

Planning Impacts of the Highlands Act
in Support of
the County of Warren, et.als. v. State of New Jersey, et. als.
(Dkt. # MERL 1021-07)

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Introduction

In general the Planning Department finds the Act, Rules and draft Regional Master Plan written to be the justification from prohibiting new development in the non-urbanized areas of the Highlands Region, leaving limited opportunity for meaningful economic growth that would be needed to maintain an equitable property tax base and quality of life for highlands residents.

The premise behind the Act, Rules, and Plan is purported to be to protect Highlands water quality and quantity for use by the Highlands and non-highlands populations. Eighty percent of the highlands' drinking water is consumed by those living outside of the Highlands Region. The means to accomplish water quality and quantity “protection and supply” is cloaked behind the preservation of virtually all natural resources in the region. There is very little planning discussion on prioritizing contaminated areas for clean up or methods to conserve water consumption outside of the Highlands Region which uses 80% of the water, or to increase available water supply through the construction or expansion of reservoirs, impoundments, and other surface water and groundwater systems.

In terms of water quality, there seems to be a misconception that limiting future development on individual septic systems to extremely low densities, 25 acre and 88 acres, will actually improve water quality. The basis for the lot sizes are based on a NJDEP report that identified samples of nitrates in a limited number of areas throughout the Highlands Region. The samples accepted for the report and ultimately inclusion into the rules, were from the most remote areas of the region where very limited development or agricultural uses were taking place, usually on State parkland. Therefore the nitrate levels included in the modeling reflect “pristine” conditions, and are not reflective of actual conditions nor do they reflect the accepting thresholds for nitrate modeling taking into account the public health standards.

One effect of the low densities is that they negatively impact a farmer’s land equity reducing the value of farmland thereby affecting his ability to use it as collateral for farm loans. Another effect is that by significantly limiting land areas available for development, the cost of “appropriate” land areas for development will increase making it less affordable to live in the region.

Clearly the value of plant and animal life is paramount and weighs heavily on the location of future human development. Available water is to be reserved for the maintenance of ecosystem health. A proportion of the available water is to be reserved for residential and economic growth in the Planned Community Zone which contains only 1.1% of the Warren County’s vacant land area and is targeted for future development.

The whole Highlands planning and protection process is contrary to traditional planning and rule making procedures. Traditional planning practice has been to plan first then develop the regulations. In the Rules, 7:38-1.4 the definition of *Regional Master Plan* states that the Regional Master Plan shall mean “the standards established in the Regional Master Plan...” It is clear that the Regional Plan is intended to be a regulatory document rather than a planning document.

It should be noted that great strides were being made by the counties in preparing and adopting Strategic Growth Plans using funding from the NJ Office on Smart Growth. Through an inclusive process with interested groups, individuals, appointed and elected officials the Warren County Strategic Growth Plan was prepared and adopted by the County Planning Board. It represents a true balance of growth and preservation goals without succumbing to such draconian measures as described in the draft RMP.

It is also noted that the Five County Coalition prepared a set of recommendations to be considered by the Highlands Task Force in its deliberations on how to deal with the Highlands.

Below are additional comments that have been made on the Regional Master Plan and Highlands Rules. They are organized by category.

RMP is Advisory in Planning Area?

The Highlands Act states that the Plan is to be advisory in the Planning Area. The statement is contradictory inasmuch as another section of the statute states that the New Jersey Department of Environmental Protection should not issue a permit for sewer extension until after it has consulted the RMP.

However, section 7:38-1.1 (g) of the Highlands Water Protection and Planning Act Rules state that the NJDEP will give regulatory weight to the Regional Master Plan when making decisions in or affecting the highlands region including activities in the Planning Area. This can be interpreted as saying that NJDEP will not issue any approval if a project is incompatible with RMP. It is apparent that the major decisions regarding growth in the planning area will be made by the NJDEP after consulting with the “advisory” Highlands Regional Master Plan.

This further reinforces the duplicity of the Act’s intentions regarding the “voluntary” nature of the Plan for the Planning Area. Growth decisions in the planning area involving wastewater and water quality plan amendments will be made by the NJDEP regardless of a municipal “opt-in” to the RMP.

Plan Development Process

It is noted that Warren County participated in and endorsed the Five County Coalition’s recommendations concerning the Highlands when Governor McGreevey created the

Highlands Task Force in 2002. It is disappointing that many of the Coalition's key recommendations failed to be considered in the Act and failed to be considered in the draft RMP.

In addition it appears that the Council did not use the local plans in any way to establish land use planning policy or to understand the unique needs of the 88 municipalities. Using the local plans, an analysis could have been conducted to project what the future impacts on the natural and built environment (including transportation, water, and sewer) could have been if the local plans were implemented as written. Then the RMP could have been developed to identify where problems relating to development could occur, identify the positive outcomes and then outline methods to prevent or mitigate the negative outcomes.

The Highlands staff has said that the RMP does not include a build out and fiscal impact analysis because the Draft RMP policies and Land Use Capability Map are subject to change based upon the Council's decisions to change the RMP when it is adopted. Any specific data evaluation based on the draft would be subject to change. Of course this true but how can the draft plan be evaluated fully if the analysis of future conditions is not provided?

The draft Plan Conformance guidelines indicate that the impacts of the regional plan will be analyzed as municipalities enter the plan conformance process. Impacts need to be analyzed regionally rather than in a piecemeal fashion during plan conformance.

Lastly, according to the statute, within 18 months after the date of the Highland's Council first meeting, and holding the requisite public hearings, it was to adopt a regional master plan for the Highlands Region. The first meeting of the Council took place in December 2004 making the adoption date of the Plan due by June 2006. The Highlands Council is therefore in violation of the Highlands Water Protection and Planning Act.

Water Quality

One of the planning area goals is "to protect, restore, and enhance the quality and quantity of surface and ground waters therein;" There is little to no discussion in the RMP where the existing contaminated sites are located and no meaningful discussion in setting priority to clean up these sites. According to the RMP, most of the watersheds have impaired water quality. It seems logical that cleaning up contaminated sites that are known to be significant polluters of our environment should be of top priority. Instead the RMP focuses on new development as the culprit and devotes most of its attention to stopping it.

One major known contaminated site is in Warren County. Known as the Pohatcong Valley Groundwater Contamination Superfund Site it encompasses over 5,000 acres. It is polluting the carbonate limestone aquifer underneath the Borough of Washington and follows the Rt 57 corridor through Washington and Franklin Township affecting Brass Castle, Broadway, the County College and the Technical School. Because the limestone aquifer is affected, the

contamination can travel further distances in a shorter amount of time. This plume of contamination will only continue to expand if not remediated.

Concerning the map on Impaired Waters, the areas in red are described as impaired which are in the predominately rural areas while the non-impaired waters are shown in the built up areas of Morris County. This is counter intuitive and calls to question the validity, reliability, and the methodology used in the analysis. Is the map suggesting that all waters within the HUC 14 watershed are impaired?

In the proposed rule summary, the section on *Drinking Water Treatment* states that New York City is meeting its EPA drinking water standards by acquiring land areas in upstate New York and saving about \$8 billion in water treatment costs by doing so. It is not clear how preventing the further degradation of the New York water supply helps meet the EPA standard. Simply protecting land from development does not improve water quality if no other measures are taken to clean up the existing sources of contamination.

Rule Making Process

On page 72, the RMP states that land uses are prohibited that would increase pollutant loadings for which NJDEP has proposed or indicated a need for a Total Maximum Daily Load (TMDL). Since when does an indication of need or a proposal for a TMDL transform into a full rule to prohibit land use? This violates due process and has the potential for official abuse.

Transfer of Development Rights

According to the Act, a detailed and complete TDR program is to be provided. So far, only the framework is provided. The Act states that the Highlands Master Plan may not be adopted until the receiving zones are recommended and the capacity defined for the receiving zone. Nor has adequate funding been provided to compensate land owners in the preservation area for demonstrated loss of values.

Cost of Implementing the RMP

The RMP does not discuss what the annual operating expenses of the Highlands Council, and other state and local programs to implement the plan would be. In addition, the costs to municipal and county governments for conformance and “opt-in” are missing.

If the RMP is implemented as written, the staff will have to be expanded significantly. The RMP fails to discuss future Highlands staff functions and resources needed in a detailed manner. A number of planners, engineers, surveys, scientists and attorneys will be needed to handle the work load.

If municipalities defer their development review process to the Highlands Council for applications in the Preservation area, can applicants expect the timely review as outlined in the Municipal Land Use Law?

In the Rule summary, Appendix A: Valuation of Wetland Ecosystem Services it states Species Protection that people will pay \$83,159 per acre for wildlife habitat based on willingness to pay studies. This becomes an expensive land acquisition program if the Council bases its land acquisition values on these studies. Land values are based on competent appraisals and bonafide sales transactions, not through willingness to pay studies. If the NJDEP wishes to justify the taking of land based on willingness to pay studies then the fair thing to do would be compensate all of the landowners within the critical habitat area at the \$83,159 per acre rate.

The Financial Technical Document estimates that approximately 85 million dollars will be available for the Highlands Region on an annual basis. But for how long?

The RMP and Financial Technical Document implies that local and county open space funds would have to be used to meet the acquisition goals of the RMP. Local funding is programmed for specific local purposes. The Highlands Plan's needs are different and should not look to local funding to satisfy the plan's priorities. If compatible with local priorities, then partnerships can be entered voluntarily.

To estimate funding needs for acquisition the RMP should compare the existing amount of open space with the Balanced Land Use Method used by Green Acres and using the methods provided in the SADC Strategic Targeting Plan. On page 56 of the Regional Master Plan, Council estimates a range of acres for lands that would be appropriate for preservation, over the next eight years, as between 75,000 and 125,000 acres. Surely, the analysis should have a geographic component to target where the land areas should be preserved. A county by county and preservation area, planning area listing should be provided.

Funding

The financial component includes only the amount of grant money that may be available five years after the plan is adopted. The sources of revenue are federal, state, and local government. The other source of revenue is a proposed water consumption tax to be placed on residents of Highlands and water purveyors. It is noted that last year, the water fee bill died in the legislature. One of the main reasons reported was that it was going to raise the annual water bill by \$3.50. According to the objectors, it was too much to pay to protect water supplies and repair water infrastructure.

Furthermore, the Garden State Trust Fund has now expired and no reliable source of long term state funding can be expected although a the public question to authorize the state to bond for \$200 million will be on the ballot in the November 2007 election. This is to fund the entire state.

On page 16, the RMP states that in the 1930's, the City of Newark took the initiative to buy land for water supply. Why aren't the other highly populated cities paying for this water supply today?

Land Equity

One of the fundamental issues that is critical to the future of the farming industry in New Jersey is the need to retain the value of the land. Farmers need the land value to use as collateral to borrow against for equipment purchases etc. Once the ability to borrow against land value is gone, how can a farmer sustain a reliable business? Off farm income from agri-tourism may help pay a portion of the bills but a capital base is needed for collateral. If the average farm size in Warren County in 2002 was 96 acres, and the Preservation Zone requires 25 acre septic density, 3 lots can be created from the average farm. The Warren County Department of Land Preservation has produced a report that documents that the Preservation Area standards have significantly reduced the value of the land. The major issue and concern is that the environmental standards in the planning area are just as detrimental as those in the Preservation area.

The Warren County Department of Land Preservation has produced a report that documents the fact that farms in the Preservation Area have lost at least 80% of their pre Highlands values. The Highlands Acts requires two appraisals on Highlands Preservation Area properties; pre-highlands act and post-highlands act, with the higher value to be offered. Because every farmer is not going to enroll in a government sponsored preservation program, the argument should not be made that land equity is maintained because the State will pay pre-highlands values.

At a minimum the intrinsic value of creating improved habitat for a threatened or endangered species should be defined so that it could be include as a monetary figure that private land owners could use to help them with their farmland assessment.

Buildout Analysis

As required in the Act, the draft Plan does not discuss the amount and type of human development that can be sustained. The build out analysis and septic density analysis are not complete. They need to be performed to indicate what the natural systems can sustain. Build out analyses were performed for many County Strategic Plans, including Warren County.

In the Proposed Rules Summary under *Cost of the Rules Proposed for Re-adoption with Amendments* it states that it is not within the department's resources to measure of the increase in development from exemptions. It is difficult to understand that while the NJDEP analyzed various "studies" to justify the economic benefits of the rules an analysis of development potential under the exemptions could not be completed. Most

counties have parcel mapping available with MODIV tax assessment records to identify vacant and farmland parcels.

In addition, the build out figures provided in the Proposed Rules Summary in Tables 6 and 7 are based on erroneous assumptions. The development potential is not reduced by factoring out environmentally constrained lands, preserved lands, and lands already developed. Failing to exclude these land areas as undevelopable will yield high buildout numbers. Any worthwhile buildout will factor out these land areas and provide for further reductions for roadways and other easements that are typically necessary. The buildout provided in the summary is flawed and should not be used for rule making purposes.

Furthermore, in the same section, the projected population of the preservation area relies on federal and state estimates of population growth in the highlands region as a whole. Growth in the preservation should not be based on these estimates because in Warren County, most of the public sewer and more developable lands areas are in the planning area. In the preservation area, it is more difficult to construct septic systems and drill wells because of its geologic formations, depth to bedrock, slopes, etc. Using general growth figures and applying them to the preservation area is misleading the reader into thinking that the preservation area is experiencing the same amount of growth as the planning area when in fact it is much less.

The NDJEP could have estimated population growth in preservation area by reviewing the development applications that have been approved. The NJDEP could have obtained the information from the respective county planning departments.

Capacity Analysis

A lot of work was done to determine water supply capacity and water quality using modeling and other techniques. While it appears that the existing capacities of sewage treatment plants and public water systems are contained in the Utilities Technical document, the results are not reflected in the Smart Growth Component. The amount of growth that can be sustained in the region based on utility capacity needs to be fully understood. The Act states that the capacity analysis must identify transportation, water, wastewater, and power infrastructure that would support or limit development and redevelopment in the planning area. This analysis shall also provide proposed densities for development, redevelopment, or voluntary receiving zones for the transfer of development rights.

On page 54, the RMP states that as part of the implementation and plan conformance process, the Highlands Council will develop growth thresholds by municipality based on limitations in Net Water Availability, and ensure that no sub watershed is utilized for water supply purposes beyond its own Net Water Availability. The thresholds should be

done now. The data is available throughout the Highlands Region and there is no need to wait until municipalities seek plan conformance.

The Proposed Rule Summary on *Water Supply and Water Quality* implies that out of region withdrawal is acceptable if it is intended to support development outside of the highlands region. The summary fails to recognize that out of region withdrawal is more costly because the need to transport the water from one watershed to another requires some form of public or private infrastructure to convey the water to a central system.

Septic Density

The RMP states that it will use GSR 32 for the water recharge model. Concerns were voiced last year at the committee level about the use of GSR 32 because it does not reflect the unique geological conditions that are prevalent in the Highlands Region particularly the karst limestone formations. Another model called GSR 39 was being developed at the time to address the highlands geology. If GSR 39 is available, it is recommended that it be considered instead of GSR 32.

On page 78 concerning Nitrate Concentrations and Septic Suitability, the RMP discusses the impacts of high nitrate concentrations. The RMP should include the fact that the EPA standard of 10mg/l is the maximum level for public health. This will bring into context that the median nitrate concentrations measured in the highlands region range from .17mg/l to 3.6mg/l. are well below the public health standard. It should be noted that the NJDEP program for 50 or more realty improvements require nitrate dilution analysis to be modeled at 5.2 mg/l. The Warren County Strategic Growth Plan used 2 mg/l which was considered to be an acceptable model assumption to protect groundwater resources. The idea to limit nitrates to the background ambient median level .83 mg/l or lower as suggested in the RMP has no public health basis.

The Warren County Strategic Growth Plan recommended that alternate septic systems be explored for use in the rural areas to promote clustering on smaller parcels and to provide for a better quality effluent. The RMP should be more supportive of this concept and provide more discussion on its potential use.

In the Proposed Rule Summary for *Loading Rate for Nitrate*, it states that the municipal household population is not available. This is not true. Household rates are available through the 2000 Census.

The section on *Water Quality Target Selection* states that the septic densities will provide for the restoration of groundwater quality. However the rules provide no mechanism to clean up polluted sites. To restore water quality the use of existing septic systems will have to be discontinued and homes will have to be connected to a better system that cleans the water before discharging and existing contaminated sites will have to be remediated.

Water Supply

The RMP repeats several times of the significance of the Highlands Region in supplying water to five million New Jersey residents. Page 51, Water Use and Availability states that 500 million gallons per day (MGD) is for public water supply service areas within and outside the Highlands Region. The needs of Highlands residents and municipalities are largely met through withdrawals from wells tapping local aquifers and some smaller surface water resources. On Page 52, it says that the growth analysis projects that sustainable capacity will be exceeded by major cities like Newark, Jersey City, and Hackensack. And that the several reservoirs may have insufficient amounts of water to provide anticipated water needs, resulting mainly from growth outside the region.

If the water supply is at such a deficit because of the growing population outside of the Highlands Region, preventing growth in the Highlands Region will not solve the problem. One or a combination of the following should take place: construct new drinking water reservoirs or storage facilities, utilize existing non drinking water reservoirs, require strict water conservation measures on non-highlands users of water, repair leaking water supply lines, curtail future growth outside the highlands region to reduce the demand for water, and/or construct water purification plants along the major rivers and Atlantic Ocean to supply potable water.

Page 59 discusses the imposition of water conservation and recycling measures on existing and new residential and commercial areas within the Highlands Region. 80% of Highlands's water is exported outside of the Highlands. Requiring conservation measures on the highlands will do very little to conserve water when most of users are somewhere else. Legislation is needed to require water conservation statewide.

Transportation

The plan lacks meaningful discussion on regional transportation priorities and instead focuses on site specific issues that should be addressed at the municipal level. To address regional transportation, the RMP states that trails, and safe bicycle and pedestrian paths need to be provided. No roadway and public transportation improvements are proposed and supported.

The North Jersey Transportation Planning Authority Regional Transportation Plan should be incorporated into the RMP as the RTP was developed with extensive stakeholder input throughout the 13 county region it covers. And, as required in the Act, the list of federally mandated projects and programs is not provided.

The Warren County Strategic Growth Plan also contains a transportation component that modeled existing and future traffic on the county road network. Realizing the impacts of future growth, the county plan recommended certain roadway and transit improvements, center based development, and curtailing the amount of strip commercial development proposed along some of the major highways. The RMP does not contain or acknowledge

any of the recommendations that resulted from the planning efforts from any county or municipality in the Highlands Region.

Impact of Existing and Proposed Regulations

Within the last 10 years, the Warren County Planning Department has found that most municipalities have become more cognizant of the impacts of their land use decisions and have made significant strides to mitigate those impacts. They have recognized that the increase in traffic, municipal and school services, and flooding, in pursuit of rateables does not work. All levels of government have increased open space and farmland preservation efforts as well.

State agencies, most notably the NJDEP, have adopted some of the most stringent environmentally protective rules in the nation to deal with storm water management, C-1 stream classification, and freshwater wetland protection rules. The impacts of all the rules when applied should be modeled to determine how much and where new development can occur. More importantly, the analysis should evaluate the impact on the natural and built environment. This analysis should be conducted before the RMP recommends even more stringent regulation. Part of the analysis should include how well the rules are enforced. It is the WC Planning Department's belief that if the rules are enforced, more stringent rules would not be needed.

The RMP recommends that the Highlands Council initiate the process to become the designated water quality planning agency for the Highlands Region. The NJDEP is released rules on May 21, 2007 that would have the counties become the wastewater planning agencies, instead of the municipalities and MUA's. It is unclear what effect these rules will have on the Highlands proposal to become the planning agency. Will the counties or the Highlands Council have the first right to refuse becoming the wastewater planning agency.

Pre-Conformance

The draft RMP states that technical guidelines, model ordinances, local master plan requirements and procedures related to each element within the Resource Assessment Component and Smart Growth Component are to be developed more fully during the pre-conformance phase. The RMP provides a listing of actions that will need to be completed by the Council subsequent to the adoption of the Plan but before the official conformance period begins. The RMP refers to this period as Pre-Conformance. The pre-conformance period is not established by the Highlands Act. The Highlands Council is misconstruing the 9 month conformance period as established in the Act, as an intermediate period of time between plan adoption and plan conformance which is not established in the Act.

Inter Agency Coordination

Page 13 of the Regional Master Plan speaks to the 2002 Update to the Forest Study and that it reiterated the recommendation from the 1992 Study to establish a permanent regional entity to oversee the planning and management of the study area. If read in context, the 1992 report describes the roles of the regional council as; information and education, natural resource conservation and protection through voluntary programs available at the federal and state levels, data coordination and management, planning assistance, and administration, conflict resolution and consensus building. No where does it say that the council should have land use regulatory control. The study recognized that keeping land use control in the hands of the county and local governments was appropriate.

According to the Highlands Act, the Council on Affordable Housing shall take into consideration the regional master plan prior to making any determination regarding the prospective fair share of the housing need in any municipality in the Highlands Region under the “Fair Housing Act”. Will this obviate the need for municipalities in the Highlands protection and conservation zones to provide affordable housing? The restrictive nature of the plan will curtail the provision of affordable housing in the conservation and protection zones and drive it into the PCZ. This is inconsistent with the Fair Housing Act in as much as the PCZ is not located in every municipality in the Highlands thereby making affordable housing more difficult to obtain in municipalities with no PCZ.

In the Proposed Rule Summary for *Waivers* it states that the construction of 100% affordable housing in preservation area may qualify for a waiver. These projects generate wastewater and pollute the environment just like the others that are being prohibited in the Preservation Area? Affordable housing should be in or near towns, villages and cities so services are close by, ideally within walking distance. Building affordable housing in the Preservation Area goes against conventional smart planning practice.

The interagency agreement with the State Planning Commission has not been prepared and signed yet. Failing to secure such an agreement with the statewide planning agency is of major concern when it pertains to state agency consistency and coordination. The State Planning Commission is responsible for ensuring that agency programs are coordinated and consistent with one another.

It is also important for the Highlands Council to enter into Memorandum of Agreements with other state agencies to define what the review, permitting and regulatory authority and responsibilities are to add clarity to all who participate in and are part of the respective processes.

Lastly, it is interesting to see that in the Acknowledgment section, of the Regional Master Plan, that 19 of the 21 persons credited as contributing to the plan are employed by the NJDEP. Clearly this indicates that the Plan is biased to environmental protection and pays little attention to the needs of agriculture, transportation, housing, and economic

growth in the Highlands Region. There was no interagency coordination in writing the RMP.

Land Use Capability Map

About 56% of the portion of Warren that is in the Highlands Region is in the Protection Zone (about 94,744 acres). The majority of acres designated as Protection Zone 53,041 acres (56%) are found within the Preservation Area. 41,703 acres or 44% of the Protection Zone is in the Planning Area.

About 37% of Warren that is located in the highlands region is in the Conservation Zone (about 64,113 acres). 22% or about 13,962 acres is in the Preservation Area. 50,151 acres or 78% of the Conservation Zone is located in the Planning Area.

About 7% of Warren that is located in the highlands region, (12,239 acres, or 19 sq.mi.) is identified as Planned Community Zone / SPA, of which about 99.6%, or 12,192 acres is in the Planning Area.

Land Use Capability Map Indicators and Factor Maps

On pages 49 and 50 concerning the indicators/criteria used in defining the Land Capability Map zones are duplicative in many ways and overly complicated. For example, if an area is in a Total Forest Area, it will also be in a Forest Resource Protection Area, and be a Forest Core of greater than 250 acres. From Land Use Capability Map Abstract dated March 2, 2007 provided by the Highlands Staff, it states that if 6 protection zone indicators were found, the area would qualify for protection zone. Under the duplicative scenario just mentioned, three of the six can be found in the same forest criteria.

Also, in the Land Use Capability Map Abstract, the rationale for selecting 6 indicators for protection zone, 3 indicators for the conservation zone, and 3 indicators for the Planned Community Zone should be provided.

For the planned community zone, it is recommended that the planned future sewer service area be included as one of the indicators. The planned sewer areas provide an indication of where local communities are envisioning growth and/or see the need to sewer an area to protect ground and surface water.

The accuracy of the indicator mapping needs to be checked as well. One example includes the area south of Belvidere that includes the Warren County Administration Building Complex, Country View Estates, Colby Court, Wyntryst Apartments, and Village Square. The indicator maps show this area as moderately developed, suburban fringe, and sewered. The indicator maps do not show that the area is also served with public water. If this area is incorrectly mapped then there are probably others.

Each factor map should be overlaid to demonstrate the areas within the Highlands region where growth may occur. In addition they should be shown individually to show each constraining environmental feature that would need to be mitigated should development be proposed. This would be a better way to mitigate impacts instead of prohibiting development altogether.

The Act requires the identification of undeveloped areas in the planning area, which are not significantly constrained by environmental limitations such as steep slopes, wetlands, or dense forests, are not prime agricultural areas, and are located near or adjacent to existing development and infrastructure, that could be developed. Policies in the RMP allow extensions of water and sewer to adjacent properties only. However they may be properties near existing developed areas within planned sewer service areas that could be and perhaps should be served with water and sewer.

The Act requires an assessment of scenic, aesthetic, cultural, historic, open space, farmland, and outdoor recreation resources of the region. Statements and discussion is provided but a comprehensive assessment of the resources is lacking. Warren County completed a comprehensive Historic Site Inventory in 1992 and maintains a comprehensive inventory of preserved open space and farmland in the County. Existing inventories and related documents should have been consulted when the RMP was developed.

Redevelopment Areas

The Act states that the RMP is to identify existing developed areas capable of sustaining redevelopment activities and investment. The RMP states that the Planned Community Zone and Specially Planned Areas may contain those areas capable of sustaining redevelopment. However, no analysis is performed to document what the limitations may be to redevelopment such as wastewater availability, water availability, transportation access and capacity, and other environmental constraints such as limestone karst geology. In addition, there may other areas capable and more appropriate for redevelopment that are not considered because they have less than 70% impervious cover and are located outside the Planned Community Zone.

Contradictory Policies and Maps

Many of the policies are contradictory. For example the extension of water lines into a conservation or protection zone are permitted only if the parcel is adjacent to a property already served with the utility and the development is clustered on 20% of the parcel and 80% remains as open space or agriculture. Another policy in the same section will then state that all development is prohibited in the protection or conservation zones if located in an Agricultural Resource area or in a Forest Resource Area. In some cases the Agricultural Resource Area and the Forest Resource Area overlap. The land should be in one or the other.

Other inconsistencies involve how many of the environmental features are depicted in the County's urbanized area. The Critical Habitat Map shows most of the Town of Hackettstown and Oxford Village to be in a Critical Habitat. The Watershed Values by HUC 14 map shows Hackettstown, Washington Borough, Oxford Village, and a portion of Belvidere to be high value watersheds. The Forest Integrity Area by HUC 14 shows Hackettstown, Washington Borough, Oxford Village, and a portion of Belvidere to be high value forest. The Riparian Area map shows most of Belvidere and the area between Belvidere and the County Administration Building complex two miles south of Belvidere as being in a riparian area. The Agricultural Resource Area map shows the entire Borough of Alpha and the urbanized portions of Pohatcong, Greenwich and Lopatcong as agricultural. The plan maps depicting these features and other features need to be re examined to ensure that they are accurate.

There is at least one example of where public policy only applies to private landowners and not to public agencies. Nearly all forestry operations occur on private land within the Highlands. There is limited management occurring on State owned land and non-profit land. The RMP should recommend that the public land also have management plans. Currently the State doesn't manage its own lands.

Economic Impacts

In the Proposed Rule Summary in *Impact on Property Taxes*, a statement reads that "development results in substantial costs to society". The statement ignores the fact that development also has a benefit to society. Otherwise why would our society build homes and businesses unless there was a social and economic benefit and need.

In Appendix B of the Proposed Rule Summary: *Estimation of New Jersey Ecotourism Benefits*, the analysis should compare preservation area employment gains resulting from land development vs. the ecotourism benefits. The analysis should provide this comparison to see if ecotourism is the preferred industry for the area.

The extreme prohibitions placed on existing and future land use will create a scarcity of land. This scarcity will increase the cost of remaining land that may be used for new development. The Highlands Act and Plan is creating an area that can be affordable only to the wealthier segment of the population. For the others less financially able to live here, economic conditions may force them move out the region, or they may be forced to live in enclaves until the property tax burden ultimately forces them out as well. A declining population is not a symptom of a healthy economy.

A Warren County Planning Department GIS analysis shows that approximately 2000 acres of assessed vacant land exists in the PCZ consisting of 1,127 parcels. They range in size from .002 to 94 acres. The average size is 1.78 acres and the median size is .17 acres indicating that the vacant land available in the PCZ is scattered and small in size. The larger parcels, are mostly golf courses, already have development proposals on them, or are environmentally constrained in some way. Of the 2000 acres, approximately half

are “developable” after factoring out the environmental features of steep slopes, 300 foot buffers, wetlands, and flood prone areas. If development is severely limited in the protection and conservation zone, to maintain a viable economy, future development in the PCZ in Warren County will have to include redevelopment. Because of the scarcity of vacant land, smaller less expensive structures may have to be torn down and replaced with larger more expensive structures. Single family homes may be replaced with large multifamily multiple story apartments.

The RMP focuses on tourism as the economic driver. What studies have been conducted to show tourism effects on the local highlands communities as opposed to industrial, commercial and employment rich development that will be stymied by the Highlands Act? It is unlikely that agri-tourism is going to promote enough revenue to support local governmental operations and schools, and provide a viable income source for residents of the region. Those that live here will have to commute outside of the region for jobs pay well enough to support a family.

A tourist based economy with limited opportunity for a growth in ratables will lead the region into an economic downturn. The cost of government and school services will continue to increase, but the taxable base will not increase and those residing in the Highlands will not be able to pay the higher taxes to sustain current services. Balanced growth is needed and the current RMP does not provide for balanced growth.

Preservation Area Requirements for Exemptions

In N.J.A.C. 7:38-2-3 (a) 6 The exemptions should apply to firehouses and other emergency service related structures as well. The facilities are for the public good and necessity.

It has been the NJDEP’s practice to require deed restrictions on properties that are deemed to be exempt from the Preservation Area requirements. The restrictions are being required on projects that were submitted to the NJDEP for a Highlands Area Determination for the construction of a single family home. After reviewing the application the NJDEP would declare the project exempt and then require a conservation restriction on the balance of the property to prohibit further disturbance and development. Warren County contends that this practice is beyond the scope of NJDEP’s authority and must cease the practice.

Water Body Buffers

As defined **Highlands Open Waters** – “All springs, wetlands, intermittent and ephemeral streams, perennial streams, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but shall not mean swimming pools.”

As defined a 300' buffer on all HOW with exceptions (if in Low Resource Value Watershed and Low Integrity Watershed) must be maintained. Using the criteria, only the Phillipsburg area would qualify for exception in Warren County leaving towns such as Belvidere, Washington and Hackettstown subject to the 300 feet. All three towns have stream/river corridors that affect the central business districts. Excessive buffers in existing urbanized areas will stifle growth in these traditional towns.

Major Items Not Defined in the Plan

The following is a list of items that the Highlands Act requires to be included in the Regional Master Plan and have not been included in the November 30, 2006 draft.

- Specifically defined receiving zones. All PC/SPA areas are considered *potential* receiving zones.
- Preservation Zones, i.e. zones in the Preservation Area where development shall not occur. The Protection zone is not equivalent to the Preservation zone. Development may still occur in the Protection zone, pursuant to NJDEP regulations. Specific sites where development is to be prevented entirely are still to be prioritized.
- A detailed and complete TDR program – so far, only the framework is provided. Details not yet developed.
- Standards for minimum lot sizes. (*Septic Standards have been deferred to the Pre-Conformance Phase*)
- Maximum appropriate population densities.
- Development capacity of areas served by sewer.
- Development / Septic capacity of areas not served by sewer.
- Regulated uses for specific portions of the Preservation Area or for any other area where “appropriate” land uses are to be defined. (*For example, wellhead protection prohibited uses*)
- Specific recommendations for amendments to the NJDEP regulations concerning Planning or Preservation Area boundaries, septic densities, exemptions or any other specific changes.
- Highlands Build-Out Calculations.
- Technical guidelines, model ordinances, local master plan requirements and procedures related to each element within the Resource Assessment Component and Smart Growth Component

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EDUCATION: **Rutgers, The State University of New Jersey** **January 1993**
Master of City and Regional Planning. Concentrated in land use and transportation planning, and research methods.

The Pennsylvania State University **May 1986**
Bachelor of Science degree in Community Studies, Physical Development option.

EXPERIENCE: **Planning Director** **February 1995 – Present**
Warren County Planning Department **Belvidere, NJ**
Responsible for the preparation of departmental budgets for operating and capital expenditures, oversee a staff of four planners, the preparation of the County Master Plan, including the general development plan, transportation plan, open space plan, strategic growth plan, and development review regulations; review subdivision and site plan applications for compliance with the county development review standards and offer recommendations to the county planning board the coordination of the open space acquisition program with the Board of Recreation Commissioners; the preparation of the solid waste management plan for the Solid Waste Advisory Council and Board of Chosen Freeholders, conducted and participated in the three rounds of cross acceptance of the State Development and Redevelopment Plan, Alternate voting member for Warren County on the North Jersey Transportation Planning Authority, member of the North Jersey Resource Conservation Development District, Co-Chairman of the Structural and Non-Structural Committee for the Interstate Flood Mitigation Task Force.

Senior Planner **October 1991 – February 1995**
Warren County Planning Department **Belvidere, NJ**
Responsibilities included transportation planning, air quality planning, reviewing local zoning ordinances, assisting general public for information requests, serving as the County Data Center Contact to the NJ State Data Center, served on the committee of Long-Term Healthcare, supervised the Internship Program, appointed as co-chairman of the County Computer Policies Committee.

