

Township of West Milford

Passaic County, New Jersey

~ Resolution 2008-097 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC AND STATE OF NEW JERSEY OFFERING COMMENTS TO THE HIGHLANDS COUNCIL ON THE REVISED HIGHLANDS DRAFT REGIONAL MASTER PLAN

WHEREAS, pursuant to the Highlands Act which was enacted in August, 2004, the Highlands Council was appointed and assigned the task of creating a Regional Master Plan for future development regarding planning on a regional basis in order to protect the critical resource of water supply which provides drinking water to 5.4 million or more than half of the residents of this State; and

WHEREAS, the Township of West Milford is over 80 square miles in size, with the entire municipality being located within the Highlands Preservation Area, and where the municipality contains reservoirs which serve over 2 million residents of the State with public drinking water; and

WHEREAS, of the eleven major reservoirs in the Highlands Region, four are located partially or wholly within West Milford Township; and

WHEREAS, professional hydro-geology reports and research conducted in 2003 by Matthew Mulhall, P.G. entitled "Evaluation of Groundwater Resources of West Milford Township" conclude that nearly 94% of the Township's soils, bedrock and steep slopes result in substantial surface and subsurface run-off, thereby preventing adequate recharge to the Township's own aquifer; and

WHEREAS, 72% of the soils beneath West Milford Township have severe limitations and an additional 19% have moderate limitations for septic discharge; and

WHEREAS, USGS and/or NJGS soils and bedrock maps for the Township provide further evidence that very little precipitation goes to recharge our ground water; and

WHEREAS, while West Milford Township maintains these critical reservoirs for public drinking water, its own community wells are poor yielding water supply and poorly transmissive; and

WHEREAS, many Township residents have experienced full or partial well outages and the municipality's own limited water supply is of extreme concern to the governing body; and

WHEREAS, the Highlands Council, in studying the water supply of the region found this to be a common problem with 60% of the Highlands Watersheds being in a deficit water situation; and

WHEREAS, according to the Highlands Council's maps, 100% of the Township of West Milford is in a water deficit area; and

WHEREAS, the Mayor and Council recognize that the requirements in a final Regional Master Plan may have significant environmental, social and economic effects upon the Township; and

WHEREAS, having reviewed the Draft Regional Master Plan, the Mayor and Council wish to provide comments to the Highlands Council with the intention of calling their attention to a variety of issues that are important for the long range sustainability of the community; and

WHEREAS, the Mayor and Council have had an opportunity to review and solicit comments and consensus from residents, planners and constituents;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of West Milford, County of Passaic and State of New Jersey that they hereby submit the following comments and policy concerns as to the Highlands Regional Master Plan:

I. Comments as to the Regional Master Plan:

1. Lake Community Zones: The Lake Community Zone contains few prohibitions as to development. This zone should preclude high density residential development and TDR receivership and it should be supported by model ordinances such as septic maintenance and fertilizer ordinances. Further, all lakes should be removed from Existing Community Zones.

2. Transfer Development Rights: The Plan provides for “TDR” zones within municipalities such as West Milford that are located in the Preservation Area. The original intent of the Act was to provide for receiving zones in the Planning Area. To permit such activity in the Preservation Area contradicts the goals of the Highlands Regional Master Plan and may impact the very natural environmental resources that this Plan seeks to protect. The Township does not have adequate infrastructure or sufficient resources to justify TDR Receiverships within the municipality. TDR receiving zones should never be permitted in the preservation areas, and most certainly should not be permitted in a Township such as West Milford that is located 100% within the preservation area, when in fact the Township has a water supply deficit and such has been demonstrated historically by the failure of high density development to obtain necessary DEP water allocation permits and approvals.

3. Conditional Water Availability: Conditional Water Availability is a proposed method for creating additional water supply where current shortages exist. It is based on a) future promises of municipalities to save water through conservation, despite the fact that most communities and homeowners in water deficit areas such as West Milford have already instituted many water conservation methods, and b) future promises from developers to recapture water, despite the fact that this promise is neither based on science nor is it enforceable nor is there any provision for remedy upon failure of the developer to fulfill said future enhanced water supply. This approach is inconsistent with the purpose and objectives of the Highlands Act, especially for those environmentally sensitive lands located in the preservation area. This approach will place the burden to sustain water supply to such developments on the municipalities and taxpayers as opposed to the developers. The Plan should eliminate Conditional Water Availability in its

entirety from the Plan as end users must be held accountable to maintain water conservational requirements in the same manner as all Watershed Municipalities.

4. Existing Community Zones: Existing Community Zones, cannot be interpreted as a mechanism for the potential for major residential development and sewer expansion or growth. The Preservation areas are highly sensitive, environmental areas and should be protected from residential development. West Milford Township, located 100% within the Preservation Area, is in a water deficit area and cannot support major residential development, or TDR receivership. Residential growth areas should not be permitted in water deficit areas. As a result, the Existing Community Zones located within the preservation areas must prohibit additional high density or large scale residential development.

5. Development and Redevelopment: The RMP maps in the Preservation Area need to conform to the policy that development and redevelopment is limited to brownfields and grayfields or areas where the existing impervious coverage is 70% or greater. This policy promotes economic development and environmental protection. Said redevelopment of existing commercial districts and abandoned or contaminated sites should be permitted, regardless of zone type, providing it is consistent with a municipal master plan and the State Plan for Development and Redevelopment.

6. RMP Map Changes: Petitions for changes or adjustments to the Land Use Capability Map need to be based on existing map errors, resource protection issues, a scientific basis, or factual standards. Presently, the Plan does not provide for same, and municipalities will run the risk of inconsistent planning and incompatible uses in the Highlands.

7. Impervious Coverage: Furthermore, the recent amendment to the definition of impervious coverage, which included “any modification to the soils from their natural state that would hinder the absorption of stormwater,” is in direct contradiction to the intent of the Act and needs to be eliminated.

II. Policy Concerns as to the Highlands Act.

1. Financial Inequities: The Plan fails to provide for any certain equitable remedies for townships in the Preservation Areas such as West Milford. Specifically, while the municipality is identified as part of a Preservation Area, which severely restricts growth and development in exchange for the benefits and protection of the water supply of millions of residents throughout the State, there is no State funding that will rightfully compensate the municipality for its stewardship of these water supplies and as protector and supplier of water throughout the State of New Jersey. For example, funding should be based upon certain identifiable factors such as (a) the size of the community; (b) the amount of land in the Preservation Area; (c) C-1 Streams and water bodies; (d) resources or lakes within the community and (e) storm water mandates.

2. Water Use Fees: As a result of the Highlands Act, and the extensive environmental resources in the Township, West Milford will not financially benefit from any additional growth in ratables, as it would come at the expense of these severely constrained resources. Growth will place an enormous burden on a portion of the State’s water supply. The legislature has failed to provide for a water

consumer fee to end users to offset the financial sacrifice and burden placed on the taxpayers of Highlands communities, especially those situated entirely in the Preservation Area. The fee should be guaranteed as direct payment to municipalities in the Highlands and such funding should be coordinated to include an appropriate inflation index to provide equity in future years. The Plan is incomplete as it only sets forth preservation of environmental and natural resources. It does not provide for a financial solution or equity to the taxpayers in municipalities that preserve such resources, but places the entire financial cost of preservation entirely upon the 26,000 residents of the Township of West Milford.

3. A Plan Should be Formulated: The Township requests that a thorough and responsible financial plan be included in the Regional Master Plan that shall include financial projections or analysis on the local level that includes loss of tax revenue, and reservation of revenue to Highlands municipalities. This should be completed prior to adoption of the Regional Master Plan.

There are a substantial number of mandates required of the municipality in the Highlands Master Plan that would place an enormous financial hardship on the municipality and its residents. These State mandates should be fully funded as they are a means to protect the finite water supply for millions of New Jersey residents. This financial responsibility should not be borne by the residents and municipality of West Milford and Highlands communities.

4. Implementation Standards for Funding: Designated funding for implementation should be distributed according to town-specific standards. The cost of implementation will vary between municipalities. For example, such standards should consist of the size of the municipality, number of lakes, percentage of land in preservation area, reservoirs in or bordering the municipality and C-1 water courses.

5. Highlands Tax Stabilization Aid: This Aid is currently structured so that municipalities are reimbursed for lost property tax revenue resulting from reductions in assessed property values due to the Highlands Act and land acquisitions. The aid declines each year so that after 10 years, municipalities must shoulder the entire financial burden caused by the Highlands Act. This aid should be restructured so that municipalities receive permanent 100% funding for the full loss of property tax revenue.

6. Watershed Aid: The Plan should call for financial assistance and annual increases in existing watershed aid in order to guarantee a viable economy to municipalities such as West Milford who shoulder the responsibility and expense of providing stewardship of water for millions of New Jersey residents.

This Resolution shall take effect immediately.

Adopted: February 27, 2008

Adopted this 27th day of February 2008
and certified as a true copy of an original.

Antoinette Battaglia, Township Clerk