

HUNTERDON COUNTY BOARD OF AGRICULTURE

P.O. Box 2327 – 6 Gauntt Place – Flemington, NJ 08822-2327

Scott Clucas
1st Vice President

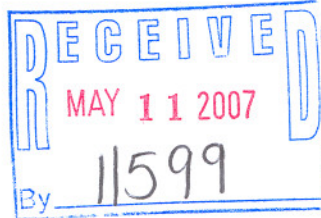
John V. Melick
President

Linda Peterson
Secretary

David Bond
2nd Vice President

Judy Conard
Treasurer

New Jersey Highlands Council
100 North Road
Chester, New Jersey 07930



May 10, 2007

Dear Council:

The Hunterdon County Board of Agriculture thanks the Highlands Council for having this opportunity to comment on the Highlands Draft Master Plan. The Hunterdon County Board of Agriculture is comprised of 800 members, all of whom are greatly concerned with the issues facing agriculture in Hunterdon, a county with a rich farming heritage. The scope and severity of the restrictions set forth in this draft go way beyond the legislative intent of this Act. Furthermore, we did not agree with the passage of this Act from the beginning because we believed that it was not based upon sound science and placed the entire burden of this Act upon the farmers and landowners who were unfortunate enough to own property on the wrong side of the Highlands boundaries. Also, we believe that there are so many flaws in this draft that it is impossible to find a starting point or a basis from which we can begin. We still believe in, and advocate for the abolishment of the Highlands Act because of the aforementioned reasons.

Nevertheless, attached are comments prepared by the New Jersey Farm Bureau in which we are in complete agreement and entirely endorse.

Sincerely,

John V. Melick, President

I. The Highlands Water Protection and Planning Act

- New Jersey Farm Bureau would like to see the following language from the Highlands Act, added to the first paragraph of this draft Regional Master Plan (RMP):

The Highlands Act states, "that the maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible wherever appropriate in the New Jersey Highlands."

- New Jersey Farm Bureau considers the words "scientifically defensible and necessary" to represent a very good test for all policies in this plan. Comments that follow will be the result of applying that test.

B. The Highlands Water Protection and Planning Council (p. 5-6)

- New Jersey Farm Bureau would like to recommend that the Highlands Council define the phrase "when appropriate" as it relates to providing just compensation to Highlands landowners, to mean all Highlands landowners who lost development potential. New Jersey Farm Bureau feels strongly that all harmed parties are the appropriate parties to receive just compensation.

C. The Highlands Regional Master Plan (p. 6-8)

Smart Growth and Transportation Component

- New Jersey Farm Bureau would like to see a bullet added to this section that directs the Highlands Council to coordinate with the goals of the New Jersey Department of Agriculture's Economic Development strategies and the State Agriculture Development Committee's plan for targeting farmland to be preserved. In addressing smart growth, the Highlands Council must address smart growth for agriculture.
- New Jersey Farm Bureau opposes the wholesale ruling out of some classes of mapped soils in the identification of future growth areas in the Planning Area. This allows for only large-lot growth that will consume large amounts of the best farmland and thus work against the goals of the Highlands Act by reducing agricultural viability. The Highlands Council must allow some form of concentrated new development in both the Preservation and Planning Areas in order to prevent a region-wide land use change from active agriculture to large-lot-estate residential.

Financial Component:

- New Jersey Farm Bureau believes that this component needs to be further developed before the final RMP is adopted. It remains difficult to comment on the plan when estimates of the cost of implementation are not available.
- New Jersey Farm Bureau would like to see the list of costs to be detailed include costs to landowners for lost land value as well as the costs associated with the

new requirements for plans, studies and surveys in order to accomplish even the simplest change to their property.

- New Jersey Farm Bureau continues to oppose adoption of a final RMP without the creation of a dedicated funding source for strictly Highlands acquisitions and other fair compensation mechanisms for Highlands landowners.
- New Jersey Farm Bureau believes that the Highlands Council must look for and describe funding sources for all of the regulatory requirements, plans, studies, mapping etc. that will be imposed on private landowners who have no means to pass this cost on to anyone.

D. New Jersey Department of Environmental Protection's Highlands Rules

- New Jersey Farm Bureau opposes applying the rigid standard of a 300 foot buffer around "Highlands Open Waters." Best Management Practices developed by the USDA, NRCS for New Jersey allow for buffers ranging from 25 feet to more than 300 feet depending upon site conditions as the scientific way to handle water supply and water quality needs. The 300 foot buffer is neither scientific nor necessary.

II. The Highlands Region, History and Current Conditions

A. Significance of the Highlands Region

2. United States Forest Service Study (p. 11-13)

- New Jersey Farm Bureau supports goals 3 and 5 of the United States Forest Service Study that aim to "conserve contiguous forests" and "promote economic prosperity" and would like to see them incorporated throughout the RMP.
- New Jersey Farm Bureau would like to point out that among the conservation measures recommended by this federal study are cluster zoning and zoning for conservation density subdivisions. This shows strong support for use of these land use tools throughout the Highlands Region.

B. History of the Highlands Region (p. 14-16)

- New Jersey Farm Bureau is dismayed to see how little information is presented in this section about agriculture, a historic land use in the Highlands region. While mining and manufacturing with water power were the major industries and land uses, there is also documentation that shows how the area was settled by farmers after the Revolutionary War when the population of New Jersey increased. Travelers to the area described "rock farms" that nevertheless produced cattle, dairy products, and fruits such as grapes and apples (Wacker, 1995). The Highlands Council must expand upon the farming history of the Musconetcong Valley and the rest of the Highlands region by using the wealth of information that is readily available in publications by Dr. Peter Wacker and others.

C. Environmental and Land Use Setting (p. 17-36):

- New Jersey Farm Bureau would like to note that the Maximum Monthly Use of Highlands water in 2003 by agriculture was a mere 0.2%; therefore, there should be no obstacle to increasing that use if it is necessary to maintain agricultural viability.

5. Vegetation (p. 25):

- The New Jersey Farm Bureau would like to point out that this section says nothing about vegetation connected to agricultural production even though there are 109,681 acres in agricultural land use. The Highlands Council should add more information about cultivated vegetative cover in order to present a more realistic picture of the Region's vegetation.
- New Jersey Farm Bureau recommends that the wording, "Grasslands provide important habitat, particularly for some bird species such as upland sandpiper and bobolink," deleted from this section. This is the only vegetation type about which statements regarding species habitat are made and such statements do not belong in this section of the RMP.

6. Wildlife (p. 25-29):

- New Jersey Farm Bureau strongly opposes the addition of "rare" species in such a broad context to the list of those of special concern. This addition largely increases the number of species on the list and as such it unnecessarily increases the effect of regulation of habitat. "Rare" should be defined as mean species that are dependent upon the Highlands for their habitat and that are rare in the Highlands Region. It is unacceptable to use the lack of numbers of species elsewhere in New Jersey that do not rely on Highlands habitat as a way of padding the list of species of special concern.
- New Jersey Farm Bureau feels strongly that the RMP should report the percentage and acreage of the Highlands Region that is actual habitat, not potential habitat for threatened and endangered species. To expand the habitat protection area in such a way that includes over 62% of the Highlands Region for habitat regulation, is to make the statutory requirement for a balance between resource protection and economic development impossible.

D. Socio-economic Characteristics (pages 37-41):

- New Jersey Farm Bureau believes it is misleading for the Highlands Council to not inform the reader of the RMP until page 37 of the extensive development and population already living and working in the Highlands Region.
- New Jersey Farm Bureau would like to see the economic data compiled by the NJDA and the USDA National Statistics Service included in this section of the RMP. The growth or decline of agricultural viability after the RMP is adopted is a significant economic indicator for the Highlands region. The RMP should include a table or a subsection on the agriculture industry as of the beginning of the Highlands planning process. This information can be found in the document, Major Agricultural Activities in New Jersey Highlands Municipalities: Division of

Agriculture and Natural Resources, New Jersey Department of Agriculture (2006, 2005, 2004) and should be used to track the effect of the RMP on agricultural viability.

III. The Elements of the Plan

A. Introduction (p. 42-45):

- New Jersey Farm Bureau supports the language explaining the policy area to address Agricultural Resource Protection and Sustainability. The emphasis should absolutely be on the viability of the agricultural industry and we agree that the challenge is to "balance the need to protect important natural resources in ways that protect both the resources and people's (often the resource steward's) livelihoods."

B. Land Use Capability Map (p. 45-50):

- New Jersey Farm Bureau is concerned that there is a need for the data and assumptions that go into the models used to develop some GIS layers to be transparent. The Highlands Council must have an ongoing, open process to amend the Land Use Capability Map based on more current, appropriate data and/or assumptions brought to the Council by the public or local government agencies.
- New Jersey Farm Bureau believes that the Highlands Council must make it clear not only what data is being used in mapping but also the relative weight that the data is given in the decision making.
- New Jersey Farm Bureau does not agree that "land acquisition" should be the only priority in the Preservation Area. There is ample evidence that ownership of natural resource lands by government is no assurance that they will be given proper care, especially in northern New Jersey. Private landowners have shown their capacity to be better stewards of the land and its resources. New Jersey Farm Bureau believes that easement purchase should be stressed over land acquisition by government.
- New Jersey Farm Bureau opposes the expansion of regulation into the voluntary Planning Area by the mapping of Zones. The Planning Area should be mapped only with overlays. This will allow the Highlands Council to apply the Land Use Capability Map in partnership with the Planning Area communities as they go through the voluntary conformance process. In planning terms, a "Zone" is considered to have a lot of regulatory power, whereas an "overlay" allows for more flexibility in the planning process.

Policies should be developed for the Preservation and Planning Areas with modifications for overlays of Protection, Conservation, or Planned Community Development. The mapping system described in the draft RMP reduces the significance of the Preservation and Planning Areas and adds too much complexity and ambiguity to the planning process.

- New Jersey Farm Bureau opposes using geographic areas as the major criteria for areas “with sufficient compatible agricultural and forestry activities to make long term preservation of these functions feasible and desirable.” No farmland preservation program has been able to prioritize farmland worthy of protection by size and soils alone. This is especially the case when small farms with adequate community support become more viable than the larger farms in municipalities with little support.
- New Jersey Farm Bureau is especially concerned about the 28,341 acres of agricultural lands in the Protection Zone. Farm operators in the Protection Zone should be on a level playing field with farm operators in the rest of the Highlands to support agricultural viability region-wide.
- New Jersey Farm Bureau is concerned that the ability of the owners of the 347,942 acres of forest in the Protection Zone to practice good stewardship will be limited by unwise forest management policies.
- New Jersey Farm Bureau opposes the use of “forest integrity and habitat quality” as the “strongest regional resource indicators.” Indicators of forest integrity and habitat quality have the most limited scientific basis. Forest health and condition along with the level of active management should be the basis of forest integrity rather than the simple measure of size and contiguity used in the draft RMP. Likewise, actual recent sightings of species should be the basis for designating critical habitat, not the Landscape Project mapping methodology.

C. Resource Assessment Component

1. Water Resource Management

a. Water Use and Availability

1. Highlands Plan Approach (p. 52-54):

- New Jersey Farm Bureau feels that there is a shortage of real data to characterize this most critical resource element. It is not acceptable to use estimates and models forever. The Council must make real time measurement of stream flow the highest priority in order to base regulation on more factual information.

2. General Policies (p. 58-59):

- New Jersey Farm Bureau is concerned with the policy that states that 80% of Net Water Availability within each subwatershed that serves a water utility shall be reserved for the public community water systems serving the Planned Community Zones, with only 20% available for the Protection and Conservation Zones. One of agricultures most vital needs is water and 98% of the Highlands agricultural lands are located within the Conservation and Protection Zones. This policy puts water availability for the agriculture industry at risk, and is a threat to agricultural sustainability and viability, a major goal of the Highlands Act.
- New Jersey Farm Bureau is concerned with the policy that requires 125% mitigation of any proposed new consumptive or depletive uses in a Current

Deficit Area or Existing Constrained Area. Agriculture is considered to be a consumptive use however; agricultural lands often provide large amounts of groundwater recharge. A farmer that needs to increase water use in a drought season or due to a change in operation should not be burdened with this provision. The expense and time would not benefit agricultural viability. Farm Bureau recommends that the language be changed to include an exemption for agricultural operations that follow a farm conservation plan.

- New Jersey Farm Bureau is concerned that there is no specific language in the Protection and Conservation Zone sections to support the capture and usage of stormwater runoff. At a minimum, the creation of farm ponds for irrigation should be encouraged and incentivized. It is unacceptable to portray the water resources of the Highlands as so critically finite and to deny the legitimate water needs of residents and businesses, including farms, within the Highlands when large volumes of water are washed down to the ocean every year.
- New Jersey Farm Bureau recommends that the Highlands Council place restrictions/caps on the amount water that can be withdrawn from all Highlands sources by the water purveyors (public and private) to serve municipalities outside the Highlands region. Exceptions should be made for towns participating in the Highlands TDR program as an incentive for more communities in surrounding counties to take on this critical role.

3. Zone Standards (p. 59-60):

- New Jersey Farm Bureau is concerned that the policies for the Protection Zone call for stringent limitations on consumptive and depletive water uses and associated land uses. Within the Protection Zone there are over 28,000 acres of agricultural land comprising 25% of Highlands agriculture. Because agriculture is considered a consumptive use this policy would negatively impact the successful agriculture operations that exist in the Protection Zone. In order to remain successful, those operations must have the flexibility to apply for increased water certifications from the DEP. This policy goes counter to the Highlands Act in supporting agricultural viability. Farm Bureau would like to see agricultural uses exempt from this policy when the agricultural operation follows a farm conservation plan.
- New Jersey Farm Bureau is concerned that the Conservation Zone policies also restrict consumptive and depletive uses of ground and surface waters. The Conservation Zone is where 72% of Highlands agricultural land is located, and yet, the policy to give agricultural uses priority for water use is the last listed, after all of the restrictions placed on use. This again goes counter to the Highlands Act which mandates the protection and enhancement of the agricultural industry. Farm Bureau would like to see agricultural uses exempt from this policy when the agricultural operation follows a farm conservation plan.
- New Jersey Farm Bureau believes that the Highlands Council should not interfere with the existing DEP water allocation certification program for agriculture and horticulture users. This is a statewide system of longstanding and should not be affected by Highlands regulations.

- New Jersey Farm Bureau feels strongly that the RMP should encourage the use of farm ponds to collect and reuse stormwater for irrigation purposes on agricultural operations.
 - New Jersey Farm Bureau is concerned that the mapping of the Planned Community Zone leaves no real opportunity for new development because it merely maps existing development. This leaves the Highlands Council to require all new development to be either redevelopment or infill development, neither of which is a sufficient or realistic means of meeting future growth needs.
- 4. Pre-Conformance Requirements (p. 60-61):**
- New Jersey Farm Bureau objects to setting “minimum growth thresholds” based on the Net Available Water while the water purveyors are allowed to continue pumping from Highlands reservoirs, when neither Highlands water users nor those outside the Highlands are required to take measures to conserve water, and when groundwater recharge is not being factored in.
 - New Jersey Farm Bureau recommends that the Highlands Council conduct a study to determine how much new recharge would be needed to alleviate the water deficit situations.
- 5. Coordination and Consistency Strategies (p. 62):**
- New Jersey Farm Bureau recommends that the Highlands Council work with the New Jersey Legislature to enact laws to place the responsibility of conserving water resources on those municipalities that use Highlands water. Authority should be given to the New Jersey Department of Environmental Protection to develop conservation rules applicable to those municipalities. Restrictions and conservation practices must be in place in non-Highlands municipalities that use Highlands water.

b. Ground Water Recharge

- 1. Highlands Plan Approach (p. 63-64):**
- While New Jersey Farm Bureau understands the need for some practical limit in order to map ground water recharge areas, we know that most of this land will undoubtedly also be the most productive farmland. Therefore we urge you to create a several-tier system to preserve the flexibility that is necessary for the protection of Highlands resources, the Highlands economy and agricultural viability. Not all groundwater recharge areas are equally valuable. This must be recognized in the mapping and planning in the RMP. This data must be weighed against other environmental, economic, and social factors, not made an overriding environmental constraint.
 - New Jersey Farm Bureau is concerned that the recharge area ranking scheme described in the second paragraph on page 64 is unnecessarily biased towards protecting vast areas of land rather than focusing on the protection of high quality ground water recharge areas. The Highlands Council should focus on the high quality recharge areas, disregarding watershed boundaries.

2. General Polices (p. 64):

- New Jersey Farm Bureau questions the reasoning behind using drought year rainfall as the starting point for determining high quality recharge areas. The opposite should be true: high quality recharge areas are those that can infiltrate a large amount of water (i.e. a non-drought year) and produce little runoff.

Furthermore, there is little explanation of why 40% of the drought year rainfall should be used when 30% is sufficient for the Raritan basin watershed. The 30% is undoubtedly a conservative figure; the RMP should not add more conservatism to its standards when such action may have serious land use ramifications.

- New Jersey Farm Bureau has been concerned for a long time that no conversation about ground water recharge area protection has included the potential on agricultural land for positive recharge through practices and facilities typical to farming. It seems always to be assumed that because agriculture is a consumptive use ground water recharge potential is zero on farms. Given the many NRCS scientifically tested practices available, and some funding for their development, it would seem prudent and practical to view farming and agricultural development as opportunities instead of activities to be tightly controlled or prohibited. Incentives should be provided to promote ground water recharge on agricultural lands.

3. Zone Standards (p. 64-66):

- New Jersey Farm Bureau is concerned that the water needs of more than 28,000 acres of active farmland in the Protection Zone are being overlooked in these standards. The Highlands Act mandates the protection and enhancement of the a sustainable agricultural industry and farm operators in the Protection Zone must be able to make changes to stay viable, to keep up with consumer preferences, diverse markets, and varying environmental conditions.
- New Jersey Farm Bureau is opposed the use of restrictive wording such as "prohibit". This leaves no room for the flexibility that will be required to meet the extremely varied Highlands physical conditions and the other mandates that the Highlands Act requires: economic development, growth and support of agricultural viability. Fuzzy words such as "limit" are appropriate for a master plan; the specific regulatory language must come later.
- New Jersey Farm Bureau feels that the Conservation Zone policies must be clear in stating that agricultural activities are allowed in Prime Ground Water Recharge areas and that any new agricultural development should be regulated under the New Jersey Department of Agriculture. Furthermore, agricultural uses should not be required to provide 125% mitigation of pre-existing discharge recharge volumes. Agricultural lands already provide large amounts of ground water recharge. The potential loss of farmland and high costs of providing mitigation at 125% will hinder agricultural viability in the Highlands.

4. Site Specific Standards (p. 66):

- New Jersey Farm Bureau is concerned that any increase in pre-existing impervious area will trigger a requirement to provide ground water recharge volumes equivalent to 125% of pre-existing conditions. This policy should clearly

state that agricultural development is exempt from this provision. Even with the agricultural exemption, this policy will hinder the goals of the Highlands Act to promote economic development and growth in the Highlands Region where appropriate. The cost of this must be included in the fiscal impact analysis for the Highlands RMP.

5. Pre Conformance Requirements (p. 67):

- New Jersey Farm Bureau is concerned that the objective to “identify land use categories or other activities that pose sufficient risk of contamination and should not be allowed within Prime Ground Water Recharge Areas” could lead to assumptions made about agricultural uses that may have no basis in fact. This has the potential to limit agricultural land uses within certain areas of the Highlands and would be detrimental to the Highlands agricultural industry which is counter to the goals and objectives of the Highlands Act. The Highlands Council does not have the expertise to regulate the agricultural industry; those powers must reside within the New Jersey Department of Agriculture.

c. Surface and Ground Water Quality

1. Surface Water Quality (p. 68-70):

- New Jersey Farm Bureau is concerned that the limited and irregular data available through the AMNET network leaves many uncertainties. Surface Water data is taken mainly from the AMNET system which monitors a location once every five years. In a rapidly changing state like New Jersey this data must be augmented with more current monitoring data.

2. Ground Water Quality (p. 70):

- New Jersey Farm Bureau is concerned that the ground water data for forest land use is weighted too heavily on modeling due to very limited monitoring data in non-disturbed locations. This may very well have underestimated the actual Nitrate concentrations in ground water. In fact the technical report (p. 111) states that, “the model results are considered to be more accurate ...” due to a lack of real data.

3. Site Specific Standards (p. 72):

- New Jersey Farm Bureau is opposed to this TMDL implementation policy because the prohibition is in direct conflict with the Right to Farm Act which recognizes the need and allows for the application of nutrients, including phosphorus when applied in the accepted manner.
- New Jersey Farm Bureau recommends that this second policy make clear that it does not apply to agriculture.
- New Jersey Farm Bureau is opposed to the third bullet under the second policy. Site specific standards are applied by a conforming municipality when development is proposed. Under the Right to Farm Act, most farm activities are exempt from municipal site specific standards. The Highlands Act specifically addressed site specific standards for agricultural development and directs the Department of Agriculture to govern these activities in the Preservation Area. There should be no requirement for site specific standards in the Planning Area

on agricultural development. The RMP should encourage the farm applicants to go through the process laid out in the Department of Agriculture's rules for agricultural development.

- New Jersey Farm Bureau feels strongly that the New Jersey and United States Departments of Agriculture should be the only government agencies regulating agricultural practices and along with the Natural Resources Conservation Service and the Soil Conservation Districts the only government agencies qualified to give advice and guidance to farmers on agricultural best management practices.

4. Long Term Goals (p. 72-73):

- New Jersey Farm Bureau requests that a Long Term Goal be added to work with the United States Department of Agriculture, Natural Resources Conservation Service and the New Jersey Department of Agriculture to acquire funding for agriculture best management practice development and implementation. The local Soil Conservation Districts do not have the staffing or funding available to meet current needs let alone the added assistance needs that will be brought on by the implementation of the Highlands RMP.

d. Wellhead Protection

1. General Policies (p. 76):

- New Jersey Farm Bureau is aware that there are significant amounts of active farmland within one or more of the Wellhead Protection Areas. It must be clearly stated as a general policy that agricultural or horticultural production or activity done according to a farm conservation plan is exempt from these provisions and may continue within the Wellhead Protection Areas across all Zones of the Highlands region. The Highlands Council must expect to add the cost of Farm Conservation Plan development and implementation to the total fiscal impact of these rules.

2. Site Specific Standards (p. 76):

- New Jersey Farm Bureau puts forth that there is no justification for excluding agriculture from reusing stormwater in Wellhead Protection Areas. We strongly believe that the construction of farm irrigation ponds should be encouraged through out the state and especially in the Highlands.
- New Jersey Farm Bureau recommends that the prohibition of engineered stormwater infiltration in Wellhead Protection Areas should be qualified by the quality of that water. There should be no restrictions for clean stormwater such as roof runoff. The Highlands Council must realize that infiltration is also a filtration process. The restriction of infiltration in these areas is counter productive to maintaining or even increasing aquifer recharge.

3. Long Term Goals (p. 77):

- New Jersey Farm Bureau recommends that the Highlands Council identify potential funding sources to plan, install and maintain the Agricultural Management Practices that are demonstrated to be needed on active farms within Wellhead Protection Zones.

e. Nitrate Concentrations and Septic Suitability

1. The Highlands Plan Approach (p. 78-82):

- **Assessment of Background Nitrate Concentrations**
New Jersey Farm Bureau is concerned that the Highlands Council is using nitrate standards lower than the state standard. The NJDEP nitrate standard of 2mg/L for fresh water for the state of New Jersey is already far below the drinking water standard of 10mg/L. The Highlands Council must justify using standards lower than the state standard. It appears that the goal of this policy is to further reduce potential areas for growth and development rather than to protect water quality. The Highlands Council should focus on protecting designated uses and not just a concentration of a pollutant.
- **Assessment of Soils Suitable for Septic Disposal**
New Jersey Farm Bureau recommends that the RMP policies on septic system design should reflect the ongoing improvements in septic design that can result in much reduced nitrate infiltration or no polluted discharge at all.

Most of New Jersey Farm Bureau's members are dependent upon septic disposal systems for their homes, employee housing, and other aspects of their operation. Undoubtedly using older systems, farmers will be affected by whatever standards and regulations the Highlands Council adopts to deal with identified nitrate issues. The NRCS language describing the 4 levels of septic limitation reveals that it is possible to overcome soil suitability with design and resources. This is important since it is stated that "67% of the region's soils are classified as Very Limited."

- **Next Steps**
New Jersey Farm Bureau is dismayed that at this late date, with a draft RMP, the Council's efforts with respect to nitrate management and septic suitability are not yet completed. This major component for land use planning must be part of the Plan before it is put before the Council for final adoption.

2. General Policies (p. 82):

- New Jersey Farm Bureau is concerned that the Highlands Council is establishing septic densities "that do not exceed the natural capacity of groundwater to attenuate loadings" and basing an entire land use and regulatory structure on technology that is outdated. The NJDEP regulations for on-site wastewater treatment and the Residential Site Improvement Standards permit use of more current technology that poses no threat to drinking water. With appropriate design, septic systems can be prevented from "exacerbating existing nitrate impairment, or contributing to potential nitrate impairment" and density should be based on that potential.

3. Pre-Conformance Requirements (p. 82):

- New Jersey Farm Bureau believes that the standards and technical guidance for "determining appropriate septic densities and design/maintenance requirements" should be completed before the final RMP adoption, not during the pre-conformance period. Furthermore, the guidance should be based on the nitrate concentrations in effluent from the latest and best technology available for septic

systems and alternative waste disposal systems, not old septic/cesspool technology.

4. Long-Term Goals (p. 83):

- New Jersey Farm Bureau recommends that the incorporation of innovative technologies appropriate for the design, installation and maintenance of septic systems should be part of the pre-conformance period, not put off until some date in the future. The New Jersey Pinelands Commission has research on innovative septic systems that should be encouraged in the Highlands as soon as possible. There is no reason for the Highlands Council to put off consideration and incorporation of the newest and best technology.

5. Coordination and Consistency Strategies (p. 83):

- Coordinated work with the New Jersey Department of Agriculture, NRCS, and other agencies must include a concentrated effort to find funding and technical assistance to develop and install Best Management Practices.

2. Ecosystem Management

a. Highlands Open Waters and Riparian Areas

1. Introduction (p. 84):

- New Jersey Farm Bureau opposes the use of an overly broad definition of Highlands Open Waters in both the Highlands Act and the draft RMP. Artificial bodies of water developed to improve water quality such as stormwater retention/detention basins or farm ponds used as a source of water to irrigate crops should not be included in the Highlands Open Waters definition.

2. The Highlands Plan Approach (p. 87-88):

- **Evaluation of Watershed Value**
New Jersey Farm Bureau objects to the quality of a watershed being determined solely on the percentage of developed and undeveloped forest land. It would be more beneficial to water supply and water quality to use Farmland Assessment Woodland Management data to delineate the privately owned forests (managed under Woodland Management Plans), the publicly owned forest land (which usually receives no management), and the remainder (woodlands appurtenant to farms). Management under Woodland Management Plans are certified by a professional forester, approved by the New Jersey State Forester and accepted by the township tax assessor. These plans could include activities ranging from removal of invasive plant species, treatment for disease and insect infestation, wildlife damage control, reforestation and periodic harvesting done in accordance with DEP-approved woodland Best Management Practices.
- New Jersey Farm Bureau recommends that the Highlands Council use high quality habitat, represented by the documented presence of federal or state threatened and endangered species, as opposed to mere presence of "potential habitat" as a measure of watershed value.
- New Jersey Farm Bureau opposes the use of merely spatial characteristics to determine levels of quality of Highlands forest as an indicator of watersheds

(Percent Total Forest, Percent Core Forest, Proportion of Total Forest). Forest condition could be an important indicator of watershed condition, which is not being captured by simply mapping the extent of Highlands forest (patch sizes, presence of roads, etc). The draft RMP provides no information about the health or sustainability of these woodlands. The RMP should show the amounts of publicly owned woodlands vs. privately owned woodlands, and give statistics on what management is ongoing because of Farmland Assessment requirements.

3. General Policies (p. 90):

- New Jersey Farm Bureau recommends it be clearly stated as a general policy that agricultural or horticultural production or activity done according to a farm conservation plan is exempt from these provisions and may continue within the riparian areas across all Zones of the Highland region.
- New Jersey Farm Bureau recommends that the RMP clearly state that the New Jersey Department of Agriculture's "Agricultural Development Rules for the Highlands" will apply to any new agricultural development activities in riparian areas in the Preservation Area and in the Planning Area the guidelines in those rules should be encouraged. Agricultural development in riparian buffers (Preservation Area) must be governed by these Agricultural Development rules so as to fulfill the statutory mandate relative to enhancement of agricultural and horticultural production. Farm operators must be able to expand, adapt and diversify to remain viable - while doing so in a manner that has no adverse effects on the Highlands water resource.
- New Jersey Farm Bureau is opposed to the policy that places all man made waters into the Intermediate Waters category. It is not clear where farm ponds, drainage ditches, retention and detention ponds for stormwater control fit into the series of resource gradations. These manmade "open waters" serve a critical function in the land use of the site and in some cases are regulated already by state and federal rules and standards. Specifically, farm ponds are a way for agricultural operations to maintain a stable supply of water by capturing some of the 40 inches of rainfall the Highlands region sees each year. This ability to use surface runoff should not be prevented by onerous restrictions.

4. Zone Standards (p. 92):

- New Jersey Farm Bureau objects to the use of the word "prohibit" in the Zone policies for the Protection and Conservation Zones. The Highlands Council is severely limiting its flexibility by using such strong words in its RMP. Words such as "limit" and "encourage" are more suited to be in a master plan.
- New Jersey Farm Bureau is concerned with the wording in the Protection Zone policy that states "prohibit new land uses or the alteration of existing land uses in the Protection Zone..." This could be interpreted to mean that existing agricultural operations cannot adapt and change in order to meet the needs of the agricultural business and the community. It must be clearly stated in the RMP that a change in use does not mean a change from one type of agricultural or horticultural operation to another.

- New Jersey Farm Bureau recommends that it be clearly stated that agricultural and horticultural buildings do not fall under these policies but rather under the policies in the Agricultural element of the RMP that direct agricultural and horticultural development to be regulated under the New Jersey Department of Agriculture. This is essential to agricultural viability; if municipalities were to begin imposing the standards on page 93 on agricultural development (such as farm markets) it would cause inappropriate extra costs for farm operators to the extent that he/she may not be able to take such steps to enhance their farm viability.
- 5. Site Specific Standards (p. 92-93):**
- New Jersey Farm Bureau repeats the above concern with the use of the wording, "maintain existing uses," This could be interpreted to mean that existing agricultural operations cannot adapt and change in order to meet the needs of the agricultural business and the community. It must be clearly stated in the RMP that a change in use does not mean a change from one type of agricultural or horticultural operation to another.
 - New Jersey Farm Bureau is concerned that riparian buffer lines based upon estimates of the location of hydric soils may be used beyond the RMP. The NRCS does not intend for its soil maps to be used for regulatory purposes because of their lack of precision and general guidance nature. The RMP may use these maps as a guide, but any municipality that wants to use the RMP mapping to impose regulation on these buffers must undergo the necessary studies to prove that the soils and hydrology are present before restricting the use of the land. Furthermore, the Highlands Council must not encourage municipalities in the Planning Area to develop stricter riparian regulations on farmland than those set forth in the draft RMP policies.
 - New Jersey Farm Bureau is opposed to a uniform 300 foot buffer on both sides of a water body. This size buffer equates to greater than one acre of land being impacted in each 300 linear feet. A 300 foot buffer is overly large in many instances and is more land than is needed to protect the water resources. This policy can be interpreted as a quick way to "take" land without compensation.
 - New Jersey Farm Bureau is concerned that in places where the Highlands Council staff has identified a 150 foot buffer to be appropriate for protection of the resources, the draft RMP requires a 300 foot buffer until the applicant can prove that 75 or 150 feet is adequate. Applicants should not be required to prove something that has already been proven by the Highlands Council and staff. This is expensive and unnecessary and it will be an added burden to the TDR program by discouraging development in the Planned Community Zones.
 - New Jersey Farm Bureau is concerned that the Highlands Council seems unaware that the strict delineation of the 300 foot buffer along with its regulatory requirements renders active farmland ineligible for USDA farm programs such as CREP, WHIP, EQIP, CSP etc. Riparian buffer provisions of the RMP must be written so that this does not occur.

The CREP program, funded jointly by the federal and state governments makes it possible for cropland to be redesigned as effective riparian buffers. Under a CREP conservation plan the size of an effective buffer area will be appropriate to specific site conditions. Farmland owners that participate in the CREP program should be only limited to the buffer determined to be appropriate for that site by NRCS technical experts. The Highlands Council would serve the natural resources well by mounting an effective outreach campaign to educate landowners of this potential.

Furthermore, forested riparian areas, because they are not being "cropped", are ineligible for the CREP program. A similar (to CREP) supplemental program is needed to help those with already forested buffers develop conservation plans to improve the effectiveness of the riparian areas. With widespread participation in these programs this information could eventually be used to correct the mapping data.

- New Jersey Farm Bureau believes that the overall impact of the site specific standards for the riparian area, which makes up almost half of the entire Highlands region, will severely limit the ability of the region and its residents to maintain economic stability. These restrictions have the potential to deter future home/landowners in the Highlands region from ever becoming home/landowners in the Highlands. The real estate market in the region will decline, businesses will leave and the Highlands economic outlook will be bleak.

6. Coordination and Consistency Strategies (p. 94-95):

- New Jersey Farm Bureau is concerned that the coordination and consistency strategies imply that the Highlands Council will work with other state agencies to ensure that the recommendations of the Highlands RMP will be used in all state regulatory review programs. This leaves the impression that the intent of the Highlands Act will be disregarded where it states that all rules, master plans and municipal master plans stemming from it, would be voluntary in the Highlands Planning Area.

b. Steep Slopes

1. The Highlands Plan Approach (p. 95-96):

- New Jersey Farm Bureau feels that the Highlands Council should look to the Natural Resources Conservation Service for guidance on how to manage steep slopes and protect the soil resource.

In agriculture, slope is the factor that dictates the degree of soil erosion and sedimentation control practices necessary to reduce erosion and protect the soil resource. The long-established expert on how to do this is the USDA-NRCS and the methods are stated in their Field Office Technical Guide adapted by the State Office for the conditions in New Jersey.

The NRCS estimates the constraints for each soil type for a number of land uses such as, foundations for dwellings and athletic fields and declares them "slight", "moderate" or "severe," depending upon the soil type, characteristics and most

critically, the land use. What might be considered a severe slope constraint for athletic fields can be rated “slight” for building foundations. The NRCS does not set a defined percentage limit for “severe” slopes but allows for careful, sensitive and creative site planning to protect the resource. Furthermore, the soil survey information must be verified on the ground before it can be used for regulation, according to the NRCS.

- While New Jersey Farm Bureau understands the need for some practical limit in order to map steep slopes (15%), we urge the Highlands Council to create a mapping system that will produce the maximum flexibility that is necessary for protection of Highlands resources and the economy of the region.
- 2. Site Specific Standards (p. 97-98):**
- New Jersey Farm Bureau would like to see a policy added that specifically exempts agricultural and horticultural production and activities done under a farm conservation plan from these site specific standards. Agricultural operations work with their local Soil Conservation Districts to develop farm conservation plans that address the issues of soil erosion and sedimentation. Many agricultural crops do well on slopes, including orchards and vineyards. Furthermore, new agricultural development should be regulated through the New Jersey Department of Agriculture. This policy needs to make that clear so that municipal officials looking for guidance understand that agriculture is regulated through a separate mechanism.
 - New Jersey Farm Bureau is opposed to use of the words “require” and “prohibit” as a part of a Master Plan. This leaves no room for the flexibility that will be required to meet the extremely varied Highlands physical conditions and the other mandates that the Highlands Act requires: economic development, smart growth and support of agricultural viability. According to both the NRCS and State Soil Conservation Committee standards, there are many creative ways slopes can be protected from erosion and sedimentation through best management practices and design that may enable the Council and municipalities to fulfill critical public needs. Fuzzy words are appropriate for a Master Plan; the specific regulatory language must come later.
- 3. Coordination and Consistency (p. 99):**
- New Jersey Farm Bureau is concerned that the draft RMP makes no mention of the authority of the Soil Erosion and Sedimentation Control Act administered by the State Soil Conservation Committee governing all disturbance over 5000 square feet. All development, including farm development, beyond that trigger must consult the Soil Conservation Districts about a soil erosion and sedimentation control plan. The draft RMP calls for the Highlands Council to coordinate with NRCS to develop standards for soil erosion. However, there are already adopted rules implementing the Soil Erosion and Sedimentation Control Act that set the standards for the handling of slope and other factors that would make dedication of Highlands staff time to developing such standards unnecessary and counterproductive. Coordination with these established rules and standards should be a Pre-Conformance Strategy to be done immediately after RMP adoption.

Reluctance observed on the part of some Council members about using NRCS standards may arise because enforcement of the rules must be an ongoing concern. Municipalities have responsibility equal to the County Soil Conservation Districts to ensure that the rules and standards already set to protect soil resources are enforced and penalties applied where necessary. It would be highly inefficient for the Council staff to develop entirely new standards and abandon those established by statute and rule that have been used for more than 20 years to protect soil resources in New Jersey.

c. Forest Integrity and Stewardship

- New Jersey Farm Bureau is dismayed to see that this RMP component and the Technical Report background document show a disregard for the facts about how woodland management is currently conducted in New Jersey and how the Farmland Assessment program works (income requirements, “active devotion to agriculture” requirement).

We recommend that the RMP and the Highlands Council gain a better understanding of these two very important programs. A better understanding will show that the policies and regulations proposed in this section are unnecessary. Forest management practices are already regulated by public agencies according to statutory requirements, which already represent a significant monetary investment for woodland owners.

New Jersey Farm Bureau recommends that the RMP contain the following language:

Farms that have 50% or more land in woodlands are required to have a 10-year Woodland Management Plan prepared and certified by a state-approved forester that is reviewed and approved by the New Jersey Forest Service and the municipal assessor under the Farmland Assessment rules. The requirements for a Woodland Management Plan are outlined in the Farmland Assessment statute (N.J.S.A. 54:4-23.1 et. Seq.) and rules (N.J.A.C. 18:15-1.1 et. Seq.) and are highly detailed and inclusive. The NJDEP Forest Service inspects each woodland property at least once every 3 years, and the consulting foresters monitor the implementation of the woodland management plans and attest to the practices and harvesting that are done in accordance with the woodland management plan.

Farms with less than 50 % of their land in woodlands (“appurtenant”) are not regulated or monitored for Farmland Assessment, however, Section 30(a)7 of the Highlands Act requires a Forest Management Plan for a disturbance of more than ¼ acre of forest and clearly exempts the management of woodlands under a Woodland Management Plan. The Woodland Management Plan or the Forest Stewardship Plan required for federally funded forestry programs is sufficient to protect the needs of the forest and a new type of plan is completely unnecessary.

1. The Highlands Plan Approach (p. 101-103):

- New Jersey Farm Bureau is concerned that forestry is separated from the rest of agriculture just as it was in the Pinelands, despite the fact that thousands of

acres of appurtenant woodlands are part of the Highlands farms. The forest resources have long been an untapped resource for farmers, providing ways to raise income from timber and firewood sales, development of forest products, to hunting, fishing, and passive recreation/agri-tourism activities. Landowners should be able to utilize this income resource in the future as it can be a sustainable agricultural practice. For some forest landowners in the Highlands, silviculture may be a business bringing in needed income. Since good forest management can be achieved while generating income, the RMP must not rule out continuation of such activities.

- New Jersey Farm Bureau recommends that the RMP must encourage scientifically based ecological forest management for the maximum biological diversity through creation of a diversity of forest habitats.
- New Jersey Farm Bureau is concerned that the draft RMP does not include the up-to-date research brought to the Highlands Council by the Forestry TAC and made part of the recommendations of the joint Forestry-Ecological Management TAC at the charette conducted by the Highlands Council in 2005.

A large amount of the research relied upon for the forestry report that informs this draft RMP, was done earlier than 1988 or 89. The Forestry TAC references date mostly later than 1995, including many done after 2000. This broader literature search should be the basis of the RMP forest protection policies since forest management practices may have changed greatly since the 1970s and 80s. If the goal is to protect the water quantity and quality of the Highlands area, this more current research shows that more is needed than just large patch size, contiguity, and distance from disturbance.

The data to be used to delineate the forest resources must contain other elements and research findings as recommended by the Highlands Forestry TAC and more current forestry research.

- New Jersey Farm Bureau believes that the omission any information about how the forests of the Highlands are currently being managed under Woodland Management Plans, as a requirement to obtain Farmland Assessment, is misleading. The Highlands Council must seek input from the NJDEP Bureau of Forest Management about their experience with forest management under the Woodland Management Plans.

The statistics about numbers of acres in the Highlands under such plans or the more rigorous Forest Stewardship Plans should be included in the RMP. The Farmland Assessment statistics are readily available in the reports of data from FA-1 forms for each tax year prepared by the Division of Taxation. The seven counties that make up the Highlands, for example, have 113,667 acres in nonappurtenant woodlands that are required to be managed under a Woodland Management Plan developed by an approved forester and approved by the New Jersey Forest Service. Statistics for the individual municipalities are easy to obtain. This is a substantial investment of time and money by private forest landowners that is completely omitted and discounted by the draft RMP. This information should be added before adoption of the RMP to ensure that all readers are aware of the forest management that is ongoing.

- New Jersey Farm Bureau advises the Highlands Council to reconsider their policy to require so many different types of forest plans as laid out in this section of the draft RMP. The Highlands Council should limit the required forest plans to those that are already being required for Farmland Assessment or federal Forest Stewardship benefits. There is no need for the confusion that will be caused by the multiplicity of plans or the extra costs this will entail.
- New Jersey Farm Bureau recommends that the cost of any additional requirements for forest management, especially if this requires more and different types of plans or more detailed mapping and surveying, will be included in the Fiscal Impact analysis of the RMP.
- New Jersey Farm Bureau believes that the examination of the ecological integrity of forests to create the Forest Resource Area should not be done at the landscape level using patch size and contiguity factors alone (p. 101). The mere presence of trees is no indicator that water quality and supply are benefited. Forest health needs to be a determining factor in delineating the Forest Resource Area. New Jersey Farm Bureau recommends that more data about actual forest conditions must be the basis for forest policy in the RMP.

Periodic forest conditions assessments by the USDA Forest Service and the New Jersey Forest Service have documented that infestations of gypsy moth and woolly adelgid, invasion by barberry and multiflora rose, and heavy depredation by deer have weakened the health and utility of many forests in the Highlands. To put off assessment of forest health until some time in the later five years after plan adoption is at odds with the expressed need to protect the forest resource of the Highlands. Such assessment must be done by forestry experts, not the Highlands Council staff. Monitoring already done by the New Jersey Forest Service should suffice, saving the cost of hiring Highlands Council staff to serve this function.

- New Jersey Farm Bureau is concerned that too much “protection” could result in degradation of the forest resource instead of “protection, restoration and enhancement” of the resource. The forests of the Highlands region are an ever-changing, dynamic, relatively young, renewable resource. The comments from the forestry community experts clearly describe the process by which a farm field becomes a forest over time and what can happen to Highlands forests if left totally alone. With invasive species, wildlife damage, tree decline because of insects or disease, there is no permanent steady state of “forest health” in nature. To maximize the ability of the Highlands forests to protect and augment water resources, wise management will be required.

2. Zone Standards (p. 103):

- New Jersey Farm Bureau is concerned with the first policy under both the Protection Zone and the Conservation Zone that prohibits the clearing of woody vegetation except in exceptional situations. Forest management that prevents some clear cutting will prevent regeneration of the forest and a native understory upon which wildlife, including birds depend. Clear cutting is a silviculture method to create forest regeneration and is often required for forest health and

sustainability. A tract where the trees have been killed by gypsy moth, for example, must be cleared to encourage regeneration or reforestation.

Furthermore, the RMP cannot prohibit clearing in the Forest Resource Area because most of it is managed under Woodland Management Plans approved by the State Forester under the DEP. Landowners, both public and private must be free to take management actions that will benefit the health of the forest resource. The Highlands Act specifically exempts forest management under these plans from standards of the RMP.

3. Site Specific Standards (p. 105):

- If these site specific standards are meant to be in place only when there is an application for a major highlands development, then that needs to be specified. It appears that these site specific standards apply to all parcels within the Forest Resource Area without consideration of forest management plans or, in the case of appurtenant woodlands, farm management plans.
- New Jersey Farm Bureau strongly disagrees with the policy that limits the permissible uses within a Forest Resource Area or a High Integrity Forest Area to maintenance of pre-existing uses and prohibits removal of woody vegetation resulting in a land use change. The requirement to get a Highlands Council approved forest mitigation plan in order to get some relief from these strict standards is onerous, duplicative and expensive for landowners that are already following a forest management plan.
- New Jersey Farm Bureau strongly disagrees with the policy that limits the permissible uses within a Moderate Integrity Forest Area to maintenance of pre-existing uses and permits only a minimal amount of removal of woody vegetation from forested lands, again attached to the requirement of a Highlands Council approved forest mitigation plan.

The removal of woody vegetation is an integral part of a forest management plan that promotes regeneration of a healthy understory. Farm Bureau is disappointed that the draft RMP seems to ignore many of the Forestry TAC recommendations in these policy statements.

4. Forest Stewardship policies(p. 105):

- New Jersey Farm Bureau is concerned that the draft RMP will only allow forestry activities within a Forest Resource Area when approved by the Highlands Council. The majority of Highlands forests are managed under woodland management plans that are approved by the State Forester, under the DEP. To require these plans to be submitted and reviewed by the Highlands Council, which does not have the expertise to provide sound advice on woodland management practices, would prevent good forest stewardship practices from taking place. Just the amount of time it would take to go through this approval process would put forest health at risk.
- New Jersey Farm Bureau opposes the policy to encourage owners and operators with woodlots to have approved forest management plans that conform to the protection standards of this RMP unless they are identical with the statutory and

regulatory requirements of existing federal and state forest management programs. The RMP must recognize that forestry is a type of agriculture. Farmers may utilize their woodlands that are appurtenant to the farm to provide income opportunities, therefore, helping to support "sustainable agriculture." Woodlands nonappurtenant to the farm are being managed under plans certified by both professional foresters and the New Jersey Forest Service and thus do not need the added supervision of the Highlands Council. The standards in the draft RMP are too onerous and inflexible to promote good forest health in the Highlands.

- New Jersey Farm Bureau recommends that forest stewardship should be encouraged through a well-developed toolbox of incentives available to those forest landowners that follow the established management guidelines of Woodland Management and Forest Stewardship plans. These incentives must appeal to public forest landowners as well as private so that these lands receive the attention they must have to serve as a water protection resource.
- 5. Pre-Conformance Requirements (p. 105-106):**
- New Jersey Farm Bureau believes that the Highlands Council could save greatly on staff time and cost by using guidelines for community forestry already developed for state and federal programs. The Community Forestry model ordinance developed for the Hunterdon County Freeholders' Environmental Toolbox also could be used instead of reinventing the wheel. The draft RMP requires too many types of forestry plans, all of which are developed at a cost to the landowner or the municipality and deepen the confusion in conformance.
 - New Jersey Farm Bureau strongly opposes the draft Highlands RMP recommendation to make any changes to the Farmland Assessment program. This statute has been responsible for preserving the 464,200 acres of existing forest in the Highlands from development so that it is now available to be protected by this regional plan. Opening the door to changes in Farmland Assessment puts the program at great risk of being gutted by lawmakers who do not understand its value and who are looking for ways to lower property taxes.
- 6. Conformance Requirements (p. 106):**
- New Jersey Farm Bureau believes that it is imperative that local governments that own forestland be required to maintain and be good stewards of that land. It is often the land that is publicly owned that is in the worst condition. Any town that opts-in to the RMP must agree to prepare, adopt as a part of their master plans, and implement forest stewardship plans.
- 7. Long Term Goals (p. 106):**
- New Jersey Farm Bureau opposes the goal of developing a Highlands Managed Woodlands, Woodland Forester and Logging Certification Program. The professional certified foresters, who work in the Highlands region, should not be required to be specifically certified by the Highlands Council. This would be an undue burden and expense to the very people who are working to maintain the forest health of the Highlands region. Furthermore, to establish a certification, tracking and regulatory program for the handful of foresters and loggers active in the Highlands is a waste of public funds. These foresters and loggers are

already regulated by the Freshwater Wetlands Act, the Woodland Management Plans, and often municipal tree harvesting ordinances.

- New Jersey Farm Bureau agrees that there should be incentives for private land owners to prepare and implement forest stewardship or forest management plans. It is very important, however that this be incentive based. Programs should be developed that are similar to CREP and the Farmland Preservation Program which benefit farmers.
- As stated in our comments on pre-conformance requirements, New Jersey Farm Bureau opposes efforts to seek amendments to the Farmland Assessment Act. This statute has been responsible for preserving the 464,200 acres of existing forest in the Highlands from development so that it is now available to be protected by this regional plan. Opening the door to changes in Farmland Assessment puts the program at great risk of being gutted by lawmakers who do not understand its value and who are looking for ways to lower property taxes. Furthermore, opening this program to allow the inclusion of credits for the control of invasive species and white tailed deer creates more opportunity for abuse of the program. When abuse happens, it puts the entire Farmland Assessment program at risk by opening it up to skeptics.

New Jersey Farm Bureau suggests that the Highlands Council encourage enrollment in the various federal programs and implementation of practices recommended by the Natural Resources Conservation Service to control invasive species and white tailed deer and to protect water quality.

8. Coordination and Consistency Strategies (p. 107):

- New Jersey Farm Bureau feels that there is no need for the Highlands Council to implement the coordination tasks mentioned in the 1st, 4th, 6th, 7th, and 8th bullets due to the fact that any activity conducted in accordance with a woodland management plan or forest management plan is exempt from the provisions of the RMP according to the Highlands Act.
- New Jersey Farm Bureau strongly supports the development of a forest easement purchase program as an addition to the Green Acres fee simple open space purchase program and the SADC farmland preservation easement purchase program.
- New Jersey Farm Bureau recommends to the Highlands Council that in the policy stating, "Coordinate with the United States Department of Agriculture's Natural Resources Conservation Service and New Jersey Department of Agriculture to promote forest area resource protection requirements..." the word "protection" should be replaced with "management."

d. Critical Habitat

1. Critical Wildlife Habitat (p. 107-108):

- New Jersey Farm Bureau opposes giving the DEP Landscape Project mapping undue weight in determining the important natural resource areas to be protected in the Highlands. The Landscape Project mapping methodology is questionable

and lacks credibility. The methodology is designed to restrict the largest amount of land rather than to ensure measures that would protect or increase the numbers of threatened and endangered plants and animals. Our specific reasons for claiming the Landscape Project has limited scientific basis and credibility are as follows:

- The DEP Landscape Project has not undergone the rule making process and the required public scrutiny of its maps and policies.
- The review process included only scientists from outside New Jersey with no one from local scientific institutions or communities. These scientists were not selected by a disinterested third party and it is unknown whether these “experts” would agree that the process should be used so heavily as a basis for land use regulation.
- There is no information about when supposed species sightings occurred, therefore, the animal could have migrated to an adjacent state for better living conditions decades ago. If sightings dated 1970 are considered still valid, with no efforts to use revised land use/land cover maps to bring them up to date, there is no basis for giving them weight. Furthermore, there is no assurance that the quality control of those earlier observations is sufficient for them to be used in regulation. It is unknown what standards were used to evaluate the veracity of sighting reports or to choose qualified observers.
- Methodology results are based on contiguous land use type rather than the actual presence of the species, with a preference for large, contiguous forest habitat for all species, regardless of how sensitive they might be to the smaller habitat gradations of microclimate and topography.
- The experience of New Jersey Farm Bureau members with the Landscape Project maps shows that they are often incorrect or misleading. There appears to be little ground-truthing, rather gross-scale and often outdated aerial photos are used. When applied on a site-specific basis, existing buildings and other errors appear. Landowners are told they must develop expensive wildlife habitat management plans even when comparisons of two aerial photos show that the mapping is clearly incorrect.
- Some uses of the Landscape Project mapping are unfounded. For example, allowing the identification of a tract as habitat for an animal to automatically, without consideration, increase the regulatory standards for everything from buffers to levels of disturbance is not scientifically valid. Actual habitat requirements for the animal in question should be the only information used to regulate other land uses.
- Farms have been mapped as “grassland bird habitat” without any consideration of what crop was growing when the aerial photos were taken. Many farmers rotate their crops from year to year to enhance soil and water conservation as well as improve farm viability. Ground-truthing is essential before confiscatory regulation is imposed.

- New Jersey Farm Bureau does not consider the DEP Landscape Project to be founded on science as both the Highlands staff and DEP maintain. There appears to be a scientific bias towards expanding the areas deemed necessary for the species, rather than delineating them more precisely to be sensitive to human needs and property rights. The Highlands Council should seek research that increases the list of compatible land uses and activities and the many proofs that some species of concern actually thrive with more human activity and land disturbance.

- New Jersey Farm Bureau sees use of the Landscape Project mapping as a potential direct conflict with agricultural viability. Our research tells us that soybeans and corn may not be the best habitat for some species, which would imply that in order to protect potential habitat, farm fields would need to be permanently planted with warm season grasses. At this time there is almost no market for that type of crop. In order to support a viable agriculture, the Highlands Council should not suggest that farms change their crop rotations to include such grasses that contribute nothing to agricultural viability.
- New Jersey Farm Bureau continues to protest the addition of “rare” species to the list of species of concern. This is not required in either the Federal Endangered Species Act or the New Jersey Endangered Species statutes for good reason: they may be abundant in some nearby area even though conditions have reduced populations at one mapping point. It gives the appearance of being yet one more way to restrict the use of hundreds of acres of land for any human purpose.

2. Significant Natural Areas (p. 108):

- New Jersey Farm Bureau supports the use of the Natural Heritage database as a starting point in this version of the RMP. Any nomination of additional areas must meet the same scientific standards as those used to place areas on the Natural Heritage list. This should take place after the RMP is adopted and include discussions with municipalities and landowners.

3. Vernal Pools (p. 108):

- New Jersey Farm Bureau is concerned with the overly stringent way in which the Highlands Council is choosing protect Vernal Pools. The policies to address Vernal Pools in this draft RMP threaten to increase the number of regulatory takings in the Highlands to levels which will cause an undue burden on the people of the Highlands region. The Highlands Council must seriously reconsider the strict use of 1000 foot buffers around vernal pools in order to prevent such a mass taking of land.

4. The Highlands Plan Approach (p. 110):

- New Jersey Farm Bureau agrees with the approach that the Highlands Council is taking to have a ranking index to identify relative importance, or value of habitats, however we are opposed to the removal of the third tier (discussed at an October 5, 2006 meeting) for low significance. There must be priorities set on what habitat is the most important. If there are no gradations in species, it is very possible that the entire Highlands region could be mapped as “critical” habitat. We agree with three levels of species priority rather than the two that are in the

draft RMP. We are concerned that that this third tier for species of low significance was removed, and recommend that it be put back.

- New Jersey Farm Bureau would like to see the terminology changed so that only the most important habitat (top tier) would be termed “critical.”
- New Jersey Farm Bureau strongly opposes the use of a 1000 foot buffer around vernal pools. This would prohibit most land uses on more than 72 acres of land or 3 football fields in all directions. This certainly meets the legal definition of a taking for which the landowner must be compensated. The cost of the regulatory takings imposed by this one policy must be added to the fiscal impacts of the RMP.
- New Jersey Farm Bureau strongly believes that the Highlands policies should guide municipalities to work hard to develop a positive accommodation between the thousands of humans in the Highlands and plant and animal species. Accommodation of wildlife habitat needs with development, agriculture, and other land use needs to be expressed in the draft RMP. Unfortunately, we see that the policies set forth in this section of the RMP run counter to that philosophy by severely restricting flexibility and creating an environment of complete regulatory overkill.
- New Jersey Farm Bureau recommends that a guiding principle be management of all public or private land areas for invasive and/or over-abundant species. This will reduce the threats to other valuable species as well as agricultural crops. We are disappointed to see that this draft offers no policies to deal with the issue of invasives as a threat to threatened and endangered species.

5. Zone Standards (p. 112):

- New Jersey Farm Bureau is opposed to the language in the Protection Zone policy that states, “Prohibit new land uses or modification to existing land uses within the Critical Habitat Resource Area or within any Critical Habitat feature...” There are over 28,000 acres of agricultural land within the Protection Zone and it must be clearly stated in this policy that agricultural and horticultural practices and activities done under a farm conservation plan are exempt from this policy.
- New Jersey Farm Bureau maintains that in order to maintain agricultural viability, agriculture operations must have the flexibility to change and adapt their operations to meet the needs of their business and the community in all Zones. Furthermore, this policy must state that all agricultural and horticultural development in the Preservation Area will be regulated through the New Jersey Department of Agriculture rules that were developed as per the Highlands Act. All new agricultural and horticultural in the Planning Area should be encouraged to follow the guidelines set forth in the NJDA rules.
- New Jersey Farm Bureau is opposed to the language in the Conservation Zone policy that states, “Prohibit new land uses or alteration of existing land uses within the Critical Habitat Resource Area except...” The Conservation Zone is primarily made up of agricultural lands and 72% of Highlands agriculture is within this Zone. This language implies that a farmer would not be able to change from

one crop to another or from one kind of agriculture to another. One of the goals of the Highlands Act is to maintain agricultural viability and this policy runs counter to that goal. It must be clearly stated in this policy that agricultural and horticultural practices and activities are exempt from this prohibition of new or altered land uses. In order to have a continuing agriculture economy in the Highlands, agriculture operations must have the flexibility to change and adapt their operations to meet the needs of their business and the community. Furthermore, this policy must state that all agricultural and horticultural development in the Preservation Area will be regulated through the New Jersey Department of Agriculture rules that were developed as per the Highlands Act. All new agricultural and horticultural in the Planning Area should be encouraged to follow the guidelines set forth in the NJDA rules.

- In some instances, agricultural lands may be hosts to threatened and endangered species because of the land use. New Jersey Farm Bureau feels strongly that farmers who have threatened or endangered species on their property should not be punished by having to limit change of their land use, rather they should be rewarded through “green payments” and “hold harmless agreements” etc.
- 6. Site Specific Standards (p.112-112):**
- New Jersey Farm Bureau strongly opposes the inclusion of rare species on the list of those species to be protected, in both the Highlands Act and the draft RMP. By adding rare plant and animal species, the list of regulated habitat is greatly increased. Furthermore, the protection of rare species is not required by the State or Federal Threatened and Endangered Species Protection Acts.
 - New Jersey Farm Bureau recommends that until the Legislature makes adjustments to the Highlands Act and omits rare species from its definition of species to be protected, the Highlands Council must define a rare species as one that is specifically rare in the Highlands region and relies upon the Highlands region for support.
 - New Jersey Farm Bureau strongly opposes the provision that development applicants include identification and evaluation of any “suitable habitat” for rare, threatened or endangered species. The majority of the land in the Highlands could be put into this category. The regulation of “suitable habitat” when there is no rare, threatened or endangered species actually living there is regulatory overkill and an unnecessary infringement on property rights.
 - New Jersey Farm Bureau opposes the language that states, “Prohibit any activity that would result in the likelihood of the destruction or adverse modification of habitat for a rare, threatened, or endangered species of animal or plant.” We respectfully suggest that you change the word “prohibit” to “limit” as a way to allow for flexibility in future decision making. Such strong language as “prohibit any activity” does not belong in a master plan due to its nature as a guidance document.
 - New Jersey Farm Bureau opposes the Highlands Council’s decision to include language that states, “Prohibit adjustments and revisions to critical habitat

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- New Jersey Farm Bureau recommends that the policy that allows for the expansion of critical habitat protection areas, significant natural areas and vernal pool buffers, also allow for the reduction of such areas and buffers.
- 7. Pre-Conformance Requirements (p. 113):**
- New Jersey Farm Bureau is concerned with the policy to develop procedures for the nomination and inclusion of additional sites, or rebuttal of existing sites as critical habitat features. This process needs to be publicly vetted to the fullest extent.

The Highlands Council must be very careful to not allow the intrusion of private property rights. This violates the New Jersey Trespass and Vandalism statute

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and reduces biosecurity protection critical for New Jersey farms. Landowners have reason to be concerned that any citizen can decide that their property should be considered special and therefore petition the Highlands Council for inclusion as a critical habitat feature. The procedures for nomination must include a provision that requires the immediate notification to the property owner(s) affected, as well as on-site ground-truthing, paid for by the Highlands Council.

- New Jersey Farm Bureau agrees that there is a need for an appeal process for landowners who believe that their land has been incorrectly designated as a significant natural area or habitat for threatened and endangered species. Since the mapping for these designations has been done at the state level and is known to be frequently inaccurate, the Highlands Council must create a fair process for landowners to bring facts to bear on any mapping with which they disagree. This should not necessarily be a requirement for a full, expensive wildlife habitat or plant inventory in accordance with DEP application standards, especially if such data as aerial mapping can easily show the designation errors. It is important to make note of the cost of this to a landowner and it should be noted as a part of the fiscal impact analysis.

8. Conformance Requirements (p. 113):

- New Jersey Farm Bureau is concerned that the requirement of habitat management plans at every level (Highlands-wide, county, municipal and site specific) will be a costly and time-consuming process. Having four plans to address the same issues will create confusion and conflicts in the data. It would require a huge increase in the numbers of wildlife management professionals who charge as much as \$15,000 per property for a plan that could yet be rejected by the DEP or the Highlands Council. The titles of the various plans are very confusing as well. There should be sharing of data, ground-truthing and consistency of standards to save time and money.

9. Long Term Goals (p. 113):

- New Jersey Farm Bureau recommends that a high priority be put on an effort for the Highlands Council, NJDEP and other wildlife agencies, USDA-NRCS and the NJDA along with Rutgers Cooperative Extension to work together to develop and publish guidelines about how to have a viable farm and protect habitat at the same time. There are models from other States that can be consulted. This is a necessity to help resolve the inherent conflict between the goals of enhancing and maintaining viable agriculture and protection of critical habitat.

10. Local Participation Strategies (p. 113-114):

- New Jersey Farm Bureau recommends that municipalities include their Agricultural Advisory Committees in the development of ordinances concerning critical habitat and supporting species management plans.

11. Coordination and Consistency Strategies (p. 114):

- New Jersey Farm Bureau strongly recommends that the Highlands Council add the NJDA and USDA-NRCS to those with which coordination is desirable in development of Regional Habitat Conservation and Management Plans for two reasons:

1. Farmland is a major type of potential habitat and effort must be made to support farm viability along with habitat protection.
2. The USDA-NRCS administers the Wildlife Reserve Program that helps landowners defray the cost of wildlife habitat development and protection.

3. Land Preservation and Stewardship

- New Jersey Farm Bureau is opposed to the concept that land is only protected if it is in government ownership. Experience with open space preservation in rural areas has proven otherwise. State and local governments buy land for open space and then often times, they do not monitor or police these lands and they become host to invasive species, nuisance wildlife species, and trespass and vandalism. This abandonment of the land often destroys the very resource the public has paid to protect and the adjacent landowner has nowhere to turn for protection, assistance or compensation for damages incurred despite statutory requirements for these processes.
 - New Jersey Farm Bureau recommends that language be added in the third paragraph on page 115 where it describes the State Agriculture Development Committee's Farmland Preservation Program. The language should read, "...acquires the development rights on privately owned farmland, to support and promote a sustainable agricultural industry."
 - New Jersey Farm Bureau supports the Highlands Council in its efforts to support stable sources of funding for land preservation, including a water consumption fee; though we feel strongly that agricultural water use should be exempt from such fees.
 - New Jersey Farm Bureau believes that open space conservation can be accomplished more effectively by using an easement purchase program rather than a fee simple purchase program. Leaving land in private ownership and protecting it through easement purchase allows for the public investment to go further while at the same time better protecting the resource because private landowners continue to maintain and police the land.
 - New Jersey Farm Bureau would support selling some open space properties that were acquired through fee simple purchase, to private landowners under deed restrictions as a way to develop funds to buy more open space. The Highlands Council should explore this possibility as another source for more funding for land preservation.
- 1. Highlands Plan Approach (p. 116-117):**
- New Jersey Farm Bureau feels that the Highlands Council must be clear about the debt of open space acquisition that has been created by the Highlands legislation and regulations. The Highlands Council must be accountable to the property owners who have been promised by the Legislature that they would be made whole. The inequities created by the regulatory impacts of the Highlands Act can not be glossed over.

- New Jersey Farm Bureau believes that the Highlands Council needs to not only set criteria for land preservation, but be clear and realistic about how much preserved land is truly needed to protect the resources. It must then deal with the question of how to find just compensation for all those who seek to be made whole for acres beyond the targeted total.

The question of a Highlands funding source must remain high on the agenda to provide monies not only to buy development rights on farmland and open space parcels, but also to provide start-up funds for the TDR Bank. There must be some way developed for the water users to help pay for the protection of their water resources without putting the burden on taxpayers statewide.

- New Jersey Farm Bureau proposes that the Highlands Council inform the readers of the Regional Master Plan that the Farmland Preservation element is included in a separate section. Otherwise, it appears as though the farmland element has been ignored.

2. General Policies (p. 117-119):

- New Jersey Farm Bureau agrees with the policy statements in this section. However, in the 6th policy on page 119, we recommend adding the date of January 1, 2004 added to the language so that there is no confusion around what the Highlands Council supports. If it is not clearly stated that the Highlands Council supports this date, it may be interpreted in the future that the Highlands Council may support moving that date.
- New Jersey Farm Bureau proposes that the Highlands Council include a policy to develop a program that allows for the purchase of development easements from forest landowners, modeled after the farmland preservation program.
- New Jersey Farm Bureau proposes that the Highlands Council include a policy for the development of a program to sell “agricultural rights” of farmland that has been purchased in fee simple by the government to farmers. There is a large amount of farmland that has been bought in fee simple by the state or municipality that is now sitting fallow. New Jersey also has a problem with affordable farmland and farmland availability. By selling the agricultural rights of a farm to farmers, young/new farmers will be able to enter the business with some security in the future use of the land. Currently, young/new farmers are forced to lease land to start their business. This puts them in the position of not being able to make long term investments in the land because of the uncertainty of their ability to continue farming.

3. Pre-Conformance Requirements (p. 119-120):

- New Jersey Farm Bureau believes that developing the criteria for setting priorities for conservation funding should be the first task to be completed in the pre-conformance period.

4. Agriculture Resource Protection and Sustainability

- New Jersey Farm Bureau agrees that “agriculture is a vital component of the culture and landscape of the Highlands Region.” Agriculture does indeed

contribute “economic benefits” to Highlands communities and the surrounding region.

- New Jersey Farm Bureau feels strongly that what this general introduction states about the effects of farmland loss is only partially true and not a realistic picture of present economic conditions. It is incorrect and misleading to say “in addition to the direct loss of agricultural lands is a corresponding reduction in agricultural productivity,” followed by data only about field crops. Productivity can be measured in more ways than by just determining the number of acres of land in agricultural production. In fact, smaller farms can be far more productive in terms of income and return on investment than larger farms, especially in a state like New Jersey. Farmland Assessment program statistics show that there are many agricultural operations producing nursery crops, beef cattle and horses in the seven Highland counties. These farms would be far more productive per acre than field crops and often times need less land to operate efficiently. We strongly recommend that you delete this inaccurate statement from the RMP.
- New Jersey Farm Bureau feels strongly that the RMP must acknowledge that the Right to Farm Act supersedes the Highlands Act and the Highlands RMP. The Highlands Act acknowledges this in section 13:20-9 c where it says, “In preparing and implementing the regional master plan or any revision thereto, the council shall ensure that the goals, purposes, policies, and provisions of, and the protections afforded to farmers by, the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et seq.), and any rules or regulations adopted pursuant thereto, are recognized and not compromised in any manner.”

As a regional agency the Highlands Council should use its power to require municipalities to follow the provisions of the Right to Farm Act.

- New Jersey Farm Bureau strongly recommends that the following language be added to the introductory section:

Agricultural activities that take place on a farm in the Highlands Region are governed by the provisions of the Right to Farm Act (NJSA 4:1C-1 et. seq.) as it supersedes the Highlands Act. Questions about agricultural activities and practices from municipalities or individuals must go to either the County Agriculture Development Board or the County Soil Conservation Districts for information and assistance.

1. Goals and Requirements of the Highlands Act (p. 121):

- New Jersey Farm Bureau opposes the use of the word “compatible” to determine what agricultural and horticultural uses may be promoted in the Highlands region, however, because such wording is used in the Highlands Act, we feel that only the New Jersey Department of Agriculture and other Agricultural agencies have the experience and expertise needed to determine what “compatible agriculture” is. The Highlands Council, through its Agriculture Committee must work with the New Jersey Department of Agriculture in order to determine how this term of “compatible agriculture” should be used.

- New Jersey Farm Bureau strongly recommends that the Highlands Council site the many sections of the Highlands Act that promote the equitable treatment of and fairness to Highlands landowners, in this section of the RMP. We have attached to these comments a white paper, produced by New Jersey Farm Bureau and submitted to the Highlands Council in October 2006, which discusses these very issues. (Attachment A)

2. The Highlands Plan Approach (p. 122):

- It has been the experience of the New Jersey Farm Bureau along with the conclusions of research on the subject, that the actions of municipalities can have more positive or negative effects on agricultural viability than any other factor. It is for this reason that recommend the language in the 2nd paragraph in this section be changed to read:

Many factors contribute to sustainable agricultural practices. These include but are not limited to... and local interest in maintaining agriculture in their communities through active support of the industry.

- New Jersey Farm Bureau would like to see more specific information about the methodology used in identifying the farms with the “highest agricultural resource value” as mapped on page 124 of the draft RMP. The RMP must be specific about what factors are going to be used to differentiate further for the purpose of prioritization for compensation. This is necessary to assure the farm community that the methodology is appropriate for its intended purpose.

Furthermore, there is no evidence that the seven Highlands County Agriculture Development Board’s or the State Agricultural Development Committee were consulted at any time on the development of this critical methodology. The County Agriculture Development Boards have almost 20 years of experience in preserving the most valuable farmland in their respective counties; therefore, the Highlands Council must defer to the CADB’s to propose the method for determining the “highest agricultural resource value.”

- New Jersey Farm Bureau feels strongly that the prioritization of agricultural lands must not excuse the Highlands process from leaving any Highlands landowner unattended. Every landowner harmed by the Highlands Act and this Regional Master Plan must be made whole.
- New Jersey Farm Bureau insists that the Highlands Council demand the implementation of a funding source for lost land values as a result of the Highlands Act, TDR Bank start up costs, and grants to develop and implement the newly required plans laid out in various sections of the draft RMP. This must be a top priority of this Council.

3. Land Use Capability Map (p. 122-125):

- New Jersey Farm Bureau recommends that the second policy in this section be deleted as it is inappropriate to use only one factor (soils) to define the critical agriculture resources in the Highlands.

Furthermore, the definition of “Important Farmland Soils” is overly broad and

marks virtually all soils in the Highlands as “Important Farmland Soils.” The only types not included are wetlands and urban soils. The former is prohibited from development and the latter is typically either built-out or a brownfield.

The consideration of “Important Farmland Soils” as a critical agricultural resource of the Highlands region, implies that all the types of soil ever in consideration for farmland preservation by counties or the state are equally important and worthy of the most stringent protection. Because the percentage of those soil types in each county varies greatly as a function of location and topography, what’s considered “important” by each County Agriculture Development Board and ranked higher for preservation purposes also varies greatly. Prime soils in one county may receive the highest rank while in another Prime and Statewide Importance soils get weighted equally.

This policy appears to be a calculated way to disallow equity protecting measures such as cluster and lot-size averaging in almost the entire Agriculture Resource Area. From a soils point of view, wherever there are “Important Farmland Soils” as currently defined in the RMP, development or redevelopment as mandated by the Highlands Act will be difficult at best, but most likely impossible. If the Highlands Council were to adopt this policy, it would severely limit the tools available for equity protection and further increase the burden to find funding for compensation.

- In response to a request made by the Highlands Council staff, New Jersey Farm Bureau staff is currently working in cooperation with the New Jersey Department of Agriculture and the State Agriculture Development Committee staff to come up with an approach to best protect the agricultural resources of the Highlands without relying on only one factor. We fully intend to work with the Highlands Council on this matter as soon as possible.
- New Jersey Farm Bureau strongly recommends a policy be added to state that any farmland owner whose land is not designated as part of the Agriculture Resource Area has the ability to petition for inclusion in the Agriculture Resource Area. There are successful agriculture operations that are currently not mapped as part of the Agriculture Resource Area. These operations must have the opportunity to receive the potential benefits of such a designation if the farmer so chooses.

4. Zone Standards (p. 125):

- New Jersey Farm Bureau is concerned that there are no agricultural policies to cover the 28,341 acres of active farmland mapped in the Protection Zone. This is clearly against the intent of the Highlands Act that mandated support of agricultural viability wherever it was located. Farm Bureau strongly recommends that the Highlands Council take the approach of having one policy for the entire Agricultural Resource Area, regardless of which zone the land is in.

We oppose making a distinction between Protection Zone and Conservation Zone agricultural activities. This differential treatment of agricultural operations weakens the ability of the farmer in the Protection Zone to compete equally in the market place, which is a major factor in determining agricultural viability.

- New Jersey Farm Bureau believes that if the farmland mapped in the Protection Zone is considered more environmentally sensitive, the provisions of the Agricultural Development rules for the Highlands that require farm conservation or natural resource systems plans will ensure that any land used for building necessary structures will receive the appropriate scrutiny for the impact on the Highlands environment.
- New Jersey Farm Bureau is concerned that throughout this draft RMP, the Highlands Council has included policies that look to prevent agricultural operations from changing. New Jersey Farm Bureau believes that changes in crops, cropping practices, or other land management for farming purposes cannot be limited to existing “agricultural uses” because of the need to rotate crops to protect the soil, plant crops for which there is an adequate market to cover the cost of production, adjust to consumer preferences, or adjust to wildlife depredation, among other reasons.
- New Jersey Farm Bureau proposes that the Zone Standards section be amended as follows (recommended language changes are in underlined italics):

Agricultural Resource Area Standards

- Limit permissible uses within an Agricultural Resource Area to those uses of land that support the preservation of farmland and the continued viability of the agricultural industry and of the rural economy;
- Allow for the construction of ancillary structures and housing for family and farm workers that are necessary to support farm operations that meet the requirements of the Right to Farm Act (NJSA 4:1C-1 et seq) In the Preservation Area the requirements of the New Jersey Department of Agriculture rules for Agricultural Development in the Highlands (NJAC 2.92) shall be followed. In the Planning Area, the guidelines set forth in these rules shall be encouraged;
- Encourage the application of agroforestry best management practices and techniques on cultivated farmland located within both the Agricultural Resource Area and the Forest Resource Area; and
- Encourage owners and operators of farmland with woodlots to use them to increase their farm income by developing and implementing a woodland management plan approved by the State Forester.

5. Site-specific Standards (p. 125):

- New Jersey Farm Bureau strongly disagrees with the wording used in the first bullet under this policy and we feel that it conflicts with the bullets that follow. The word “prohibit” should be replaced with the work “discourage,” otherwise, the open space design methods discussed in the rest of the policy will be unusable. As pursuant to our comments above regarding farmland soils, we recommend that the wording “important farmland soils” be replaced with “farmland soils.”
- New Jersey Farm Bureau supports the use of open space design methods within the Agricultural Resource Area because these methods are essential if the best soils and larger blocks of farmland are to be protected from scattered, very large-lot residential or commercial/institutional development.

- New Jersey Farm Bureau supports the use of density transfers for Highlands Act exemptions or other development from multiple properties to one, more appropriate property in lieu of a formal TDR credit transfer.
- New Jersey Farm Bureau proposes that the Site Specific Standards section should be amended as follows (recommended language changes are in underlined italics):

Site Specific Standards

- Discourage non-agricultural land development or alteration within an area determined to be an Agricultural Resource Area that is incompatible with the protection and enhancement of agricultural production, protection of farmland soils and other natural resource protection requirements;
 - Where development other than agricultural development is proposed, require open space design methods within the Agricultural Resource Area to adequately protect farmland and sensitive environmental resources. Open space design includes but is not limited to the following characteristics to protect agricultural resources:
 - Require mandatory clustering or lot averaging with a minimum of 80% of the property dedicated to farmland and natural resource protection unless otherwise approved by the Highlands Council based on site specific factors;
 - New and expanded water and wastewater infrastructures shall be encouraged where they improve water quality as approved by the Highlands Council;
 - Innovative wastewater systems shall be explored in coordination with NJDEP that may serve to provide additional water quality protection and shall be promoted when feasible; and
 - Deed restrictions and enforcement: The area dedicated to farmland and natural resource protection would be subject to a deed restriction enforceable by the municipality and Highlands Council.
 - Encourage Farm Conservation Plans and Resource Management System Plans for agriculture development in the Highlands Planning Area. The Highlands Act only mandates the Department of Agriculture's rules for agriculture development in the Planning Area.
 - New Jersey Farm Bureau is concerned that although this policy is a positive step towards protecting equity, it may be nullified by the policies in the rest of the draft RMP document. The overly restrictive policies of the Resource Protection Element will create situations where building any such cluster development would be impossible. This discounts the value a cluster policy has in creating equity for the landowner.
- 6. Pre-Conformance Requirements (p. 125-126):**
- New Jersey Farm Bureau supports all of the tasks listed in this section.
 - New Jersey Farm Bureau believes the following high priority task should be added to this section:

The requirement of guidelines for the Farmland Preservation Plan element shall be coordinated with the existing guidelines developed by the SADC for

Planning Incentive Farmland Preservation grants and with the Plan Endorsement guidelines for agriculturally significant municipalities and counties developed by the New Jersey Department of Agriculture for the State Planning Commission.

7. Conformance Requirements (p. 126):

- New Jersey Farm Bureau strongly supports the 1st and 2nd bullets under this section. Research and experience show that municipal actions pose the biggest threat to agricultural viability. The conformance process will be the key to whether or not the Highlands Act's agricultural sustainability goals will be implemented by municipalities.
- New Jersey Farm Bureau would like to see the language changed in the 3rd and 4th bullets in this section to read as follows (recommended language changes are in underlined italics):
 - Require that conforming municipalities and counties within the Agricultural Resource Area include a Farmland Preservation Plan and an Agricultural Retention Plan in their respective master plans and development ordinances
 - Require the inclusion of appropriate, cost effective, and agriculturally feasible wildlife and invasive species management techniques and water resource protection approaches in any land management and stewardship plan developed by counties and municipalities as part of their respective Open Space Plan.

8. Long Term Goals (p. 126):

- New Jersey Farm Bureau supports the goals listed with the exception of the 6th bullet that talks about making changes to the Farmland Assessment Act.

New Jersey Farm Bureau opposes efforts to seek amendments to the Farmland Assessment Act. Changing the Farmland Assessment Act is not the most productive way to achieve what is desired: financial support for woodland owners for improvement to the health and quality of their forests including wildlife and invasive control. Instead, opening the door to changes in Farmland Assessment puts the program at great risk of being gutted by lawmakers who do not understand its value and who are looking for ways to lower property taxes. Furthermore, opening this program to allow the inclusion of credits for the control of invasive species and white tailed deer creates more opportunity for abuse of the program. When abuse happens, it puts the entire Farmland Assessment program at risk by opening it up to skeptics.

- The New Jersey Farm Bureau recommends the following language changes for the 6th bullet (recommended changes are in underlined italics):

Advocate to the legislature for property tax credits to be given to qualified woodland owners to compensate them for control of invasive species, white-tailed deer reduction programs and for practices to improve water quality on well managed agricultural lands. Adopting financial credit criteria for such

activities would encourage landowners to become better and more active stewards on their land;

9. Local Participation Strategies (p. 126-127):

- New Jersey Farm Bureau recommends the following addition of language to the last bullet in this section (recommended changes are in underlined italics):

Promote, establish and use municipal Agriculture Advisory Committees *that represent the variety of commodities and farming scales in the community* as a resource to meet the goals of this Plan.

10. Coordination and Consistency Strategies (p. 127):

- New Jersey Farm Bureau supports the tasks listed in this section. Coordination with long-established, ongoing county, state, and federal agricultural support programs is critically important for agriculture to be maintained long-term and to increase in productivity and viability. However, we strongly recommend that under the 5th and 6th bullets, the RMP add language to recognize that the USDA NRCS is adamant that their design standards from the USDA Field Office Technical Guide are National Policy. These science-based design standards and guidelines shall not be adjusted, amended or made to conform to any special local or State policy when designing and cost sharing for farm conservation practices.

6. Historic, Cultural, and Scenic Resource Protection

- New Jersey Farm Bureau believes that the RMP must recognize Highlands agriculture as an historic land use that is worthy of recognition and support. We are disappointed to see that there is no mention of Agriculture as a historic, cultural and scenic resource in the introduction of this section of the draft RMP.

1. Historic and Cultural Resource Inventory (p. 132-122):

- New Jersey Farm Bureau agrees that the Historic and Cultural Resource Inventory shall be made up of sites that are already on the State or National Register of Historic places.
- New Jersey Farm Bureau would be opposed to a nomination process that differs from the processes used by the State and National Register of Historic places. We would also note that it is vital to have notification and appeal processes for those property owners who are nominated to be included on such a list.
- New Jersey Farm Bureau is concerned about the designation of farmhouses, farm buildings, and farm fields as historic resources, especially if this means regulation of the uses, changes or improvements to those resources. Viable agriculture requires updated facilities to house animals or equipment, and farm fields will change in use almost every year because of crop rotation or changes in crops to meet emerging markets. Adaptive reuse of farm buildings for the farm operation is difficult if not impossible for most growers or livestock producers if restrictions are placed on them. The Historic and Cultural Resource Protection policies must include as one of their mandates the support for viable agriculture.

2. Scenic Resource Inventory (p. 133):

- New Jersey Farm Bureau is concerned about the designation and regulation of scenic resources that are not government owned land. Private property owners should not be the target of such regulation as it would create great amounts of uncertainty that would hinder the progress of a viable agricultural industry.

New Jersey Farm Bureau strongly believes that only lands that are already owned by government entities should be listed as scenic resources.

3. General Policies (p. 133):

- New Jersey Farm Bureau is concerned about the extra layer of regulation that is being added to the Historic, Cultural and Scenic sites that will be included in the inventory of such sites. Incentives, not disincentives should be made available to property owners who voluntarily accept a designation as a Historic, Cultural or Scenic site.
- New Jersey Farm Bureau feels that the decision to designate properties as “historic” is one of the most controversial actions a municipality can take. Landowners do not know their property has been identified until it is being discussed by a municipal commission. The RMP must not go beyond what has already been identified by counties and towns nor should it regulate any properties that have not been thoroughly reviewed, analyzed, and discussed by the public, including landowners. If the Highlands Council were to move out ahead of this legally determined process, where decisions are made by elected officials, it would not be legally defensible. Even more importantly, such a move would be considered highly inequitable to property owners.

4. Site Specific Standards (p. 133):

- New Jersey Farm Bureau is concerned about the costs associated with including a cultural and historic resource investigation in and application for site plan or subdivision approval, therefore we are opposed to the first policy in this section.
- New Jersey Farm Bureau is opposed to the policy which requires site plan or subdivision approval to include Scenic Resource protection standards – this has not been defined and our concern is with the regulation and extra costs that may come with these standards.

5. Conformance Requirements (p. 134):

- New Jersey Farm Bureau proposes that if the RMP is to encourage historic preservation of farm buildings and structures, the following steps be taken:
 - Require rural municipalities to adopt ordinances to permit and encourage non-farm business uses of farm buildings that have little effect on the character of the building or farmstead landscape. Some New Jersey municipalities that work to support agricultural viability have such ordinances on the books at present. This includes encouraging bed and breakfasts and farm vacation facilities to support agricultural tourism in ways similar to policies in other states

- Provide the same tax and other monetary incentives to owners that are available for protecting other historic structures.
- Require assessors to use the special Agricultural Buildings section of the official Assessors' Manual to assess these structures instead of the residential or commercial guidelines to make taxes more appropriate to the age, condition, and use of these buildings.

D. Smart Growth Component

- New Jersey Farm Bureau has an overarching concern that although the draft Highlands RMP includes this Smart Growth Component, there will be very few places in the Highlands that will be able to implement the recommendations. This draft RMP is so heavy on the environmental regulation that Smart Growth is not an option in the majority of the Highlands, only No Growth.

1. Regional Development and Redevelopment

a. Redevelopment

1. Highlands Plan Approach (p. 136, 140):

- New Jersey Farm Bureau is opposed to and concerned with the Highlands Council's policy decision to make all provisions and standards in the RMP relating to regional growth discretionary. This undermines the Highlands Act that charged the Highlands Council with creating a regional plan that balances the needs of the environment with the growth and economic needs of the region using smart growth tools. Without making these smart growth standards mandatory, the Highlands Council is allowing the sprawling development patterns of the past to continue into the future.
- The New Jersey Farm Bureau is concerned that if no concrete areas for new growth and redevelopment are identified in the RMP, development will happen in large-lot pieces cut out of rural areas and causing the "death by a thousand cuts" to viable agriculture.

2. General Policies (p. 140-141):

- New Jersey Farm Bureau is concerned with the second policy on page 141 that states that "the Highlands Council shall encourage the following policies that provide a balanced approach..." The Highlands Act mandates a balanced approach. The Highlands Council must require the policies that provide this balance, otherwise, they have created a document that is solely regulatory in nature, and thus not a regional plan.

3. Site-Specific Standards (p. 141):

- New Jersey Farm Bureau recommends the following language be added to this section to provide more support for development of TDR Receiving Zones, without which any TDR program cannot function:

The Highlands Council shall examine all planned development in municipal master plans and development applications to identify opportunities to create TDR Receiving Zones to facilitate the purchase of Highlands Development

Credits from the Sending Zones in the Highlands Region. The Highlands Council shall also work to streamline approvals for any development that takes place in TDR Receiving Zones.

4. Pre-Conformance Requirements (p. 141):

- New Jersey Farm Bureau recommends the following language be added to the 1st bullet in this section (new language is in underlined italics):

Refine and finalize the municipal GIS parcel-based land development tracking program to identify vacant land parcels, known contaminated sites, potential TDR Receiving Zone sites, and development and redevelopment opportunity parcels.

5. Long Term Goals (p. 142):

- New Jersey Farm Bureau believes that the monitoring and tracking of economic viability of the region must begin even before the RMP is adopted with a thorough review of existing economic conditions. After that, economic monitoring should be a continuous activity so that the RMP can be amended to foster a balance between economic growth and environmental protection.

2. Housing and Community Development

1. Highlands Plan Approach (p. 145):

- New Jersey Farm Bureau is concerned that the Highlands Plan Approach Goal to “promote and facilitate the establishment of an adequate supply of housing which is affordable and accessible and meets the needs of a diverse population...” cannot be met due to the regulatory nature of this draft RMP. The Land Use Capability Map in conjunction with the Site Specific standards of the various policies make this goal unachievable for the majority of the Highlands region.

2. General Policies (p. 145-146):

- New Jersey Farm Bureau proposes that the 3rd Policy under this section include lot-size averaging along with the clustering and conservation development approaches. Lot-size averaging can be an effective tool to maintain landowner equity and preserve active farmland at the same time. It allows the farmer to remain on the land to farm and care for the property after some land has been used for residential development.

3. Zone Standards

- New Jersey Farm Bureau is concerned that there are no Zone standards for this section of the draft RMP. It is unrealistic for the Highlands Council to direct any and all growth to the Planned Community Zones and Specially Planned Areas when a large number of Highlands communities have neither of these designations. This essentially says that these towns will have no future growth going forward and their economic activity will be placed at a standstill. This creates a huge equity problem that the Council must address as well as a problem in the way future tax burdens are distributed among current Highlands residents.

The RMP should include smart growth policies for the Conservation and

Protection Zones that would allow for some small scale growth, such as hamlets and villages. Cluster and lot-size averaging with alternative wastewater mechanisms should be encouraged in these Zones where municipalities will need some future growth opportunities.

4. Coordination and Consistency Strategies (p. 147-148):

- New Jersey Farm Bureau believes that the last bullet about coordinating with the New Jersey Department of Agriculture should be a stronger directive, we recommend the following language:

Coordinate with the New Jersey Department of Agriculture to identify agricultural employee and labor housing needs and opportunities to provide such housing in development or redevelopment planning.

3. Utility Capacity

a. Water Utility

1. Zone Standards (p. 153):

- New Jersey Farm Bureau proposes adding the following language to the second bullet under the policy for the Protection Zone so that it reads, "In an Agricultural Resource Area, provide for a compact development served by existing or proposed public water systems only where such development is within or immediately adjacent to existing area served, unless approved by the Highlands Council, and adequately protects farmland..." in order to allow for flexibility and added options for equity protection.
- New Jersey Farm Bureau proposes adding the following language to the second bullet under the policy for the Conservation Zone so that it reads, "In an Agricultural Resource Area, provide for a compact development served by existing or proposed public water systems only where such development is within or immediately adjacent to existing area served, unless approved by the Highlands Council, and adequately protects farmland..." in order to allow for flexibility and added options for equity protection.
- New Jersey Farm Bureau supports the policy for the Planned Community Zone that gives the highest priority to allocation of net utility capacity to those areas that can accommodate Highlands TDR Receiving Zones through reservation of projected capacity.

2. Long Term Goals (p. 155):

- New Jersey Farm Bureau recommends that the Highlands Council add a long term goal to investigate the potential of capturing the 40 inches of yearly rainfall that is typical in the Highlands to decrease the loss of this stormwater resource and provide a water supply for present and future growth of Highlands communities, industries, and farms. This goal should also include the encouragement of farm ponds in accordance with NRCS practices.

3. Coordination and Consistency (p. 155 – 156):

- New Jersey Farm Bureau recommends that the second bullet under this section include the USDA Natural Resources Conservation Service and the USDA Farm Service Agency along with the Department of Agriculture because they are the agencies responsible for technical assistance and funding for best management practices. We recommend adding language to say, "*The Highlands Council shall make efforts to find funding for planning and implementing best management practices on farms.*"

b. Wastewater Utility

1. Zone Standards (p. 159):

- New Jersey Farm Bureau proposes an addition of language under the 3rd bullet of the Protection Zone policy in this section. We recommends that the language read, "...only where such development is within or immediately adjacent to an Existing Areas Served or where approved by the Highlands Council, and adequately protects..."
- New Jersey Farm Bureau proposes an addition of language under the 3rd bullet of the Conservation Zone policy in this section. We recommend that the language read, "...only where such development is within or immediately adjacent to an Existing Areas Served or where approved by the Highlands Council, and adequately protects..." Opportunities for compact development protect active farms from large lot residential development which is critical to agricultural viability.
- New Jersey Farm Bureau supports the goal of the fourth bullet under the Conservation Zone policy which states that the Highlands Council shall "Ensure that areas not served by Highlands Domestic Sewerage Facilities have development densities suitable for on-site wastewater treatment systems."

2. Site Specific Standards (p. 160):

- New Jersey Farm Bureau is concerned that the third bullet under the first site specific policy is in conflict with the Zone standard policies mentioned above. This policy should not include the Agriculture Resource Area as one where expansion of a sewer service area is prohibited. This does not allow for the cluster/lot-size average development that will discourage scattered large lot residential development and protect the equity in the land.
- New Jersey Farm Bureau supports the last two bullets under the site specific policy.

4. Transportation

1. The Highlands Plan Approach (p. 168):

- New Jersey Farm Bureau supports the Highlands Council efforts to recognize the transportation needs of the agriculture industry in the Highlands. We are pleased to see those needs addressed in this section of the plan.

2. General Policies (p. 169-170):

- New Jersey Farm Bureau is concerned that the network of trails mentioned in the 2nd bullet of the 4th general policy could become a liability to adjacent private landowners who are left with the job of policing the land against trespass and vandalism. This issue must be addressed before any such trail network is developed and utilized.
- New Jersey Farm Bureau recommends that the 4th bullet under the 4th general policy be expanded to say "Encourage and promote tourism and Agritourism..."
- New Jersey Farm Bureau supports the 5th bullet under the 4th general policy, however we recommend the wording be expanded to say "Recognize and support the needs of the agricultural industry..."

6. Recreation and Tourism

- New Jersey Farm Bureau is disappointed to see that agritourism is mentioned in the introduction of this element of the draft RMP and not more thoroughly followed up in the policies of this section.
- New Jersey Farm Bureau recommends that the Highlands Council enlist the help of the New Jersey Department of Agriculture to develop a policy on agritourism. The policy should include the definition provided by the Department of Agriculture's 2006 study of Agritourism in New Jersey, and explain the connection between agritourism and the Right to Farm Act. This connection needs to be made clear to municipalities. Agritourism activities are a permitted activity under the Right to Farm Act and thus any conflicts must be resolved at the County Agriculture Development Board level.

1. Site Specific Standards (p. 178):

- New Jersey Farm Bureau is concerned with the second bullet under the site specific policy which implies that development applicants will be forced to forfeit rights to some of their land as a connection between open spaces. We would consider this to be a taking without just compensation, unless the Highlands Council is proposing that the connection remain privately owned, and then the problem becomes the huge liability risk created for the property owner. Private property owners of the Highlands should not be made to bear the burden of connecting public open spaces; the local, county and state government should do this through voluntary preservation programs that are currently in existence and be prepared to assume full responsibility for the liability and security of these land areas.

2. Local Participation Policies (p. 179):

- New Jersey Farm Bureau recommends that agritourism be included in the inventory of tourist attractions done by the municipalities.

7. Transfer of Development Rights

- New Jersey Farm Bureau believes in the concept of the Transfer of Development Rights as a key planning tool that can compensate landowners for land deemed

environmentally, agriculturally or historically valuable. In theory, with strong legislative support, we believe that a TDR program in New Jersey could be structured and marketed effectively. Unfortunately, the New Jersey Legislature has not provided that strong support for the Highlands TDR program. Farm Bureau feels strongly that a Highlands TDR program is not feasible without legislatively mandated Receiving Zones coupled with the development of other marketplaces to create a demand for TDR credits. Furthermore, the dollar amount of lost land values as a result of the Highlands Act is so large that even a successful TDR program would provide only a small percentage of the funds needed to make harmed Highlands landowners whole. Please read the following comments as they relate to structural issues in connection with designing a TDR program and not as an endorsement of, or belief in, the feasibility of a Highlands TDR program.

The proposed structure for the Highlands TDR plan contains features that are worthy of support, as described below. There are some aspects that remain a concern, which have also been outlined below.

1. Goals and Requirements of the Highlands Act (p. 182-183):

- New Jersey Farm Bureau is pleased to see the reference to the State TDR Act in this section of the TDR element; however, we recommend that some of the State TDR Act principles stated in this document be consequently followed up as a matter of Highlands Council policy. These include:

- The State TDR Act has specific language to address the need of a TDR program to achieve a balance between Sending Zone land and development opportunities in the Receiving Zones. It may be difficult to map Receiving Zones now or predict where they might be, since they are voluntary, but a commitment to providing Receiving Zones for all of the potential Sending Zone credits is critical. This might also curb the indiscriminant creation of additional Sending Zone credit opportunities down the road, which would dilute the values of existing credits.

- The Highlands TDR program must include a review by the county planning staffs and County Agriculture Development Boards (CADBs). In the State TDR Act, this review process provides a major checkpoint where a TDR program can be evaluated in terms of county land use and farm retention plans. Without this step, the Council will be regulating in a vacuum, making it difficult for counties to do the good planning that the State Plan requires of them. The seven CADBs should be given an opportunity to review any TDR program that would affect their own Easement Purchase program and, as they are required by the Agricultural Retention and Development statute, to review its effect on agriculture in their Agricultural Development Areas.

- The Highlands TDR program must include a review by the State Planning Commission while it is in draft form. This would allow the State Planning Commission to make its recommendations before final adoption rather than having to include it in the final review of the entire RMP at the end of the planning process. This is critical to ensure the development of a TDR program that implements the policies of the State Plan regarding equity, agriculture and

other planning objectives. Like any county or municipality, the Highlands should not receive state benefits if its plan is inconsistent.

- This RMP element must provide a clear review and sun-setting process for the Highlands TDR program. The State TDR Act requires this so that landowners are not trapped forever in a TDR program that is proven not to work. The Highlands Council must lay out how it intends to provide for regular monitoring and assessment of the "success" of their TDR program and what "success" should mean.

- New Jersey Farm Bureau supports wording that states, "The (Receiving Zone) municipality must also be deemed in compliance with the Regional Master Plan if it lies within the Highlands Region, or have its petition for initial municipal master plan endorsement approved by the State Planning Commission." We feel strongly that the Highlands Council must allow as many municipalities as possible to become TDR Receiving Zones without too many strings attached. Requiring Highlands RMP opt-in for all municipalities that show interest in becoming TDR Receiving Zones could hinder the ability of the Highlands Council to attract as many municipalities as possible, due to the overly strict nature of the Master Plan.

2. General Policies (p. 183-184):

- New Jersey Farm Bureau supports the purposes of the Highlands TDR program set fourth in the first policy under this section. The use of TDR as a way for "property owners to sell the development potential of their lands where the Highlands Act has impacted development potential," is a purpose that Farm Bureau feels is supported by the Highlands Act. The intent of the Legislature was to be fair to Highlands landowners which is evident throughout the Act. The Act even goes so far as to require two appraisals based on pre and post Highlands Act rules and regulations to landowners wishing to preserve their land. This is the legislature's acknowledgement that the Highlands Act and DEP rules do affect land equity for which landowners should be compensated fairly.

State policy as a whole also supports this purpose, as is evident in the Equity policy of the State Plan and of course the provisions in the State TDR program.

The Highlands Council itself has already addressed this purpose of the TDR program in its policy on sending and Receiving Zone designation (2006-9) adopted on February 23, 2006.

Finally, Governor Corzine has made several statements acknowledging the importance being fair to Highlands Region landowners. In his statements he has referred to a second round of GSPT funding as well as the Transfer of Development Rights Program as ways to address this issue of fairness.

- New Jersey Farm Bureau supports the goals of the Highlands TDR program set fourth in the second policy under this section. Specifically, the goals outlined in bullets 2, 4, 5, 6, 7 and 10 are imperative to having a TDR program that has a chance at being successful.

3. Sending Zone Policies (p. 184-185):

- New Jersey Farm Bureau supports the recommendation that Highlands Sending Zones should consist of those lands in the Preservation Area (Regional Protection Zone/ Regional Conservation Zone) that have had their development potential precluded or severely constrained by the restrictions imposed by the Highlands Act.
- New Jersey Farm Bureau feels strongly that the Highlands Act supports the concept that Agricultural lands are a natural resource to be protected and therefore given high priority by in the designation of Sending Zone credits. It is important that all landowners in the Highlands Preservation Area, who are designated as TDR Sending Zones, be able to apply for their credit allocation from the beginning of the program.
- New Jersey Farm Bureau disagrees with the policy that designates Sending Zones to include lands in the planning area within the Protection Zone or Conservation Zone, upon municipal opt-in. We feel that lands in the planning area should only be allocated Sending Zone credits when the municipality offers Receiving Zone opportunities commensurate with or greater than the credits created. A balance between credits and development opportunities is necessary for TDR to be equitable, and to allow towns in the opt-in process to set up Sending Zones with allocated credits without meeting an obligation to create Receiving Zones will influence the TDR credit market by increasing supply without increasing demand, and this is unacceptable. The Highlands Council and the State of New Jersey must take care of those property owners who were harmed immediately upon the signing of the Highlands Act, before it takes on the obligation to take care of property owners in the voluntary Planning Area of the Highlands. Furthermore, other equity protection tools such as cluster/lot-size averaging should be promoted and made available in the Planning Area. This may serve as a disincentive for Planning Area Towns to opt-in, but so be it, if the state wants these towns to follow the Highlands Plan, then the state will find more funding for equity protection.
- New Jersey Farm Bureau proposes a wording change in the fourth policy of this section. The policy states, "...and whether a property owner is experiencing a unique and extraordinary financial hardship." We recommends that the word 'financial' be removed from this policy statement. The definition of a hardship must be more general. There are hardship situations that may not involve financial troubles but still jeopardize or even cripple the ability of the farm operation to stay in business.
- New Jersey Farm Bureau supports a Highlands Development Credit (HDC) allocation method that recognizes and accounts for the significant real estate market variability in the Highlands Region and the relative value of Highlands Resources, including agriculture and forest resources.

Farm Bureau encourages the Highlands Council to promote an allocation system that is competitive with current and future Purchase of Development Right programs.

The Highlands Council must also consider the impact that additional Sending Zones in the Planning Area will have on the market. Increased Sending Zones will dilute the HDC market, therefore reducing the value of allocated credits in the most severely restricted Preservation Area (see above comments).

- New Jersey Farm Bureau feels strongly that the Sending Zone Policy relating to the use of a Resource Value Factor in evaluating HDCs should be the choice of the landowner. If a landowner wishes to sell only the development rights and in return accept a deed restriction against future non-agriculture development that should be their prerogative. A landowner who wishes to receive “bonus” credits for the resource value of the land should be the only one required to put a conservation restriction on the land to protect those resources.
 - New Jersey Farm Bureau proposes that the last policy under this section include language to say that a Sending Zone property owner who submits an application to the Highlands Council for a HDC determination will not be subject to a deed restriction or conservation restriction until they sell their first allocated credit.
 - New Jersey Farm Bureau is concerned that there is no policy in this section to address HDC allocation appeals, especially since such a process was discussed on page 9 of the TDR background document. New Jersey Farm Bureau supports the concept that a landowner should have the ability to appeal their HDC allocation. This appeal process is important because it addresses the validity of the TDR program. If a landowner cannot appeal an HDC determination, they may never see the program as valid and fair.
- 4. Receiving Zone Policies (p. 185-186):**
- New Jersey Farm Bureau supports the Highlands Councils efforts to identify as many potential TDR Receiving Zones as possible and to offer as many incentives as the Highlands Act allows. Voluntary Receiving Zones are a critical component of the Highlands TDR program.
 - New Jersey Farm Bureau supports the Highlands Councils efforts to provide the Feasibility Grant program to municipalities interested in becoming TDR Receiving Zones. The Highlands Council should provide as much assistance as possible to municipalities with designated Receiving Zones in order to ensure a successful TDR program.
 - New Jersey Farm Bureau supports the policy that requires municipalities who conform to the RMP or participate in the TDR program to include a requirement for the purchase of HDCs for any growth inducing variance granted by the participating municipality.
 - New Jersey Farm Bureau supports with the policy that allows for Planning Area municipalities to participate in the Highlands TDR Program without having to conform to the RMP. This will provide for a greater potential for Receiving Zones and is very important for this program to be a success.

5. TDR Bank Policies (p. 186):

- New Jersey Farm Bureau supports the establishment of a Highlands TDR Bank and feels that the membership of the TDR bank board of directors should include two Highlands Sending Zone landowners and/or farmers, two developers and/or experts in the real estate field, and one municipal official. Some of the members should also have banking/loan experience.
- New Jersey Farm Bureau supports the recommendation for the bank to serve four essential functions; as an information clearinghouse; as a buyer of last resort of HDC's and a seller of HDC's; as the agency charged with recording and tracking all HDC activity; and as the agency responsible for reevaluating the minimum HDC price on an annual basis and make recommendations to the Highlands Council for its adjustments.

As part the TDR Banks duty as a buyer of last resort, Farm Bureau believes that it is good policy to allow the bank to acquire HDC's from Sending Zone property owners facing a hardship situation at 100% of the minimum HDC price for the first two years of the program's implementation or until designated Receiving Zones are established. It is important however, that the definition of a hardship not be included in the RMP due to the broad array of situations that could create a hardship. The footnote on page 16 of the TDR background document is not sufficient. Hardship situations could occur with the death of a farm operator, or when a highlands landowner has to pay estate/transfer taxes, or even in a situation where buyout to secure intergenerational transfer is necessary.

- New Jersey Farm Bureau is very concerned about the policy statement that requires a conservation restriction be recorded when the development rights are severed from the land. Landowners who sever development rights by transferring HDCs through the TDR program should be required to deed restrict their land against future, non-agricultural development. There should be no other restrictions placed on the land uses unless the landowner is paid for those additional uses through Resource Value bonus credits. As was stated by the Highlands staff, property rights include a bundle of rights, one of those is the right to develop, a separate right is that to use the land for agriculture or forestry practices. Agriculture is an industry that must maintain the ability to change in order to stay viable. Conservation restrictions on the land could severely inhibit that ability to change.
- New Jersey Farm Bureau supports the concept that any person or entity (non-profit organizations, municipalities, neighbors) be allowed to purchase an HDC. This will aid in increasing the demand for credits. It is important to include a requirement that the purchaser of credits use the same deed restriction or conservation restriction (if Resource Value bonus credits have been purchased – based on a decision made by the landowner) as the TDR bank. This is especially important in Agricultural Resource Areas where the goal is to keep the land in active agriculture. In New Jersey, we have experience with non-profit organizations buying some of the best farmland and then placing restrictions on that land that prohibits agricultural use of the land. This must not happen in the Highlands.

6. Long Term Policies (p. 186):

- New Jersey Farm Bureau encourages the Highlands Council to be consistent with the State TDR Act and provide a review and assessment of the Highlands TDR program three years after the start of the program, rather than the suggested five. The possibility for landowners to be held in an ineffective program for five years would be unacceptable.

Furthermore, New Jersey Farm Bureau recommends that the Highlands Council lay out a schedule for review of the program after this initial review. The policy statement currently says, "...and then periodically thereafter." This is not acceptable. The Highlands TDR program will be precedent setting because a regional TDR on this scale has never been done before and it is vitally important that it be reviewed and assessed on a regular basis.

7. Local Participation Policies (p. 186):

- New Jersey Farm Bureau feels that the policy to promote local understanding of, support for and participation in the Highlands TDR program should be expanded. Public outreach should include regular consultation with a broader group of Highlands residents, individuals with planning expertise, County Agriculture Development Boards, land trusts, builders and farmland owners. These constituents and experts in their fields should be utilized as a resource by the Highlands Council as it develops the details of the Highlands TDR program and as it measures the success/failure of the program.

8. Coordination and Consistency Policies (p. 187):

- New Jersey Farm Bureau encourages the coordination with other state agencies and with county agriculture development boards and local open space agencies. The TDR process should be as efficient and smooth as possible.
- New Jersey Farm Bureau maintains that landowners, builders and municipalities all need predictability in order for TDR to work. Expediting the Plan Endorsement process and environmental/land use permitting process will certainly help promote TDR as a viable alternative to traditional development. It should also be included in this policy that the DEP must sign off on the use of local infrastructure (sewer/water) before a Receiving Zone for TDR is established. It would be bad policy for towns and builders to go through the process of designating a Receiving Zone only to have the DEP turn them down because of disagreement over infrastructure needs.

E. Financial Component

- New Jersey Farm Bureau is concerned that this section of the draft RMP does not meet the mandates of the Highlands Act or the intention of the RMP to "estimate and track over time the costs associated with the implementation of the Plan."
- New Jersey Farm Bureau is disappointed in the Fiscal Impact Analysis that is a part of the Financial Analysis Technical report. This analysis is inadequate in its effort to address the true fiscal impact of the Highlands Act.