo	15,888	5,656	2.81	$ 141,300
					Sparta Tp	18,080	6,225	2.90	$ 222,700
					Vernon Tp	24,686	8,368	2.95	$ 150,800
Warren	109,219	38,660	2.61	$ 155,500	Allamuchy Tp	3,877	1,692	2.28	$ 192,500
					Franklin Tp	2,768	972	2.84	$ 176,200
					Greenwich Tp	4,365	1,421	3.07	$ 233,300
					Harmony Tp	2,729	1,010	2.68	$ 156,000
					Independence Tp	5,603	2,146	2.61	$ 169,500
					Liberty Tp	2,765	980	2.79	$ 169,600
					Lopatcong Tp	5,765	2,143	2.55	$ 156,600
					Mansfield Tp	6,653	2,334	2.76	$ 177,200
					Oxford Tp	2,307	886	2.60	$ 125,200
					Pohatcong Tp	3,416	1,341	2.54	$ 135,100
					Washington Tp	6,248	2,099	2.95	$ 185,400
					White Tp	4,245	1,668	2.47	$ 163,700

Municipalities with land area in Preservation District = 50

Median Home price (average) = $ 220,504

Value Definitions

MARKET VALUE (unrestricted) is defined as:

"...the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is consummation of a sale as of a specified date and passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated
(2) Both parties are well informed or well advised, and each acting in what he considers his own best interest
(3) A reasonable time is allowed for exposure in the open market
(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto
(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Source: Federal Register, vol. 55, no. 163, August 1990, pages 34228 and 34229 & USPAP, 2004 edition.

MARKET VALUE (restricted) is defined as:

Market value of a property (as defined above) but subject to the deed restrictions placed on the title of a property as set fourth in N.J.A.C.2:76-6.15. The deed restriction passes with the land in perpetuity regardless of the owner. This term may be synonymous with agricultural market value although in areas under heavy development pressure or in more exclusive gentrified areas an increment of value may be inherent for residential and/or recreational uses with agricultural use being secondary.

Source: The Dictionary of Real Estate Appraisal, 4rd Edition

DEVELOPMENT EASEMENT is defined as:

The Market Value of a property less the Market Value Restricted of that property is equivalent to the value of the Development Easement.

Source: The New Jersey Farmland Preservation Program Handbook

Act Rules re-adoption with comments & responses (excerpts)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE DECEMBER 4, 2006, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

LAND USE REGULATION

Highlands Water Protection and Planning Act Rules

Readoption with amendments:	N.J.A.C. 7:38
Proposed:	December 19, 2005 37 N.J.R. 4767(a)
Adopted:	, 2006 by Lisa P. Jackson, Commissioner, Department of Environmental Protection
Filed:	, 2006 as R. d. with substantive and technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 13:20-1 et seq.; 13:1D-1 et seq.; 13:1B-15.128 et seq.; 13:9B-1 et seq.; 23:2A-1 et seq.; 58:1A-1 et seq.; 58:10A-1 et seq.; 58:11-23 et seq.; 58:11A-1 et seq.; 58:12A-1 et seq.; and 58:16A-50 et seq.

DEP Docket Number: 39-05-11/578

Effective Date:

Expiration Date:

The Department of Environmental Protection is readopting with amendments the Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38. The proposal was published on December 19, 2005. The comment period closed on February 17, 2006.

1

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Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on the proposal on January 25, 2006, at 4:00 P.M., at the Highlands Council offices in Chester, New Jersey. Susan Lockwood and Mark Mauriello were the hearing officers. Thirty-three people attended and 28 gave testimony. The hearing officers recommended that the proposal be adopted as proposed with the changes described below in the summary of responses to comments. The Department accepts the recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs
Attn: DEP Docket No. 39-05-11/578
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey, 08625-0402.

Summary of Public Comments and Agency Responses

The Department accepted comments on the proposal through February 17, 2006. One-hundred fifteen people provided individual written and/or oral comments. Four-hundred sixty-five people submitted form letters. The following individuals provided individual comments:

1. Anderson, Joanne
2. Anderson, John W.
3. Anderson, Wayne
4. Baker, Michael J.
5. Bartel, Constance
6. Best, Robert, E.
7. Best, Ruth M.
8. Bowman, Cynthia M.
9. Broadhurst, Ellen
10. Broadhurst, Hope
11. Broadhurst, Jeff

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12. Broadhurst, Tom
13. Buck, Susan
14. Canright, Mark
15. Christensen, Nancy
16. Collins, Jr., Thomas F. Vogel, Chait, Collins, and Schneider
17. Constantine, Diane M.; Sprint Spectrum and Nextel Corporation
18. Costa, Rosalind Pio
19. Davenport, Robert
20. Dilodovico, Anthony; Schoor Depalma
21. Donaldson, Lewis A.
22. Drysdale, Andrew
23. Drysdale, Lois
24. Dunn, Thomas W. Beattie Padovano representing Borough of Ringwood Planning Board
25. Farber, Joy; Association of New Jersey Environmental Commissions
26. Feller, Caroline E.
27. Filippone, Ella F.; Passaic River Coalition
28. Finke, Jean M.
29. Finke, Michael
30. Finke, Robert
31. Finke, Robert A.
32. Frey, Gertrude
33. Frey, Robert
34. Frey, Robert J.
35. Frey, Wilma; New Jersey Conservation Foundation
36. Gagne, Ed
37. Gagne, Penny
38. Gerish, Jay
39. Goger, Nicole
40. Gracie, Heather; Gracie & Harrigan Consulting Foresters, Inc.

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41. Harrigan, Christina; Gracie & Harrigan Consulting Foresters, Inc.
42. Kallesser, Steven; Gracie & Harrigan Consulting Foresters, Inc.
43. Kelsey, James;. Planning Board, Independence Township
44. Kern, Jerry and Sandi
45. Kessler, James C.
46. Kessler, James E.
47. Klumpp, Hank
48. Kraham, Susan J.; NJ Audubon Society
49. Kruger, Anne L.; Passaic River Coalition
50. Kushner, Ross. Pequannock River Coalition
51. LaHue, Michael P.
52. LaHue, Robin; The Freedom Group, L.P.
53. Leavens, III, William B.
54. Lee, Art
55. Longo, Richard A.
56. Mackey, Devlen
57. Mackey, Holly
58. Mackey, Robert
59. Maidens, Melinda B.; Jeffer, Hopkinson and Vogel
60. McGroarty, Chuck; Planning consultant for Mount Olive Township
61. McGuinness, Michael G.; National Association of Industrial and Office Properties
62. Michalenko, Thomas
63. Minervini, William P.
64. Morawski, Stephen H.; Tennessee Gas Pipeline Company
65. Motyka, Richard J.
66. Myers, Aimee Ashley; Morris County Board of Agriculture
67. Newhouse, Dave
68. Newton, Damien
69. Nieuwenhuis, Richard; President, NJ Farm Bureau
70. O'Hearn, William; Highlands Coalition

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71. O'Neil, Elaine T.
72. Orcutt, Jon, Nancy Christensen, Damien Newton; Tri-State Transportation Campaign
73. Peifer, David
74. Post, Deborah A.
75. Purcell, Monique; NJ Department of Agriculture
76. Quinn, Deborah
77. Quinn, William
78. Race, Jean
79. Race, Sam
80. Richardi, Allen
81. Rinehart, John Y.
82. Rohrbacher, Peter J.
83. Sachau, Barb
84. Scrivo, Thomas P.; McElroy, Deutsch, Mulvaney & Carpenter, LLP
85. Shaw, Steven H.; Special Counsel to Warren County for the Board of Chosen Freeholders, Hunterdon and Warren Counties
86. Shepherd, David J.
87. Shope, David
88. Sigler, Carl
89. Simone, Erin E.; 91st State Agricultural Convention
90. Skowronsky, Kenneth
91. Skowronsky, Linda K.
92. Somers, Julia; Executive Director, Great Swamp Watershed Association
93. Sternman, Walter S.
94. Strassle, Edward
95. Stryeski, Nancy Baxter
96. Stumpp, Ilona
97. Sussek, Claire
98. Sussek, Greg
99. Tavella, Doug; Appalachian Forestry Service.

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this rulemaking are both for activities that are environmentally beneficial. Habitat enhancement activities result in more and better habitat for fish, wildlife and plant species. Stream bank stabilization helps to improve the health of a stream by eliminating sources of erosion and sedimentation that would otherwise have negative impacts on water quality both at the point of erosion and downstream. Further, while it may be true that all portions of all waters in the Highlands are not entirely accessible, recreation, including fishing, is a significant activity in the Highlands which will be positively affected by the types of activities covered by these two general permits. Consequently, the Department concludes that its general permits provide positive social impacts.

665. COMMENT: It is premature to state that there is a positive social impact from implementation of the rules. In addition, the positive or negative social affects must be characterized as "macro" (New Jersey proper) or "micro" relating to the communities within the preservation district. (85, 87)

RESPONSE: The Department is required to evaluate the social impact of every rule it proposes. Therefore, it cannot wait until the rule is in place to determine the social impact. The Department believes, however, that the social impact of the Highlands rules is positive in both the "macro" and "micro" sense, as described by the commenter. The Highlands rules further the goal of the Highlands Act to protect an essential source of drinking water and other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and many sites of historic significance. These benefits accrue to those who live in the preservation area as well as to others in New Jersey. Therefore, the rules have an overall positive social benefit.

666. COMMENT: There is no evidence presented that conclusively demonstrates that the rules provide a macro social impact that is not redundant in the context of prior-existing rules and regulations. Further, the degree to which an impact will be realized is wholly dependant upon presupposed eventualities that have not occurred since adoption of the

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Act and may, or may not, occur outside the preservation district. Implementation of TDR's is an excellent example. (85, 87)

RESPONSE: The Highlands Act consolidates aspects of several existing programs, strengthens their protections, and adds some unique protection provisions as well. The result is a law that requires one thorough and comprehensive review of a proposed major Highlands development. Therefore, the Department does not agree that the social benefits of the Highlands Act are redundant with prior existing rules. The timing of the Department's regulations and the Regional Master Plan (RMP), as dictated by the Act, made it impossible for the Department to await completion of the RMP and transfer of development rights program before proposing its regulations. Therefore, the Department must view the Act in its entirety and presuppose that all provisions of the Act will be implemented as directed by the New Jersey Legislature.

However, as stated in response to previous comments, the Highlands Act contains more than TDR provisions to reduce its impacts on property owners, including an extensive list of exempt activities, the exclusion of agricultural and horticultural uses from the definition of "major Highlands development" thus keeping these activities unregulated by the Department, the requirement that agencies seeking to acquire land for open space and farmland preservation obtain pre- and post Highlands appraisals and negotiate using the higher value, and the provision of a waiver for the taking of property without just compensation if a Highlands approval has been denied and the owner can recognize no alternative use for the property.

667. COMMENT: The rules presuppose under social doctrine that the rights of the general populace exceed the rights of the individual. The purported social benefits realized by segments of the general populace, in particular the users of water resources generating from within the Highlands, are garnered at the expense of the private property owners who either live within, or own land within, the Highlands Region proper. (85, 87)

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RESPONSE: The Department is required to evaluate the economic impact of every rule it proposes. Therefore, it cannot wait until the rule is in place to determine the economic impact. The Department believes, however, that the economic impact of the Highlands rules is positive in both the "macro" and "micro" sense, as described by the commenter. The Highlands rules further the goal of the Highlands Act to protect an essential source of drinking water and other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and many sites of historic significance, without the costs associated with water purification, wastewater treatment, flood control projects and other costly undertakings that would be required to accomplish such goals after land is developed. These benefits accrue to those who live in the preservation area as well as to others in New Jersey. Therefore, the rules have an overall positive economic benefit.

718. COMMENT: The "preliminary" affects of the Act and Act rules is ambiguous. Mechanisms intended by the Act to afford parity to affected property owners are not yet in place. These include TDR's. The effective implementation of TDR's is expected to take years with the market's acceptance of same being too speculative for credible consideration at this time. (85, 87)

RESPONSE: It is the Department's understanding that transfer of development rights (TDRs) programs will be implemented shortly after the Highlands Council adopts the Regional Master Plan, which the Department understands is expected to take place by December of 2006. The market will depend upon how the credits are assigned and the availability of receiving districts and that information is currently being discussed by the Highlands Council and with the public.

719. COMMENT: The net result of transferring development potential and associated economic impact value from the preservation district to areas outside the core is an effective transfer of property worth from owners within the preservation district to other private property owners. The order of magnitude for transferred value from one group of

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private individuals to another is demonstrated by the following model. The rules cite several different development and buildout scenarios as probable occurrences within the preservation area. These include that the potential dwelling units within the preservation area (at buildout) total 215,421 units (say 215,000). The independent analysis of Holzhauer & Holenstein, LLC (Real estate advisory services) supports that the 2006 median home value within the Highlands Region is reasonably $373,000. The impact that the rules have on property owners within the preservation area is estimated as follows:

215,000 units @ $373,000/unit = $80,195,000,000.

This calculation demonstrates an $80 Billion loss in ratable base for Highlands preservation area municipalities. Further, the above depiction does not account for other forms of development, for example, commercial and industrial. It also does not make a distinction among dwelling units as may be developed with other than single family residential homes. The "average economic multiplier" for the U.S. is cited within the rules as being 2X. Therefore, the cost to local economies resulting from the failure to construct and sell 215,000 dwelling units is estimated as follows:

$80.195Billion * Factor (2X) = $160 Billion Dollars

Given the methodology cited within the rules, the loss in sales and realty transfer tax, together with the lost jobs, and jobs spending multipliers results in the conclusion that the rules will have an astronomical impact on the economy and the ratable bases of the preservation area communities.

However, this statement is not necessarily true based on the same criticisms of the rules' cost-benefit analysis. The problem must be evaluated on a micro and macro basis. Therefore, it may be stated that Statewide, and over a period of time, the loss of ratable base, and the gross affects on the economy are likely to be negligible. The rules do not prevent development, the same are just redistributed. The absorption of the theorized dwelling units will be delayed due to the increased regulation and the time necessary to facilitate increased density potentials within "appropriate" areas for development but the gross demand for housing will eventually be met. What can be stated with certainty is that whatever economic benefit is received by areas outside the preservation area will

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come at the expense of the property owners and the local economies within the preservation area. (85, 87)

RESPONSE: For the reasons set forth at length in the economic impact analysis, the Department believes that the long-term statewide impact of the rules being readopted will be significantly positive rather than negligible or neutral. In terms of the asserted short-term redistributive impacts, the Department notes the following: (1) The commenters assume that the value of $373,000 per home can be extrapolated to new housing. However, as the supply of housing increases, the price of new housing may decline as a result of supply and demand effects and because as new housing is built, the areas in which the construction takes place will, by definition, become more congested and therefore less attractive to subsequent homebuyers. (2) To the extent that development occurs outside the preservation area, the communities in the preservation area will not have to bear the costs of development, for example, the cost of new roads, water and sewer lines, schools, fire and police protection, etc. To the extent such costs are avoided, communities in the preservation area may experience no net fiscal impact. (3) Some portion of the new housing would likely be affordable housing, which would likely have a lower average price than the existing median cited by the commenters. (4) Any change in sales tax or realty transfer tax revenues is already reflected in the multiplier, and such changes would not constitute additional benefits or costs to communities in the preservation area. (5) The Department's rules contain several exemptions to permit single-family dwellings so the estimated loss of 215,000 units is an obvious overestimate. To date, the Department has confirmed 351 exemptions. (6) The Department's regulations may result in some level of reduction in value for landowners in the Highlands but does not deny all use. Consequently, municipalities will not assess these lots as having zero value. (7) A transfer of development program is yet to be developed and its potential positive impacts on property owners cannot be assessed.

For these reasons, the Department believes that any short-term redistributive impacts are likely to be significantly lower than the commenters project.

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