

HIGHLANDS COUNCIL RESPONSE TO PUBLIC COMMENTS ON THE *DRAFT RMP ADDENDUM 2017-1 – PROCEDURE FOR CONSIDERING PROPOSALS TO AMEND THE HIGHLANDS REGIONAL MASTER PLAN*

Summary of Recommendations

The Highlands Act requires the Highlands Council to review and update the Highlands Regional Master Plan (RMP) at least once every six years, after public hearings. The Act contemplates that amendments to the RMP will arise principally out of this six-year reexamination. The draft Procedure for Considering Proposals to Amend the Highlands Regional Master Plan (Procedure) sets forth the process the Highlands Council will follow to review and update the RMP in a manner that is consistent with the Highland Act and ensures robust public participation.

The Highlands Council conducted six public hearings on the draft Procedure. Public notice of the hearings was posted on the Council's website and printed in the Council's newspapers of record. Margaret Nordstrom, Executive Director of the Highlands Council, served as hearing officer. The Council heard comments from interested members of the public on the draft Procedure document. The Council has also considered all written comments submitted during the public comment period, which ran through September 26, 2017. An audio recording of the public hearings and copies of the written comments submitted by the public are available on the Council's website at: www.nj.gov/njhighlands/master/amendments/.

Based on public comments, the Council staff recommends the following changes to the draft Procedure:

- Add the following sentence to page 4 of the draft Procedure:

A copy of the proposed RMP amendment(s) that the Committee is expected to take action on will be available to the public at the time that the Council provides public notice of the RMP Amendment Committee meeting.

- Revise the sentence on page 4 of the draft Procedure as follows:

*The Council will provide not less than a 10-day public notice of the dates, times and locations of the public hearings, and shall also invite the submission of written comments within not less than 30, **nor more than 90**, days of the date of the public notice. **The Council will determine, on a case-by-case basis, the length of the public comment period at the time it authorizes public hearings on the proposed amendment(s).***

- Add the following sentence to footnote 2 on page 1 of the draft Procedure:

Even though it would not be the norm, a RMP amendment could be considered and adopted outside of the six-year reexamination process, utilizing the procedure provided herein. In that case, the Highlands Council, by a vote of at least 8 members, would refer the recommendation to the RMP Amendment Committee for its review; Council staff would send the RMP Amendment Committee a report, setting forth staff's response to the recommendation; after evaluating the proposal, the Committee would send its report and recommendation to the Council; and the Highlands Council would take action on the recommendation as it deemed appropriate. If the Council decided to move the proposal forward, it would proceed with the public hearings required before final adoption. Alternatively, the RMP Amendment Committee could recommend that the Highlands Council defer the proposal until the next six-year reexamination process.

A detailed response to public comments is set forth below.

Summary of Public Comments and Highlands Council Responses

The following people submitted written comments and/or gave oral testimony on the Procedure:

1. Nicholas R. Homyak
2. Barbara Cochrane
3. Constance Stroh, Upper Rockaway River Watershed Association
4. Styra Eisinger
5. Canny MacGonagle, MWA
6. Bettina Bieri, Mayor, Township of West Milford
7. Elliot Ruga, New Jersey Highlands Coalition
8. Anthony N. Soriano, Morris County Planning Board
9. George Cassa
10. Bill Kibler, Raritan Headwaters Association
11. Julia Somers, New Jersey Highlands Coalition
12. Toni Granato, New Jersey Sierra Club
13. Michael Hensley, Councilman, Township of West Milford
14. Ada Erik, Councilwoman, Township of West Milford
15. Gregory Gorman, New Jersey Sierra Club
16. Ken Dolsky, Coalition Against Pilgrim Pipeline
17. Sean Gilson, New Jersey Highlands Coalition

18. Anne Powley, League of Women Voters
19. Margaret Bost, Deerhaven Association
20. Lynn Dubnoff
21. Alana M. Steib
22. Randall I. Charles
23. Marilyn Lichtenberg, Councilwoman, Township of West Milford
24. Kathleen Caren
25. Guy Colina
26. David Dech, Warren County Planning Director
27. Luciano Signorino, Council President, Township of West Milford
28. Ed Smith, Warren County Freeholder
29. Laura Oltman
30. George Stafford, New Jersey Highlands Coalition
31. Wilma Frey, New Jersey Conservation Foundation
32. Carol Ann Short, Esq., on behalf of the New Jersey Builders Association
33. Elizabeth George-Cheniara, on behalf of the New Jersey Builders Association
34. Gail Adrian
35. Deborah Post
36. Anne and John Kelleher
37. Mary O'Keefe, Borough Clerk, Borough of Butler
38. Robert W. Alviene, Mayor, Borough of Butler
39. Barbara Loring
40. Robert Dennis
41. Steven Reynolds, Passaic River Coalition
42. Autumn Sylvester, County of Sussex, Division of Planning
43. Mara Modes
44. Tim Wagner, Councilman, Township of West Milford
45. Silvia Solaun, on behalf of Friends of Sparta Mountain
46. Harold J. Olson
47. Mary Kissane
48. Cean Lavery
49. James J. Beahm

- 50. Joanne Morgan
- 51. Pam McPheron
- 52. Jeff Tittel, Director, New Jersey Sierra Club

A summary of the timely submitted comments and the Highland Council staff's responses follow.

General Comments

Comments in Support

- 1. COMMENT: A number of commenters expressed support for the Procedure.
RESPONSE: The Highlands Council acknowledges the commenters' support for the Procedure.

The RMP Amendment Committee

- 2. COMMENT: Several commenters stated that there should be opportunity for public comment at any Committee meeting at which the Committee will make a recommendation to the Council on a proposed RMP amendment.

RESPONSE: The Highlands Council believes that the appropriate time for the public to comment on a proposed amendment is at a meeting of the full Council when all of its members will have the opportunity to hear from the public before it takes action on any Committee recommendation. Public comment should be addressed to the full Council, not to a subcommittee. The Committee only makes recommendations. It is the Council that will "take ...actions." (Procedure at page 3.)

The recommendations and findings of the Committee will be made available to the public and no final action is taken by any Committee. The Committee's summary of the report and findings, including its recommendation, will be presented to the Highlands Council at a public meeting, after which there will be public comment. Only after public comment will the Highlands

Council vote on the merits of the recommendation, taking one of the actions set forth on page 4 of the Procedure. That is the time for the Council to hear comments from the public.

If the Council acts favorably on the Committee's recommendation that a proposal proceed to the required "five, plus one" public hearings, there will be numerous opportunities for the public to comment on the proposal before it comes before the Council for final adoption. As set forth in the presentation at the Council's January 19, 2017 meeting, the public could have as many as ten opportunities to comment on any RMP amendment proposal before the Council takes action on the proposal.

If, on the other hand, the Committee recommends that the Council take no action on a proposed amendment, the Council would need to take action on that recommendation at a public meeting. A public hearing would proceed any Council action. Every member of the Council and anyone from the public would have the opportunity to comment before the Council decided to take no action on the proposal. It is simply not the case, as one commenter stated, that "[i]f the RMP Amendment Committee does not recommend a proposed amendment to the Council, the full Council may never be aware of it, nor will it come before them for a vote." Amendment proposals cannot die in committee.

For these reasons, the Highlands Council believes that a full Council meeting is the proper forum for the public to inform the Council before it takes action on a Committee recommendation. These comments are not about a lack of transparency, nor could they be since the Procedure ensures that the Committee's deliberations take place in public. Whenever the Committee expects to make a recommendation to Council on a proposed amendment, the Committee meeting will be noticed to the public, the meeting will be open to the public, and meeting minutes will be made

available to the public. The Committee will not be operating, as one commenter stated, “behind closed doors.”

3. COMMENT: Several commenters stated that a copy of the proposed RMP amendment which the RMP Amendment Committee will be considering should be provided to members of the public at or before the Committee meeting.

RESPONSE: The Highlands Council agrees with these comments. It recommends that the following language be added to page 3 of the Procedure:

A copy of the proposed RMP amendment(s) that the Committee is expected to take action on will be available to the public at the time that the Council provides public notice of the RMP Amendment Committee meeting.

4. COMMENT: A commenter stated that the public should be able to attend any RMP Amendment Committee at which proposed amendments are discussed, and not just Committee meetings at which it is anticipated that the Committee will make a recommendation to the Council.

RESPONSE: The Council believes that public attendance at committee meetings must strike a balance between the public’s need to know and the ability of committee members to engage in frank and robust discussions. It is Council policy that non-quorum subcommittee meetings are not open to the public. These subcommittees are not required to be open to the public under the Open Public Meetings Act. The Procedure provides that the public may attend RMP Amendment Committee meetings at which it is anticipated that the Committee will issue a recommendation to the Council on a proposed amendment. This is designed to give the public the chance to hear the Committee’s recommendation and the reasons for its decision. The Council believes this strikes an appropriate balance.

5. COMMENT: One commenter stated that giving the RMP Amendment Committee authority to deny an amendment proposal deprives the full Council and the public the opportunity to comment on the proposal.

RESPONSE: The authority to “deny” (or take no action on) an amendment proposal rests with the full Council. The Procedure does not delegate this authority to the Committee, and has not been delegated to the Committee. The full Council must “take action” on any Committee recommendation, only after having heard from members of the public. For example, if the Committee issues a report and recommendation that the Council take no action on a proposal, the Council would have to take action by adopting the Committee’s recommendation. It can only take this action at a Council meeting, subject to public comment. Thus, every member of the Council and anyone from the public would have the opportunity to comment before the Council shelved any amendment proposal. It is simply not the case, as one commenter stated, that “[i]f the RMP Amendment Committee does not recommend a proposed amendment to the Council, the full Council may never be aware of it, nor will it come before them for a vote.” Amendment proposals simply cannot die in committee.

6. COMMENT: A commenter stated that “While the proposed Procedure does not give the RMP Amendment Committee **approval** authority – this is limited to the Council – it does give the Committee **denial** authority. If the RMP Amendment Committee does not recommend a proposed amendment to the Council, the full Council may never be aware of it, nor will it come before them for a vote. Without changes to the proposed Procedure, both the full Council and the public will be denied the opportunity to evaluate the entirety of potential amendments that were considered by the Committee.” (Emphasis in original.)

RESPONSE: The Procedure gives both approval and denial authority to the full Council. The Committee has no authority to act on its own. If the Committee issues a report and recommendation to the Council that it take no action, the Council must act on their recommendation by adopting the recommendation after hearing from the public. The RMP Amendment Committee has no authority to shelve a proposed amendment on its own. Any recommendation, including one to take no action, must come before the full Council and the public for a vote. An amendment proposal cannot die in committee. Even a recommendation to take no action requires Council approval.

7. COMMENT: A commenter stated that the Procedure would “delegate ...authority to move forward bad projects in private behind closed doors [and] without oversight.”

RESPONSE: As stated above, the Procedure does not delegate any authority to the Committee to take any action of proposed amendments. The Council has the exclusive authority to take action on any Committee recommendation, after a public hearing. Thus, any proposal will move forward in public and with Council oversight.

8. COMMENT: A commenter stated that the Procedure should address the membership of the RMP Amendment Committee, and suggested that the Chair accept volunteer requests of interested Council members prior to designating all the members of the Committee. The commenter stated that it is important that any interested Council Member may attend any Committee meeting.

RESPONSE: Any member of the Council may be appointed to the RMP Amendment Committee. Under the Council’s by-laws, the Chair has the authority to appoint any members of the Council to a subcommittee, including the RMP Amendment Committee. Any interested member of the Council may attend any public session of the Committee as a member of the public.

Proposed RMP amendments

The length of the public comment period

9. COMMENT: Several commenters stated that a public comment period of 30 days on future RMP amendments is too short, and that it should be extended to 90 days.

RESPONSE: The Council intended that 30 days would be the minimum public comment period and that the Council would be free to extend the period as appropriate. The Highlands Council agrees that a public comment period of 30 days could be too short depending on the nature of the amendment. The Council agrees that it should have the discretion to extend the public comment period up to 90 days, depending on the contents and complexity of the proposed amendment.

The appropriate length of the public comment period will depend on the nature of the proposed RMP amendment(s) under consideration, e.g., their scope, complexity, and number. Take, for example, the 30-day public comment period on the Procedure. No commenter stated that the 30-day public comment period was too short for members of the public to review and comment on this proposed amendment. Thirty (30) days, then, is enough time to comment on an amendment such as this one, but might not be enough time to comment on a more substantial, complex amendment. The Council therefore believes that the best time for it to determine the length of the public comment period is when it authorizes public hearings on proposed amendment(s).

It is important to note that, in most cases, the public will be able to review a proposed amendment proposal for a period substantially longer than the public comment period. For example, the Council released the draft Procedure to the public at its January 2017 meeting. The public had seven months to review the Proposal even before the 30-day public comment period began. Despite this, several commenters stated that they were not aware of the Procedure

document until recently. We encourage them and other members of the public to subscribe to Highlands Council email updates by clicking “Sign up for alerts and public notices” on the homepage of the Highlands Council website, in order to receive notices in real time.

Based on these comments, the Highlands Council recommends that the following language be added to page 4 of the Procedure:

The Council will provide not less than a 10-day public notice of the dates, times and locations of the public hearings, and shall also invite the submission of written comments within not less than 30, nor more than 90 days, of the date of the public notice. The Council will determine, on a case-by-case basis, the length of the public comment period at the time it authorizes public hearings on the proposed amendment(s).

Additional public hearing near Newark and Jersey City

10. COMMENT: Several commenters stated that the six public hearings described in the draft Procedure do not adequately include stakeholders/water users outside the Highlands Region, and that an additional hearing should be held in a location accessible to population centers near Newark and Jersey City that rely on Highlands water.

RESPONSE: The Procedure requires the number and locations of hearings that the Highlands Act prescribes for adoption of the RMP (C.13:20-8.) The Council can always direct additional hearings outside the Highlands region if it deems it appropriate.

Other Comments

11. COMMENT: One or more commenters expressed concern that the Council could use the Procedure to weaken the RMP.

RESPONSE: These comments do not specifically address any provision in the Procedure, and therefore are not responsive. The Procedure in itself does not weaken (or strengthen) the RMP. It

is designed to provide robust public participation so that the views of all interested parties can be heard before any changes are adopted.

12. COMMENT: One commenter suggested that the number of proposed amendments considered for adoption at any one time be limited.

RESPONSE: The Highlands Council agrees that the number of potential amendments to be considered at any one time must be reasonable and manageable. The decision on how many potential RMP amendments to consider at one time is best made at the time the Council acts to move potential amendments forward to the “five, plus one” hearings.

13. COMMENT: Several commenters expressed concern about logging on public lands and with forest management plans in the Highlands region, particularly in Hardyston Township and on Sparta Mountain.

RESPONSE: The comments are beyond the scope of the Procedure, and are therefore non-responsive.

14. COMMENT: Several commenters suggested changes to the Highlands Act and/or to the RMP.

RESPONSE: The comments are beyond the scope of the Procedure, and are therefore non-responsive.

15. COMMENT: Several commenters stated that “[We] believe that the purpose of Addendum 2017-11 is to allow the Highlands Council to adopt amendments to the Regional Master Plan. In effect, this takes the status of the Highlands Council from an advisory board to legislative authority which they never had before and is not appropriate for a board which is comprised of appointed rather than elected official.”

RESPONSE: The Highlands Council is not an “advisory board,” nor is it assuming the role of a “legislative authority” by adopting a procedure to consider potential amendments to the RMP. The Highlands Act requires the Council to adopt a Regional Master Plan and directs that it “shall be periodically revised and updated at least once every six years, after public hearings” (C. 13:20-8.) By adopting a procedure to consider proposals to amend the RMP, the Highlands Council is doing what the State legislature specifically directed it to do, i.e., adopt a RMP and “to periodically revise and update” it.

16. COMMENT: Several commenters stated that they oppose adoption of the Procedure because Preservation Area municipalities, including the Township of West Milford, “cannot afford the ultimate goal which would bestow authority on the Highlands Council to adopt amendments to the Regional Master Plan without the ability to provide sufficient funding sources for these mandates.”

RESPONSE: The Council notes the Township’s concern that the RMP and any amendments thereto may impose burdens on it “without the ability to provide sufficient funding sources for these mandates.” This concern is with the Highlands Act itself, and not with the contents of the Procedure. The comment is beyond the scope of the Procedure, and is therefore non-responsive.

17. COMMENT: Several commenters expressed concerns about the punitive burdens placed on landowners by the Highlands Act in the Preservation Area.

RESPONSE: The Highlands Council notes the commenters’ concerns. Their comments, however, are directed to the Highlands Act itself, and not specifically to the Procedure document. Therefore, the comments are beyond the scope of the Procedure and are non-responsive.

18. COMMENT: A number of commenters raised lake management issues in the Highlands region and the State’s failure to provide funding to address deteriorating lake conditions.

RESPONSE: The Highlands Council notes the commenters' concerns but their comments are beyond the scope of the Procedure itself and are non-responsive.

19. COMMENT: Several commenters expressed concerns that court rulings in affordable housing litigation are placing unrealistic burdens on municipalities in the Highlands region, especially in the Preservation Area.

RESPONSE: The Highlands Council notes the commenter's concerns, which raises an important issue. However, the comment is beyond the scope of the Procedure itself and are non-responsive.

20. COMMENT: Several commenters stated that the land use restrictions imposed by the Highlands Act and RMP impose an unfair burden on residents of the region, especially residents of Preservation Area municipalities, that should be shared throughout the State by those who benefit from Highlands water.

RESPONSE: The Highlands Council notes the commenters' concerns but their comments are beyond the scope of the Procedure itself and are non-responsive.

21. COMMENT: A commenter noted that comments on the Procedure are due on September 26, yet final submission of publicly proposed RMP amendments to the MPRR were due on September 10.

RESPONSE: The commenter is correct. On January 19, 2017, after public hearing, the Council adopted Resolution 2017-3 stating that the Council would utilize the draft Procedure going forward to finalize the MPRR and to consider any amendment proposals arising out of the MPRR. The Resolution also provided that the Council would adopt a final version of the Procedure as amendment to the RMP in accordance with the Procedure.

On August 17, 2017, the Council adopted Resolution 2017-11 authorizing Council staff to hold public hearings. Following the last of the public hearings and the close of the public comment period on September 26, 2017, Council staff will provide its Response to Comments and recommend any proposed changes to the Procedure based upon the public comments received. It is anticipated that at the October 19, 2017 meeting, the Council will consider taking action to approve the Procedure as an amendment of, and an addendum to, the RMP.

As the commenter notes, public comments on the draft MPRR, including suggestions from the public for additional proposed amendments to the RMP, are on a separate track. The deadline for any such comments was September 10, 2017. All comments received by that date will be reviewed and responded to by Council staff, and recommendations will be made for any changes to the draft MPRR, in accordance with the Procedure document.

22. COMMENT: A commenter recommended that copies of any proposed amendments transmitted to local governments as described on page 4 of the Procedure also be provided directly to the secretary of each county and municipal planning board, electronically and by mail, concurrent with the transmittal to each municipal and county clerk.

RESPONSE: As suggested, the Council will send any proposed amendments directly to the secretary of each county and municipal planning board, electronically and by mail, concurrent with the transmittal to each municipal and county clerk.

23. COMMENT: A commenter stated that “While a reexamination of the RMP is required once every six years, the Council should have the ability to consider draft RMP amendments at intervals in the interim and the public should also have the opportunity to provide draft RMP amendments as part of this process. We recommend that the Procedures Document be amended to

include a specific process by which recommendations for amending the RMP may be formally considered by the RMP Committee at least once every two years.”

RESPONSE: It was always the intention that the RMP Amendment Committee and the Council would have the ability to consider draft RMP amendments at intervals in the interim and that the public would have the opportunity to provide draft RMP amendments as part of this process. While the six-year review of the RMP is intended to be the primary mechanism for considering and adopting RMP amendments, the Council has the ability to consider draft RMP amendments at other times using the procedures set forth in the Procedure document. To make its intention clear, the Highlands Council recommends that the following language be added to footnote 2 on page 1 of the Procedure:

Even though it would not be the norm, a RMP amendment could be considered and adopted outside of the six-year reexamination process, utilizing the procedure provided herein. In that case, the Highlands Council, by a vote of not fewer than 8 members, would refer the recommendation to the RMP Amendment Committee for its review; Council staff would send the RMP Amendment Committee a report, setting forth staff's response to the recommendation; after evaluating the proposal, the Committee would send its report and recommendation to the Council; and the Highlands Council would take action on the recommendation as it deemed appropriate. If the Council decided to move the proposal forward, it would proceed with the public hearings required before final adoption. Alternatively, the RMP Amendment Committee could recommend that the Highlands Council defer the proposal until the next six-year reexamination process.

24. COMMENT: A commenter stated it supports the Council's contemplated approach to discuss potential amendments with stakeholders.

RESPONSE: The Council agrees that outreach of this kind is important to informing stakeholders of potential amendment proposals.

25. COMMENT: A commenter recommended that there should be a mechanism to enable the staff to prioritize recommendations for amendments to be pursued “in the more immediate short-term.”

RESPONSE: The Council agrees with this comment. When the MPRR is finalized, it is anticipated that the Council staff will identify those recommendations for proposed amendments that should be pursued first, i.e., guidance documents.

26. COMMENT: A commenter stated that the six-year review and monitoring program set forth in the Highlands Act and in the RMP was never intended as a means to facilitate changes to the RMP.

RESPONSE: We disagree. The Highlands Act directs the RMP “shall be periodically revised and updated at least once every six years, after public hearings,” (C.13:20-8.a.) The RMP established the RMP Monitoring Program as the principal means to make updates or amendments to policies and programs of the RMP. (See excerpts of the RMP cited in footnote 3 on page 2 of the Procedure.)

27. COMMENT: A commenter stated that “following the conclusion of the public comment period on the RMP-Monitoring Program Recommendation Report (MPRR), the Highlands Council staff should provide its summary and evaluation of the public comments received thereon to the **entire Council**, not merely to the RMP Amendment Committee.” (Emphasis in original.)

RESPONSE: The Council staff will be doing this. The Response to Comments will become an appendix to the final MPRR and provided to all members of the Council.

28. COMMENT: A commenter stated that the RMP Amendment Committee should be required to report to the Council “the language and background of all proffered amendments, not just those that the Committee recommends for action.”

RESPONSE: This is precisely what is intended by Procedure. The Committee’s report and recommendation on proposed amendments will include the language and background of all

proposed amendments, including those which the Committee recommends that the Council take no action on.

29. COMMENT: A commenter stated that the “proposal – to allow ‘anyone’ to draft and submit proposed RMP amendments –would bypass and undermine the professional staff of the Highlands Council. The proposed RMP amendment process would allow private self-interested entities to interpret the Act in their own interest and draft proposed amendments and then lobby the Highlands Council for approval of their own proposals.”

RESPONSE: Allowing members of the public to submit recommendations for proposed RMP amendments will not bypass or undermine the professional planning staff of the Council. To the contrary, the Council’s professional staff will play an important role in vetting all proposed amendments to ensure that they are consistent with the Highlands Act and the goals, policies and objectives of the RMP, and that there is technical data to support the proposed revision.