

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 7, 2004

The Senate Environment Committee reports favorably and with committee amendments Senate Bill No. 1.

As amended, this bill, to be known as the "Highlands Water Protection and Planning Act," would establish a comprehensive, long-term approach to the protection and preservation of the drinking water and natural resources of the New Jersey Highlands Region, which is the source of the drinking water of more than half of the residents of New Jersey and offers unique hiking, bird watching, fishing, and other naturalist and recreational activities.

The approach set forth in the bill, as amended, consists essentially of four major parts. First, the bill defines the New Jersey Highlands Region and divides it into a preservation area, in which development would be strictly regulated, and a planning area, in which development would be monitored but not as strictly controlled. Secondly, the bill establishes the Highlands Water Protection and Planning Council, which would be charged with preparing and implementing a regional master plan for the Highlands Region, with which municipalities and counties in the preservation area would be required to conform their master plans. Thirdly, the bill would require, upon the date of enactment, that most major Highlands development in the preservation area receive from the Department of Environmental Protection (DEP) a Highlands Preservation Area approval, which would consist of the related aspects of existing environmental land use and water permits as well as additional, statutorily prescribed environmentally protective land use and water protection requirements. This system would be in effect for nine months. Lastly, the bill would require the DEP to adopt, within nine months, immediately effective rules and regulations establishing a permanent Highlands permitting review program, incorporating the provisions of the Highlands Preservation Area approval program, and setting strict standards for reviewing major Highlands development in the preservation area.

The bill, as amended, exempts some activities and types of development in the preservation area from complying with the provisions of the regional master plan, the Highlands Preservation

Area approval, and the permanent Highlands permitting review program. The bill, as amended, also contains land owner equity provisions and a provision to provide State aid to offset decreases in property tax revenues in municipalities with land located in the preservation area, makes changes to statutorily provided watershed aid, establishes a "Highlands Protection Fund," and requires the Highlands Water Protection and Planning Council to establish and implement a transfer of development rights program.

I

The New Jersey Highlands Region consists of about 800,000 acres, or about 1,250 square miles, stretching from Ringwood in the northeast to Phillipsburg in the southwest, across portions of Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren counties. Under the bill as amended, the Highlands Region is defined as all of the area within the 88 municipalities in Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren counties enumerated in section 7 of the bill. The bill, as amended, would exclude Andover Borough, Andover Township, and Lafayette from the Highlands Region, and would include Bedminster.

The preservation area of the Highlands Region, in which municipalities would be required to conform their master plans and development ordinances with the regional master plan developed by the Highlands Water Protection and Planning Council and in which the strict DEP permitting requirements would apply, is delineated in the bill, as amended, based upon natural resource data assembled by the United States Forest Service, Rutgers, The State University, and the New Jersey Water Supply Authority. The bill, as amended, contains a narrative description of the preservation area, translated into on-the-ground, identifiable reference points, such as road descriptions, survey lines, and municipal boundaries. The bill, as amended, provides that the planning area of the Highlands Region, in which municipal conformance with the council's regional master plan is optional, and in which the strict DEP permitting requirements would not apply, would consist of all that area of the Highlands Region not within the preservation area. The bill, as amended, would not include town and regional centers designated pursuant to the State Plan in the preservation area.

Under the bill, as amended, any road, railroad, or railroad right of way that constitutes part of the preservation area boundary would be considered outside the preservation area, and any stream, river or brook that constitutes part of the preservation area boundary would be considered to lie within the preservation area.

In addition to the formal designation of the preservation area in the bill, municipalities, in whole or in part in the planning area, are authorized under the bill, as amended, to opt into the regional master

plan by choosing to conform their master plans and other development regulations with the regional master plan to be adopted by the Highlands Water Protection and Planning Council.

II

The bill, as amended, would establish the Highlands Water Protection and Planning Council, a 15-member body appointed by the Governor, with the advice and consent of the Senate, and charged with preparing and implementing a regional master plan for the Highlands Region. Members of the council would serve for terms of five years, and without compensation. The Governor would appoint the chairperson of the council, and the council would appoint an executive director. The bill, as amended, provides that no action may be taken by the council except upon the affirmative vote of a majority of the total authorized membership of the council, and allows the Governor to veto any action taken by the council.

The bill, as amended, further specifies the following concerning the members of the council:

- 1) No more than four of the eight elected officials appointed to the council would be from the same political party;
- 2) The five municipal officials would be required to be Highlands Region residents;
- 3) Two of the eight county residents appointed by the Governor to the council would be residents of the county with the largest population in the Highlands Region;
- 4) Two of the seven residents of the State appointed by the Governor to the council would be recommended by the Legislature - one by the Senate President and one by the Speaker of the General Assembly;
- 5) Nonelected officials who are members of the council, to the maximum extent practicable, would have expertise, knowledge or experience in water quality protection, natural resources protection, environmental protection, agriculture, land use, or economic development; and
- 6) At least four of the members of the council would be property owners, business owners, or farmers in the Highlands Region or residents or nonresidents of the Highlands Region who benefit from or consume water from the Highlands Region.

* * *

In addition to and among the extensive powers of the council enumerated in section 6 of the bill as it was introduced, the committee amended the bill to empower the council to:

- 1) develop model land use ordinances and other regulations for water conservation, and promote, in conjunction with the DEP and the

Department of Agriculture, water conservation of water resources both in the Highlands Region and in areas outside of the Highlands Region for which the Highlands is a source of drinking water;

2) establish and implement a road signage program in cooperation with the Department of Transportation and local government units to identify significant natural and historic resources and landmarks in the Highlands Region;

3) promote brownfield remediation and redevelopment in the Highlands Region; and

4) work with the State Agriculture Development Committee and the Garden State Preservation Trust to establish incentives for any landowner in the Highlands Region seeking to preserve land under the farmland preservation program that would be provided in exchange for the landowner agreeing to permanently restrict the amount of impervious surface or agricultural impervious cover on the farm to a maximum of 5% of the total land area of the farm.

* * *

Under section 8 of the bill, as amended, the Highlands Water Protection and Planning Council would be required to adopt a regional master plan within 18 months after the council's first meeting. The council may not adopt the regional master plan unless the regional master plan includes recommended receiving zones in the planning area and the capacity therefor, pursuant to the transfer of development rights program authorized under the bill, as amended.

The regional master plan would also be required to recognize and not compromise the provisions of the "Right to Farm Act" and the protections to farmers it affords. In the preservation area, the regional master plan would also limit redevelopment to DEP designated brownfield sites and sites that are at least 70% covered with impervious surface. Within the 60 days after the council adopts the regional master plan, the council would submit the plan to the State Planning Commission for review and endorsement, and the commission's review would be limited to the parts of the regional master plan concerning the planning area. Any municipality or county or portion thereof located within the preservation area would be exempted from the State Development and Redevelopment Plan endorsement process. The bill, as amended, also directs the Department of Community Affairs, in consultation with the DEP, to provide guidelines and instructions to all local government units wholly or partially in the preservation area with respect to the processing, review and enforcement of applications for development after the date of enactment and before the adoption of the regional master plan.

* * *

The bill, as amended, provides that the goals of the regional master plan in both the preservation area and planning area would be to protect, restore, and enhance the quality and quantity of surface and ground waters; preserve extensive and contiguous areas of land in their natural state; protect the contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitats; preserve farmland and historic resources; preserve recreational opportunities on publicly owned land; promote conservation of water resources; promote brownfield remediation and redevelopment; and promote compatible agricultural, horticultural, recreational, and cultural land uses. In the preservation area, the regional master plan would have the additional goal to prohibit or limit to the maximum extent possible construction or development which is incompatible with the preservation of the Highlands. In the planning area, the additional goals of the regional master plan would be to encourage appropriate development, redevelopment, and economic growth consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, and to promote a sound, balanced transportation system that is consistent with smart growth and preserves mobility in the Highlands Region.

The bill, as amended, provides under section 11 that the regional master plan would consist of several components. Among these would be:

1) a resource assessment - binding in the preservation area and for advisory purposes only in the planning area - that determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain;

2) a financial component detailing the cost of implementing the regional master plan, including property tax stabilization measures, watershed moratorium offset aid, planning grants and other State aid for local government units, capital requirements for any development transfer bank, payments in lieu-of-taxes, and acquisition of lands for preservation or recreation and conservation purposes;

3) a component to provide for local government and public input into the council's operations;

4) a coordination and consistency component which details the ways in which local, State, and federal programs and policies may best be coordinated to promote the goals and policies of the regional master plan;

5) a transportation component that provides a plan for transportation system preservation, includes all federally mandated projects or programs, and recognizes smart growth strategies and principles; and

6) a smart growth component that would provide for, among other components described in the bill as amended, redevelopment, transfer

of development rights, a land use capacity map, and model minimum standards for municipal and county master planning and development regulations outside the preservation area.

* * *

Under the bill, as amended, within nine to 15 months after the Highlands Water Protection and Planning Council adopts the regional master plan, the governing body of each municipality and county located wholly or partially in the preservation area would be required to revise its master plan and development regulations to conform them with the requirements of the regional master plan and to submit the revisions to the council. The cost of making these revisions would be reimbursable by the council. The council would be authorized to approve or disapprove the revisions and to require additional changes. If such a municipality or county in the preservation area does not conform its master plan and development regulations to the regional master plan, the council would be authorized to enforce the provisions of the regional master plan and to essentially enforce the "Municipal Land Use Law" in the municipality or county and issue stop construction orders. In addition, the council would have call up review authority over any local application for development in a municipality or county in the preservation area. Any municipality or county in the planning area may elect to conform its master plan and development regulations to the appropriate provisions of the regional master plan. Finally, the council would also be authorized to review significant capital projects of the State or local governments in the preservation area. The council would be required to process any reviews of State, county, or municipal capital projects and other projects that are not exempt from council review within 30 days after their submission.

* * *

The bill, as amended, contains a number of specific provisions concerning the transfer of development rights program for which the council must recommend growth receiving zones in the regional master plan before the regional master plan can be adopted. The bill, as amended, authorizes the council to use the existing State Transfer of Developments Rights Bank or to establish a bank specifically for the Highlands Region. Otherwise, as provided under the bill as amended, the authorized transfer of development rights program would be consistent with the recently enacted "State Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137 et seq.), except for the following provisions:

- 1) The council would perform the real estate analysis for the Highlands Region that is required to be performed by a municipality prior to the adoption or amendment of any development transfer

ordinance under the "State Transfer of Development Rights Act";

2) No later than 18 months after the bill is enacted, and from time to time thereafter as the council determines is appropriate, the council, in consultation with municipal, county and State entities, would be required to:

a) identify areas within the preservation area that are appropriate as sending zones pursuant to the "State Transfer of Development Rights Act,"

b) identify areas within the planning area that are appropriate for development as voluntary receiving zones pursuant to the "State Transfer of Development Rights Act"; and

c) set a goal of identifying areas within the planning area that are appropriate for development as voluntary receiving zones that, combined together, constitute four percent of the land area of the planning area, to the extent that the goal is compatible with the amount and type of human development and activity that would not compromise the integrity of the ecosystem of the planning area;

3) The first time the council prepares a regional master plan and initially establishes the transfer of development rights program, the council should consider any supporting information for the regional master plan but would not be required to wait to create the transfer of development rights program until the first regional master plan has been prepared;

4) The council would be required to work with municipalities and the State Planning Commission to identify centers designated by the State Planning Commission as voluntary receiving zones for the transfer of development rights program;

5) In consultation with municipal, county and State entities, the council would be required to:

a) assist municipalities or counties in analyzing voluntary receiving zone capacity;

b) work with municipalities outside the preservation area to assist these municipalities in developing ordinances necessary to implement the transfer of development rights; and

c) establish advisory or model ordinances and other information for this purpose;

6) The council would establish the initial value of a development right considering the DEP rules and regulations in effect the day before the date of enactment. In addition, the council would give priority consideration for inclusion in a transfer of development rights program any lands that comprise a major Highlands development that would have qualified for an exemption under the grandfather provision but for the lack of a necessary State permit as specified in that exemption provision, and for which an application for such a permit had been submitted to and deemed by the DEP to be complete for review on or before March 29, 2004;

7) The council would make assistance available to municipalities that desire to create additional sending zones on any lands within their

boundaries which lie within the planning area and are designated for conservation in the regional master plan;

8) The Office of Green Acres and the State Agriculture Development Committee would be required to provide support and technical assistance to the council to operate the transfer of development rights program;

9) The Department of Banking and Insurance, the State Transfer of Developments Right Bank, the State Agriculture Development Committee, and the Pinelands Development Credit Bank would be required to provide technical assistance to the council in establishing and operating a development transfer bank, at the request of the council;

10) The Office of Smart Growth would be directed to review and coordinate State infrastructure capital investment, community development and financial assistance in the planning area in furtherance of the regional master plan;

11) Any municipality in the planning area whose municipal master plan and development regulations have been approved by the council to be in conformance with the regional master plan and that amends its development regulations to accommodate voluntary receiving zones within its boundaries identified by the council to provide for a minimum residential density of 5 dwelling units per acre, would be:

a) eligible for an enhanced planning grant of up to \$250,000 from the council;

b) eligible for a grant to reimburse the reasonable costs of amending the municipal development regulations;

c) authorized to impose impact fees, pursuant to an impact fee ordinance that would be adopted by the municipality, at a rate of up to \$15,000 per dwelling unit unless and until impact fees are otherwise established by law at which time the impact fee would be 200% of the calculated impact fee;

d) entitled to legal representation as provided elsewhere under the bill;

e) accorded priority status in the Highlands Region for any State capital improvement or infrastructure programs; and

f) eligible for any other appropriate assistance or incentives;

12) Any municipality located outside of the Highlands Region in any county that has a municipality in the Highlands Region that establishes a receiving zone that provides for a minimum residential density of five dwelling units per acre for the transfer of development rights from a sending zone in the Highlands Region, and that accepts that transfer of development rights shall, for those receiving zones, be eligible for the same grants, authority, and other assistance, incentives, and benefits as listed above, except such a municipality would not be eligible for legal representation or for priority status in the Highlands Region for State capital or infrastructure programs; and

13) Any municipality authorized to impose impact fees would exercise that authority by an impact fee ordinance in accordance with

the provisions of the bill, as amended.

* * *

The bill, as amended, also establishes a mechanism under which any municipality in the preservation area would be entitled to State aid to compensate for any decrease in the aggregate amount of property tax revenues derived from the taxation of real property in that portion of the municipality located in the preservation area that is directly attributable to the implementation of the provisions of the bill as amended. The "Highlands Municipal Property Tax Stabilization Board," established in the bill as amended, and the county tax board would annually calculate the amount to which each municipality is entitled, and would certify and transmit these amounts to the State Treasurer and to the Director of the Division of Local Government Services in the Department of Community Affairs. The State Treasurer would then pay to each qualified municipality its entitled amount in two equal installments.

The bill, as amended, would create a "Highlands Protection Fund," and dedicate \$12 million of the realty transfer fee revenue annually for 10 years, and \$5 million annually thereafter, for (1) payments to the "Highlands Municipal Property Tax Stabilization Fund"; (2) the payment of watershed moratorium offset aid pursuant to section 1 of P.L.1999, c.225 (C.58:29-8); (3) the making of grants by the council pursuant to the bill; and (4) allocations to the "Pinelands Property Tax Assistance Fund."

The bill, as amended, would also establish the "Pinelands Property Tax Assistance Fund" to which would be allocated \$1.8 million annually from the "Highlands Protection Fund" for five years. Moneys in the fund would be distributed to municipalities in the pinelands area in the same percentage of the total that the municipality received from the "Pinelands Municipal Tax Stabilization Fund" pursuant to P.L.1983, c.551. The moneys made available would be used to offset the amount to be raised as property taxes.

Also, under the bill, as amended, when certain requirements provided under section 21 of the bill, as amended, have been met, the council would provide legal representation to any requesting local government unit located in the Highlands Region in any cause of action filed against the local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to any provision of the bill as amended, or to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), R.S.40:27-1 et seq., or the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

III

The second level of water and natural resource protection for the preservation area of the Highlands Region established in the bill, as amended, consists of the imposition of environmentally protective standards for the review and permitting of major Highlands development by the DEP. Most development of any significant impact currently requires one or more State level water and land use permits issued by the DEP under the authority of a wide umbrella of environmental laws and their accompanying rules and regulations. The bill, as amended, would increase the standards imposed for the issuance of, and would coordinate and consolidate the review of, these permits for development in the preservation area of the Highlands Region. These more stringent standards would also be incorporated into the land use capability component of the regional master plan adopted by the Highlands Water Protection and Planning Council. In turn, municipalities and counties in the preservation area would revise their respective master plans and development regulations to conform with the regional master plan, and thereby reflect the more stringent standards in their respective master plans and development regulations. In this way, the standards authorized by sections 32 through 36 of the bill, as amended, create a tie between the State and regional preservation approaches in the bill.

* * *

The bill, as amended, essentially directs the DEP to develop and enforce two chronologically sequential environmental permitting programs and standards in the preservation area of the Highlands. Both permitting programs and standards would apply to permits for major Highlands development.

As used in the bill, as amended, "major Highlands development," except as otherwise exempted under section 30 of the bill, as amended, means: (1) any non-residential development in the preservation area; (2) any residential development in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity in the preservation area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a State entity or local government unit in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. As amended, the definition of "major Highlands development" does not

include an agricultural or horticultural development or agricultural or horticultural use in the preservation area. The bill, as amended, defines an environmental land use or water permit to include a permit, approval, or other authorization issued pursuant to the "Freshwater Wetlands Protection Act," the "Water Supply Management Act," the "Water Pollution Control Act," "The Realty Improvement Sewerage and Facilities Act (1954)," the "Water Quality Planning Act," the "Safe Drinking Water Act," or the "Flood Hazard Area Control Act."

The first DEP permitting program would take effect upon enactment of the bill, and would be in effect for the first nine months following enactment of the bill, after which the second DEP permitting program would go into effect. While the first permitting program would be in effect, any person proposing a major Highlands development in the preservation area would be required to receive a Highlands Preservation Area approval. This new approval would consist of the appropriate aspects of the regulatory requirements of existing environmental land use and water permits, as well as the additional, self-executing, statutorily established standards established in the bill as amended. No rules or regulations would be required to implement these standards. These new requirements would require that:

1) a 300-foot buffer, in which major Highlands development would be prohibited, be established adjacent to all Highlands open waters (which includes streams, wetlands, and other bodies of surface water);

2) the quality of all Highlands open waters be maintained and not degraded;

3) the review of a water diversion permit be triggered by a diversion of more than 50,000 gallon per day (the current threshold for the rest of the State is more than 100,000 gallons);

4) any new or increased diversion for all nonpotable purposes that is more than 50% consumptive would be required to demonstrate an equivalent reduction in water demand within the same subdrainage area through means such as groundwater recharge of stormwater or reuse, the existing unused allocation or allocations used for all nonpotable purposes may be revoked where measures to the maximum extent practicable are not implemented to reduce demand, and all new or increased diversions would be required to implement water conservation measures to the maximum extent practicable;

5) a zero net fill requirement be met for flood hazard areas;

6) the antidegradation and other provisions applicable to category one waters be applied to Highlands open waters;

7) more than three percent of the land area of a site as impervious surface - defined as "any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements" - would be prohibited on existing lots;

8) development, excluding linear development, would be prohibited

on steep slopes with a grade of 20% or greater; and

9) upland forest areas would not be disturbed, with certain exceptions.

The second and permanent DEP permitting program for the preservation area, the Highlands permitting review program, would be adopted as immediately effective rules and regulations within nine months after enactment of the bill as amended. These rules and regulations would be adopted without following the usual notice and comment provisions of the "Administrative Procedure Act," would be in effect for not more than one year, and would thereafter be adopted pursuant to the normal notice and comment provisions of the "Administrative Procedure Act." These rules and regulations would establish a Highlands permitting review program, the structure and requirements for which would essentially track the requirements for the statutorily established Highlands Preservation Area approval, with the addition of a septic system density standard established at a level to prevent the degradation of water quality, or to require the restoration of water quality, and to protect ecological uses.

The bill, as amended, would authorize the DEP to issue general permits under the Highlands permitting review program, and would authorize the DEP to charge an application fee. The bill, as amended, also sets forth detailed and environmentally protective guidelines that DEP must follow when reviewing and issuing a Highlands permitting review approval. The bill, as amended, also includes a penalty section which allows the DEP to impose civil administrative penalties for certain violations of the bill or DEP rules and regulations adopted pursuant thereto. A person who violates certain provisions of the bill or the DEP rules and regulations adopted pursuant thereto could also be subject to civil and criminal penalties.

In addition, the bill, as amended, requires the DEP to limit or prohibit the construction of new public water systems or the extension of existing public water systems to serve development in the preservation area, except in the case of a demonstrated need to protect public health and safety, and except to serve development in the preservation area that is exempt under the provisions of the bill. The bill, as amended, would revoke designated sewer service areas within the preservation area for which wastewater collection systems have not been installed on the date of enactment, and any associated treatment works approvals in the impacted areas would expire on the date of enactment, except that any designated sewer service area would not be revoked and any associated treatment works approvals would not expire if necessary to serve development in the preservation area that is exempt under the provisions of the bill.

IV

There are a number of exemptions provided in section 30 of the bill, as amended. The exemptions provide that the requirements and other provisions of the bill after it is enacted into law, the regional master plan, any rules or regulations adopted by the DEP pursuant to the bill, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan, cannot be applied to the following:

1) the construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment, or on a lot for which the individual has on or before May 17, 2004 entered into a binding contract of sale to purchase that lot;

2) the construction of a single family dwelling on a lot in existence on the date of enactment, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase by one-quarter acre or more in impervious surface (defined as "any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements");

3) a major Highlands development that received on or before March 29, 2004:

(a) one of the following "Municipal Land Use Law" approvals:

(i) preliminary or final site plan approval;

(ii) final municipal building or construction permit;

(iii) minor subdivision approval where no subsequent site plan approval is required;

(iv) final subdivision approval where no subsequent site plan approval is required; or

(v) preliminary subdivision approval where no subsequent site plan approval is required; and

(b) at least one of the following permits from the DEP, if applicable to the proposed major Highlands development:

(i) a permit or certification pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.);

(ii) a water extension permit or other approval or authorization pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.);

(iii) a certification, approval, or authorization for a septic system or other certification or approval or authorization issued pursuant to the "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.); or

(iv) a treatment works approval pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); or

(c) one of the following permits from the DEP, if applicable to the proposed major Highlands development, and if the proposed major Highlands development does not require one of the DEP water permits listed in subparagraphs (i) through (iv) of subparagraph (b) above:

(i) a permit or other approval or authorization issued pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); or

(ii) a permit or other approval or authorization issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

This exemption only applies to the land area and the scope of the major Highlands development addressed by the qualifying approvals provided, before those qualifying approvals expire, if construction beyond site preparation begins within three years after the date of enactment;

4) the reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or non-horticultural use;

5) any improvement to a single family dwelling in existence on the date of enactment of the bill as amended, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system;

6) any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of the bill, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility;

7) an activity conducted in accordance with an approved woodland management plan as provided by current law or the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

8) the construction or extension of trails with non-impervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established;

9) the routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of the bill and does not result in the construction of any new through-capacity travel lanes;

10) the construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit, provided that the activity does not result in the construction of any

new through-capacity travel lanes;

11) the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of the bill;

12) the reactivation of rail lines and rail beds existing on the date of enactment;

13) the construction of a public infrastructure project approved by public referendum prior to January 1, 2005 or a capital project approved by public referendum prior to January 1, 2005;

14) the mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring or which are permitted to occur on any mine, mine site, or construction materials facility existing on June 7, 2004;

15) the remediation of any contaminated site pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.);

16) any lands of a federal military installation existing on the date of enactment of this act that lie within the Highlands Region; and

17) a major Highlands development located within an area designated as Planning Area 1 (Metropolitan), or Planning Area 2 (Suburban), as designated pursuant to the "State Planning Act" as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. The exemption provided pursuant to this paragraph would expire if construction beyond site preparation does not commence within three years after receiving all final approvals required pursuant to the "Municipal Land Use Law."

Although the bill, as amended, would provide these exemptions, it also provides that the exemptions to the provisions of the law established by the enactment of the bill and the exemptions from the various regulatory requirements created under the bill, as amended, do not exempt the activities and types of development listed above from other applicable State or local laws, rules, regulations, development regulations, or ordinances. The bill, as amended, provides that none of its provisions alter the funding allocation formulas established pursuant to the "Garden State Preservation Trust Act," P.L.1999, c.152 (C.13:8C-1 et seq.). Furthermore, the bill, as amended, provides that none of its provisions shall be construed to repeal, reduce, or otherwise modify the obligation of counties, municipalities, and other municipal and public agencies of the State to pay property taxes on lands used for the purpose and for the protection of a public water supply, without regard to any buildings or other improvements thereon, pursuant to R.S.54:4-3.3.

The bill, as amended, also excludes "agricultural or horticultural development" and "agricultural or horticultural use" from the

definition of major Highlands development and therefore those uses and activities would not be subject to the Highlands approval and permit review program established in the bill as amended. Instead, agricultural or horticultural development in the preservation area that would increase agricultural impervious cover would be subject to review by the local soil conservation district. If an agricultural or horticultural development would increase agricultural impervious cover (either individually or cumulatively) by three percent or more of the total land area of the farm management unit, the owner or operator would be required to submit a farm conservation plan to the local soil conservation district. If the agricultural or horticultural development would increase agricultural impervious cover by nine percent or more, a more detailed resource management systems plan would be required to be submitted to the local soil conservation district and to the DEP. The Department of Agriculture, in consultation with the DEP, would be required to adopt rules and regulations establishing scientific standards to guide the preparation and implementation of the farm conservation plans and resource management systems plans prepared by farmers pursuant to the bill, as amended.

V

The bill, as amended, also contains provisions providing protection for the equity in land of landowners or farmers who decide to sell their property, or in the case of farmers a development easement, to the State, the State Agriculture Development Committee in the case of farmland, or a local government unit or a non-profit organization. In such cases, the bill, as amended, would provide for a special appraisal process commencing on the date of enactment or July 1, 2004, whichever is later, and through June 30, 2009. This appraisal system is modeled after the system currently provided for in the law for the Green Acres and farmland preservation programs. As amended, the first part of the appraisal would be based on the land use zoning of the lands, and any State environmental laws or DEP rules and regulations that may affect the value of the lands, subject to the appraisal and in effect at the time of proposed acquisition, and the second part of the appraisal would be based on the land use zoning of the lands, and any State environmental laws or DEP rules and regulations that may affect the value of the lands, subject to the appraisal and in effect on January 1, 2004. Only landowners who have owned the subject land continuously from the date of enactment of the bill until the date of the proposed acquisition, with certain exceptions, would be eligible for the special appraisal system. In addition, any landowner would be required to choose between the appraisal system established in this bill, as amended, or the two other existing statutory appraisal systems.

The bill, as amended, provides that the Highlands Water Protection and Planning Council would make recommendations to the DEP

concerning prioritizing the acquisition of land in the preservation area for conservation purposes, especially lands that have declined substantially in value due to the implementation of the bill, and for any major Highlands development that would have qualified for an exemption under the grandfather provision but for the lack of a necessary State permit, and for which an application for such a permit had been submitted to the DEP and deemed to be complete for review on or before March 29, 2004. The council would make similar recommendations concerning farmland preservation to the State Agriculture Development Committee for lands that have declined substantially in value due to the implementation of the bill. However, the provisions of the bill, as amended, would not change the formulas or procedures currently used to prioritize properties for preservation under the Green Acres and farmland preservation programs. Current law requires the DEP to adopt guidelines for evaluation and priority ranking of land acquisition under the Green Acres program. Under the bill as amended, these guidelines would be required to be designed to provide, to the maximum extent practicable and feasible, for the equitable spending of moneys among the geographic areas of the State. In addition, the bill, as amended, requires that the amount of money spent by the State for State Green Acres acquisitions and State purchases of farmland and farmland easements in the fiscal years 2005-2009 in each county in the State would be at least as much as the average annual amount spent in each county for State fiscal years 2002-2004, provided that there are sufficient and appropriate lands within the county to be so acquired by the State.

Finally, the bill, as amended, contains a number of provisions amending current law to provide for the independent commissions and authorities in and near the Highland Region to coordinate planning with the Highlands Water Protection and Planning Council, and giving the DEP the necessary authority to implement the provisions of the bill.

The bill, as amended, contains no provision concerning the State's right of first refusal for lands being sold or conveyed in the Highlands Region, no provision negating preliminary and final "Municipal Land Use Law" approvals of major development that were inconsistent with the Highlands regional master plan, and no provisions concerning prohibitions against local government units, public utilities, or public water utilities from selling lands in the Highlands Region that may protect the water supply.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- 1) Change the definition of "major development" to "major Highlands development" and revise the scope of the definition (Section 3);
- 2) Add definitions of "agricultural or horticultural development,"

"agricultural impervious cover," "agricultural or horticultural use," "construction beyond site preparation," "development," "farm conservation plan," "farm management unit," "immediate family member," "Office of Smart Growth," "public utility," "resource management systems plan," "soil conservation district," "State entity," "State Soil Conservation Committee," and "temporary coverings" (Section 3);

3) Add definitions of "construction materials facility," "mine," and "mine site," which definitions are related to an exemption for mining and quarrying provided in section 30 of the bill (Section 3);

4) Clarify the definitions of "Highlands open waters" and "waters of the Highlands" (Section 3);

5) Add definitions of "capital improvement," "facility expansion," "impact fee," "individual unit of development," "service area" and "service unit," which are related to the transfer of development rights program to be established by the council (Section 3);

6) Make changes to the qualification and residency requirements of the 15 council members, and provide that no action may be taken by the council except upon the affirmative vote of a majority of the total authorized membership of the council (Section 5);

7) Authorize the council to: hire attorneys, develop model land use ordinances and other development regulations for planning area municipalities concerning water conservation, establish a Highlands Region road signage program, promote water conservation in and outside of the Highlands Region, promote brownfield remediation and redevelopment, and work with the State Agriculture and Development Committee and the Garden State Preservation Trust to establish incentives under the farmland preservation program that would be provided in exchange for a landowner agreeing to permanently restrict the amount of impervious surface and agricultural impervious cover on farmland (Section 6);

8) Include a metes and bounds description of the boundaries of the preservation area (Section 7);

9) Specify that any road, railroad, or railroad right of way that constitutes part of the preservation area boundary would be considered outside the preservation area, and any stream, river or brook that constitutes part of the preservation area boundary would be considered to lie within the preservation area (Section 7);

10) Specify that town and regional centers designated pursuant to the State Plan would not be included in the preservation area (Section 7);

11) Prohibit council adoption of the regional master plan unless the regional master plan includes recommended receiving zones in the planning area pursuant to the transfer of development rights program (Section 8);

12) Require the regional master plan to be submitted to the State Planning Commission for endorsement, and limit the commission's review to the planning area only (Section 8);

13) Provide for council and DEP consultation with the Department of Transportation wherever appropriate;

14) Limit redevelopment to brownfield sites or to sites with at least 70% impervious surface (Section 9);

15) Direct the council to ensure the regional master plan recognizes and does not compromise the provisions of the "Right to Farm Act" (Section 9);

16) Expand the goals of the regional master plan in the preservation area and the planning area (Section 10);

17) Specify the resource assessment, transportation component, and smart growth component is only for advisory purposes in the planning area (Section 11);

18) Expand the required components of the regional master plan to include a transportation component and a smart growth component (Section 11);

19) Provide certain requirements and provisions for the transfer of development rights program to be established by the council (Section 13);

20) Provide that the goals and elements of the regional master plan, including the resource assessment and the smart growth component, be used to develop the transfer of development rights program (Section 13);

21) Provide that prior to the establishment of the transfer of development rights program by the council, the Office of Smart Growth shall establish a pilot transfer of development rights program that includes Highlands Region municipalities (Section 13);

22) Empower the council to revoke conformance approval for a preservation area municipality if the local government takes action inconsistent with the regional master plan (Section 14);

23) Delete section 16 of the bill as introduced, which concerned vested rights under the "Municipal Land Use Law";

24) Provide preservation area municipalities with additional time to revise ordinances to conform to the regional master plan (Sections 14 and 18);

25) Include provisions concerning cases in which local government development decisions are contested in the preservation area (Section 17);

26) Provide reasonable expenses incurred by municipalities and counties for conforming with the regional master plan would be payable from grants and other financial aid (Section 18);

27) Delete section 20 of the bill as introduced, and revise the property tax stabilization provisions to address decline in taxes paid for vacant land and other issues (Section 19);

28) Create a "Highlands Protection Fund," and dedicate a portion of the realty transfer fee revenue annually for certain State aid purposes in the Highlands Region (Sections 21, 61 and 62);

29) Create the "Pinelands Property Tax Assistance Fund" to which would be allocated \$1.8 million annually from the "Highlands

Protection Fund" for five years for property tax stabilization moneys for certain pinelands area municipalities (Section 20);

30) Provide that the council, rather than the Attorney General, would provide legal representation to local governments in the preservation area whose development decisions are challenged in court (Section 22);

31) Revise section 24 of the bill as introduced, which concerns the Council on Affordable Housing and adjustments to fair share obligations in consideration of the regional master plan (Section 25);

32) Delete section 26 of the bill as introduced, which concerned the State's right of first refusal to purchase property from the bill;

33) Delete section 27 of the bill as introduced, which concerned the sale of water supply protection lands in the Highlands Region by any State or local public entity or public utility;

34) Provide exemptions for certain activities and types of development to the provisions of the bill after it is enacted into law, the regional master plan, any rules or regulations adopted by the DEP pursuant to the bill, or any amendments to a master plan (Section 30);

35) Specify that the provisions of the bill would not affect the funding allocations in the "Garden State Preservation Trust Act" (Section 30);

36) Add a new section concerning agricultural or horticultural development in the preservation area (Section 31);

37) Provide for specifics connected to administration of the Highlands Preservation Area approval, including exempting the establishment of the fee schedule from the provisions of the "Administrative Procedure Act" (Section 32);

38) Require demonstration of equivalent reductions in water demand and implementation of water conservation connected with new or increased water allocations for nonpotable purposes, and authorize revocation of unused allocations (Section 32 and 34);

39) Add language to provide that the provisions of sections 41 and 42 in the bill, concerning public water systems and designated sewer service areas, would not apply to development in the preservation area that is exempt pursuant to section 30 of the bill (Sections 41 and 42);

40) Add language to provide that moneys for State open space acquisition be spent equitably among the geographic areas of the State (Section 53);

41) Provide a special appraisal process for open space and farmland preservation (Sections 53 and 54);

42) Require that the amount of money spent annually by the State for State Green Acres acquisitions and State purchases of farmland and farmland easements in the fiscal years 2005-2009 in each county in the State would be at least as much as the average annual amount spent in each county for State fiscal years 2002-2004 (Sections 53 and 54);

43) Exempt any municipality or county or portion thereof located within the Highlands preservation area from the State Development

and Redevelopment Plan endorsement process (Section 69);

44) Change the amount of watershed aid to municipalities who host lands on which there is a moratorium from \$35 per acre to \$47 per acre (Section 82);

45) Delete sections 27, 60, and 81 of the bill as introduced, which concerned the sale of water supply lands;

46) Delete subsection k. of section 6 regarding the council's authority to establish a nonprofit corporation;

47) Specify that none of the bill's provisions shall be construed to repeal, reduce, or otherwise modify the obligation of counties, municipalities, and other municipal and public agencies of the State to pay property taxes on lands used for the purpose and for the protection of a public water supply, without regard to any buildings or other improvements thereon, pursuant to R.S.54:4-3.3; and

48) Make technical and clarifying changes to the bill.