

State of New Jersey
Executive Order #114

Governor Jon S. Corzine

WHEREAS, safeguarding the clean drinking water supply for New Jersey's residents and preserving the quality of our environment are among the most important responsibilities of State government; and,

WHEREAS, the legislative and executive branches of State government have demonstrated a strong commitment to protecting New Jersey's natural resources, water supply, and quality of life from the negative effects of unrestrained and haphazard sprawl, while at the same time providing reasonable opportunities for growth and development in the State; and

WHEREAS, the New Jersey Highlands is an essential source of clean drinking water for one-half of the State's population, including communities beyond the Highlands, and contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, as well as many sites of historic significance, while also providing abundant recreational opportunities; and

WHEREAS, in 2004, the Highlands Water Protection and Planning Act, P.L.2004, c.120 ("Highlands Act"), was enacted to provide for the protection and enhancement of the Highlands Region through the creation of the Highlands Water Protection and Planning Council ("Highlands Council") and the enhancement of the statutory authority of numerous State agencies; and

WHEREAS, the Highlands Act required the Highlands Council to adopt a Regional Master Plan with a goal to protect and enhance the significant value of the resources of the Highlands Region, and on July 17, 2008, the Highlands Council, after careful analysis of the best available scientific and planning materials, and after completing a thorough public review process, adopted the Highlands Regional Master Plan ("Highlands Plan"); and

WHEREAS, the Highlands Plan is an important planning tool to establish broad goals and criteria for each of the municipalities and counties within the Highlands Region; and

WHEREAS, in accordance with the Highlands Act, for lands in the Highlands Preservation Area, local governments are required, and for lands in the Highlands Planning Area, local governments are authorized, to update their local master plans and development regulations to conform to the Highlands Plan, and to adopt ordinances to effectuate those plans; and

WHEREAS, in further accordance with the Highlands Act, the master plans and development regulations of conforming municipalities must be submitted to the Highlands Council for approval, and the Governor retains veto authority over the actions taken at each Highlands Council meeting; and

WHEREAS, the Highlands Act encourages appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth in or adjacent to

areas already utilized for such purposes, and discourages piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof; and

WHEREAS, the Highlands Act also 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 Highlands; and

WHEREAS, regionally planned, compact, mixed-use communities can be consistent with agricultural, environmental, water, and historic resource protections, while sprawling development, whether under conventional zoning or in unplanned isolated clusters, may contribute to the degradation of the natural environment as well as regional and local quality of life; and

WHEREAS, in enacting the Highlands Act, the Legislature found and declared that, as a matter of wise public policy and fairness to property owners, a strong and significant commitment by the State is necessary to fund the acquisition of exceptional natural resource value lands; and

WHEREAS, it is vital that the Garden State Preservation Trust be reauthorized and that a statewide transfer of development rights program be considered to meet the open space and agricultural preservation needs of the Highlands Region and the State, and, in part, to address landowner equity issues in the Highlands Region; and

WHEREAS, landowner equity issues also should be addressed through enactment of a reasonable extension, of at least five years, beyond the June 30, 2009, expiration of the period set forth in the Highlands Act during which dual appraisals are required for open space and agricultural preservation acquisitions; and

WHEREAS, the Supreme Court of New Jersey, in *South Burlington County v. Mount Laurel*, 67 N.J. 151 (1975), and *South Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983), determined that every municipality in a growth area has a constitutional obligation to provide a realistic opportunity for a fair share of its region's needs for housing for low and moderate income families, which constitutional obligation must always be balanced with the protection of natural resources, and particularly, the quality and quantity of drinking water originating in the Highlands Region; and

WHEREAS, the Highlands Act directs that the Council on Affordable Housing shall take into consideration the Highlands Plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the Fair Housing Act, P.L.1985, c.222 (C.52:27D-301 et al.) ("Fair Housing Act"), for the fair share period subsequent to 1999; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L.2008, c.46 to create a responsibility for the Highlands Council to plan for and create opportunities for affordable

housing on a regional basis with consideration for infrastructure and transportation and to require a 20 percent affordable housing set-aside in residential developments;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Highlands Council shall work in cooperation with the Council on Affordable Housing (“COAH”), the Department of Environmental Protection (“DEP”), and the Department of Community Affairs to:
 - a. review COAH’s third round growth projections for consistency with the Highlands Plan and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the Highlands Plan, to be utilized by municipalities that conform to the Highlands Plan;
 - b. create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan;
 - c. ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while preserving critical environmental resources;
 - d. identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, c.46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation;
 - e. identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region’s affordable housing needs while preserving its critical resources;
 - f. coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines;
 - g. preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the

Highlands Plan, and provide priority review for proposed affordable housing projects; and

- h. provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.
2. The Highlands Council and COAH shall enter into a joint Memorandum of Understanding (MOU) as soon as practicable but no later than 60 days from the effective date of this Order to implement the provisions of Paragraph One of this Order.
3. In accordance with the Court's recognition in the Mt. Laurel cases of the clear obligation to preserve open space and natural resources, in implementing Paragraph One of this Order the relevant State agencies shall give priority to the protection of the critical water resources in the Highlands Region that provide drinking water to over five million people in New Jersey.
4. The Highlands Council and COAH, with appropriate input from DEP and the Department of Community Affairs, shall provide to the Governor quarterly written reports on the status of the coordinated efforts required pursuant to Paragraph One of this Order.
5. The State Transfer of Development Rights Bank shall reserve and make available to the Highlands Development Credit Bank, upon its establishment as authorized by N.J.S.A. 4:1C-52, an amount not less than \$10 million.
6. The Highlands Council, in implementing its Land Use Capability Map Adjustment program, making any modifications to Highlands Open Water buffer standards, and designating Highlands Redevelopment Areas, shall:
 - a. ensure that a public process is in place allowing the public to review and comment on any map adjustments, modifications to Highlands Open Water buffer standards, or designation of redevelopment areas proposed to the Council, prior to adoption; and
 - b. ensure that there is no net natural resource loss or degradation of surface or ground water quality resulting from any map adjustments or modification to Highlands Open Water buffer standards.
7. In approving any plan or permit application or in issuing any other approval for a project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, the DEP shall, to the maximum extent feasible, require that development proposals designed to meet the clustering provisions of the Highlands Plan, as necessary, be (i) part of a center-based, transit-oriented, or mixed-use development or a development that is consistent with the State's smart growth policies, and (ii) municipally or regionally planned through Plan Conformance with the Highlands Plan and not isolated clusters. Furthermore, the DEP shall ensure that any such approval is conditioned upon the establishment of, and availability of funding for, the Highlands Development Credit Bank.

8. The DEP shall adopt and enforce strict standards for water deficit mitigation projects, consistent with the water deficit mitigation policies of the Highlands Plan, as part of the forthcoming update to the Statewide Water Supply Master Plan.
9. The DEP shall take appropriate action to ensure that no water allocation permit is issued for any development project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, until such time that a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, has been approved by the Highlands Council and has been fully implemented.
10. The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, unless the approval is conditioned on a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented.
11. Nothing in this Order shall prohibit the issuance or granting of an approval if the denial or conditioning of such approval would adversely affect public health or safety or cause a taking of property without just compensation.
12. This Order shall take effect immediately.

GIVEN, under my hand and seal this 5th day of September, Two Thousand and Eight, and of the Independence of the United States, the Two Hundred and Thirty-Third.

/s/ Jon S. Corzine

Governor [seal]

Attest: /s/

Edward J. McBride, Jr.
Chief Counsel to the Governor