



State of New Jersey

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Executive Director

HIGHLANDS REGIONAL MASTER PLAN MONITORING PROGRAM LAND OWNER STAKEHOLDER MEETING

DATE: December 10, 2014

TIME: 6:00PM – 7:30PM

LOCATION: Highlands Council
Meeting Room
100 North Road
Chester, NJ

ATTENDEES:

First Name	Last Name	Organization
Wayne	Anderson	Landowner
Joady	Anderson	Landowner
Andy	Drysdale	Landowner
Hank	Klumpp	Landowner
Deborah	Post	Landowner
Sam	Race	Landowner
David	Shope	Landowner
Rick	Sparling	Landowner
Doug	Williams	Landowner
Tom	Williams	Landowner
Jim	Rilee	NJ Highlands Council - Member
Tracy	Carluccio	NJ Highlands Council - Member
Bob	Holtaway	NJ Highlands Council - Member
Rob	Walton	NJ Highlands Council - Member
Michael	Francis	NJ Highlands Council - Member
Margaret	Nordstrom	NJ Highlands Council - Staff
Andy	Davis	NJ Highlands Council - Staff
Chris	Danis	NJ Highlands Council - Staff
Corey	Piasecki	NJ Highlands Council - Staff
Rob	Freudenberg	Regional Plan Association
Janani	Shankaran	Regional Plan Association

HIGHLANDS REGIONAL MASTER PLAN MONITORING PROGRAM



MEETING PURPOSE:

To provide an overview of the Highlands Regional Master Plan Monitoring Program and process; brainstorm topics and data availability for ongoing monitoring; identify potential technical advisory committee members; and discuss next steps.

- 1) Introductions
- 2) Overview of Monitoring Program Process
- 3) Discussion Items:
 - a) Opportunities for improvements to the RMP.
 - b) How can outreach and education from the Highlands Council be improved?
 - c) What RMP topics/information are most appropriate for ongoing monitoring?
 - d) Do you have access to and/or relevant information about data that can be used for the ongoing monitoring of the RMP?
- 4) Identification of Potential TAC Members
- 5) Wrap up/Next Steps

MEETING SUMMARY:

The meeting opened with welcoming remarks by Rob Freudenberg, Director of Energy and Environmental Programs at Regional Plan Association (RPA), the project consultant. Attendees introduced themselves. Mr. Freudenberg gave a short PowerPoint presentation with background on the Highlands Regional Master Plan (RMP) Monitoring Program and process. Key points included:

- The RMP is continually updated as new factual information is made available, but the Monitoring Program evaluates progress toward achieving the goals of the RMP by identifying and measuring indicators and milestones.
- Stakeholder meetings are being conducted now to identify potential indicators and data sources that may not be readily available. Public outreach stakeholder meetings will be held in mid-December and January.
- Two series of technical advisory committee (TAC) meetings will take place, one in winter 2015 and the second after initial research and analysis has been completed.
- The process will result in the Monitoring Program Recommendations Report (MPRR) and a science and research agenda.
- A Fiscal Impact Assessment (FIA) will be conducted concurrently to measure the economic state of the Highlands region as well as provide comparisons to other regions.

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In response to questions about RPA's role in the monitoring program, Mr. Freudenberg conveyed that RPA is an independent consultant in the process and is currently assisting the Highlands Council to reach various groups of stakeholders. Participants then engaged in discussion, facilitated by Mr. Freudenberg, about opportunities for enhanced outreach by the Highlands Council, as well as potential improvements to the Highlands RMP. Mr. Piasecki recorded comments on a whiteboard.

Participants expressed general frustration with the Act and the lack of proper land owner compensation, and conveyed that the state and Council should pay for what was taken. Compensation should have been appropriated before adoption of the Act. Having voiced concerns at numerous Council meetings, one participant suggested that the land owner stakeholder meeting was simply a formality in the monitoring program process. Mr. Freudenberg conveyed that the stakeholder meeting would facilitate an open forum for dialogue and asked participants to withhold judgment until the end.

One participant suggested that the monitoring program have an independent peer reviewer. Further, all documents should be signed and certified by the authors. Another participant conveyed that environmental resource protection has been used as an excuse to devalue private land. If the public deems water and other environmental resources valuable, then land owners should be properly compensated for protecting these resources.

Participants then discussed the importance of transparency. The data that served as a basis for the Highlands Act should be made publicly available. An independent economic analysis on the Highlands region should be conducted. Participants also conveyed that the preservation and planning area boundaries were delineated based on politics rather than science, requesting that a scientific study be conducted to reevaluate the delineation. Further, some suggested that the Council has misled the public about true water deficits. To address this, the Council should conduct an independent study on the Patrick Moffitt reports. One participant suggested that the Council support NJ S355, a bill to suspend the Highlands Act until certain conditions are met.

Speaking to the Council members, participants expressed frustration with the lack of support from members and compared the lack of compensation to robbery. As a result of the Act, land owners are a disenfranchised minority.

One participant circulated an 11-page comment handout, attached and summarized below:

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- RMP improvements included: honest intent, reject blind to the line, promote and protect agritourism, preserve Integra Resources work, revalue the HDC, minimize restrictions in the deed of easement, implement N.J.S.A. 13:8C-39(1)(1), revisit constraints, and embrace the Highlands currency.
- Outreach ideas included: appoint a landowner advocate, provide landowners grant access, exemption allocations, show respect, and intellectual integrity of all analyses.
- Data monitoring suggestions included: disclose the total just compensation need, disclose all Highlands waivers/exemptions issued, track Highlands land sales with intellectual integrity, beware of ratables, and why 2006 and not 2004?
- Finally, in terms of access: stop denying open public record request for Council activities. Embrace transparency.

Participants expressed support for land preservation, provided that there is scientific evidence for such initiatives. In terms of data, one participant described the Gravity Recovery and Climate Experiment (GRACE) at the University of Texas, which may have data on water table levels. Further, there should be a reevaluation of septic density standards.

One participant conveyed that tax stabilization was an original component of land owner compensation within the Act, but was dropped. Land owners should not be required to pay taxes on their devalued property. One land owner described how he is paying taxes on ten acres of residential property that is actually being used as farmland. Other land owners have springs on their properties and should be compensated for contributing to water generation, such as through a water user fee. Families have been protecting Highlands land for generations, and should be justly compensated.

Participants then discussed the Highlands transfer of development rights (TDR) program. Highlands development credits should be paid at proper amounts. Further, development rights should not be sold for credits, but for real money.

One participant expressed that at Council meetings, there is no opportunity for open exchange; landowners feel ignored by Council members and hope for greater acknowledgement.

With regard to the monitoring program, one participant expressed that simply evaluating the RMP would be unsatisfactory. An independent investigation of the Act is required. Participants questioned the economic impact of the Highlands Act and RMP; with lower land value and lower property tax revenue, how can municipalities

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support school budgets? Additionally, a human resources impact study should be conducted.

In terms of opportunities for enhanced outreach, participants explained that water preservation issues are not well understood. Further, members of the public are unaware of the ramifications of the Highlands Act. More education is required, particularly around impacts to land owners.

Participants expressed frustration that new open space funding does not include forested land. Further, under state farmland preservation programs, tree farmers are unable to seek funding for forest preservation.

One participant criticized the political nature of the planning and preservation area boundaries. Lebanon Township is almost entirely in the preservation area, with the exception of six acres. Conveniently, these six acres in the planning area are owned by Toyota.

Regarding opportunities for enhanced outreach, one participant suggested the use of water bills to educate water users outside of the region about Highlands policies and associated implications to land owners. There is a need to make the connection between land preservation within the Highlands and water use outside of the region.

One participant conveyed that despite his land being devalued, he must continue farming it to maintain a farmland assessment. Land owners in the preservation area should not have to pay property taxes on their land. Implications of Highlands preservation area policies extend beyond loss in value; participants have limited leverage/equity when approaching banks for financing.

Mr. Freudenberg then asked participants for data monitoring suggestions. One participant recommended measuring land sales in the preservation area since passage of the Act. Within a land valuation analysis, building improvements (such as a housing renovation) should be subtracted from the total property value to represent the true value of the land. Participants suggested completing a time series analysis that compares present day conditions to conditions in 2000. Further, participants emphasized the need for transparency in the analysis and suggested use of an independent task force.

In response to accusations that Council members alienate land owners, one Council member conveyed that efforts are constantly being made to foster just land owner compensation, though often away from the public eye. One participant thanked the

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Council member for his words of support and suggested that at Council meetings, members make more motions that represent landowner interests.

Participants then requested that the Council establish and adhere to a formal scientific code of conduct. In response, a Council member conveyed that the lack of scientific credibility behind the Act will impact the science behind the monitoring program. The Act was initiated on a scientific basis but like most legislation, became politicized. The Council member also described the various efforts being made to support Highlands land owners. Legislators in Sussex, Warren, and Hunterdon Counties regularly advocate for land owner compensation, and make suggestions to improve the Act. Currently, elected officials are also advocating for a water user fee.

One participant expressed that there should be enhanced outreach to New Jersey residents on the consequences of the Highlands Act. In terms of indicators, the total amount of water supplied from the Highlands should be measured. Participants conveyed that when the Act was written, there was no shortage in water supply.

Participants revisited the comments that Mr. Piasecki wrote on the whiteboard, including:

- Compensation (dedicated source)
- Independent certification of science in the RMP
- Revise Land Use Capability Map to reflect economic reality
- Conduct an independent economic analysis of the impact of the RMP
- Increase transparency
- Conduct a scientific study on the delineation of the preservation area boundary
- Conduct an independent evaluation of studies performed by Patrick Moffit
- Support Senate Bill 355
- Honest intent (RMP CH-6- Add language on compensation)
- Reject Blind to the Line
- Promote / Protect Agritourism
- Preserve Integra Resources work
- Revalue the base price for HDCs (current 50% discount)
- Strip the TDR
- Minimize restrictions on Deeds of Easement
- Implement NJSA 13:8C-39(1)(1)
- Revisit constraints
- Embrace Highlands Currency
- Tax Stabilization
- Re-evaluate property tax classification (Q-Farm classification should no longer be necessary in Highlands Preservation Area)
- Review and apply G.R.A.C.E. Dataset from University of Texas regarding water table levels and quantity

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- Re-evaluate septic density standards
- Implement a Water User Fee
- Conduct an independent evaluation of the Highlands Act
- Conduct a Human Resources Study
- Education on Impact of the Highlands Act
- Preservation dollars for Tree Farms
- (Indicator) Land sales in the Preservation Area- create or obtain database for public consumption
- The Highlands Council should make legislative recommendations for changes to the Highlands Act
- Members of the Highlands Council should make motions for resolutions regarding landowner compensation at Council meetings
- The Council should prepare a formal legislative package regarding the Highlands Act
- Establish a formal code of scientific conduct
- Educate Highlands water users on the impact of the Highlands Act on landowners within the Highlands region
- (Indicator) Total gallons of water consumed from the Highlands Region

As the meeting concluded, Mr. Freudenberg remarked that participants are encouraged to send further feedback on indicators and data via email and through the online comment portal. Participants are also encouraged to identify potential TAC members. The TACs will meet in two series, the first set of meetings in January 2015. Interested stakeholders should send resumes.

Over the next few weeks, Highlands Council staff and the project team will be conducting three public workshops in the three sub-regions of the Highlands. Participants are encouraged to attend.

Next Steps/Action Items

- Participants should submit via email: additional feedback on indicators, additional feedback on data sources, and TAC member suggestions.
- The project team and Highlands Council staff will follow up with individual participants regarding indicators and data sources.

ATTACHMENT

COMMENT POINTS FOR DISCUSSION

RMP Improvements

1. Honest Intent.
2. Reject blind to the line.
3. Promote and protect agritourism.
4. Preserve Integra Resources work.
5. Revalue the HDC.
6. Strip the TDR.
7. Minimize restrictions in the deed of easement.
8. Implement N.J.S.A. 13:8C-39(1)(1).
9. Revisit constraints.
10. Embrace the Highlands currency.

OUTREACH

1. Appoint a Landowner Advocate.
2. Provide landowners grant access.
3. Exemption allocations.
4. Show respect.
5. Intellectual integrity of all analyses.

DATA MONITORING

1. Disclose the total just compensation need.
2. Disclose all Highlands waivers/exemptions issued.
3. Track Highlands land sales with intellectual integrity.
4. Beware of ratables.
5. Why 2006 and not 2004?

ACCESS

1. Stop denying open public record requests for Council activities.
Embrace transparency.

TAC RECOMMENDATIONS

To: Highlands Council
Re: Comments for Impacted Landowner Stakeholder Meeting
From: Deborah Post
Date: December 10, 2014

Per the Council provided agenda for the Impacted Landowner Stakeholder Meeting, the following are my comments:

RMP IMPROVEMENTS

1. Honest intent. The 2008 RMP Chapter 5 on Programs includes a very brief six pages outlining a tdr program. However, Chapter 6 on Plan Implementation is devoid of any mention of just compensation or implementation of any landowner equity program. There was and is no sincere intent to compensate the harmed Highlands property owners. This is a serious problem and represents the factual foundation for the landowners having no trust in the Council.
2. Reject blind to the line. The RMP's "blind to the line" determination of its three Zones violates the clear words and intent of the Highlands Act. The Planning Area is where the legislature intended development to happen and the boundaries of the Planning Area are statutory. The legislature never intended the conformance process to be distorted into turning the entire Highlands region into the Preservation Area. Blind to the line harmed many additional landowners who were not harmed by the Act itself, and has significantly increased the dollar requirement of just compensation unnecessarily.
3. Promote and protect agritourism. The 2008 RMP touts tourism as the economic salvation of the Highlands. Yet agritourism is under attack and the Council does not act.

Last summer the legislature passed a farmland special events bill A837 unanimously, shy only one vote. The SADC, who is adamantly opposed to agritourism, convinced the governor to veto the bill. When the bill was repassed Section 6 which had added "agritourist activities" to those activities protected by right to farm was deleted. If there is to be a prayer for economic growth in the Highlands, landowners must be allowed to operate businesses on the land that actually make money.

The RMP must not only embrace but actively promote and protect all types of businesses, agritourist businesses included, which bring people to the Highlands to enjoy the land. All deed restrictions in the Highlands, including those from constitutionally dedicated monies, must specifically state that agritourism (and ecotourism?) is allowed.

4. Preserve Integra Resources work. Integra Resources work product may be the only competent work product of the 2008 RMP. The HDC allocation formula appears fair and balanced. The municipal average data, while on the lower end of the range, is within a

fair and honest range of lot values prior to the Highlands Act's devastation of property values. Importantly, the municipal average data is as of the time of the Act's regulatory taking, as it should be. The factual foundation of values around the time of the Act's passage does not change, it is an historical fact.

The Council has made a point of embracing the dual appraisal methodology which is laudable in its positive message, however a bit misguided in application. Section 13 h1 clearly states: "The Council shall establish the initial value of the development right considering the DEP rules and regulations the day before the day of enactment of this Act". The 2004 date is permanently embedded in the law in connection with actions of this Council. The dual appraisal methodology was an instruction to agencies other than this Council to recognize the Act's regulatory taking back in 2004 when using constitutionally dedicated monies.

The Integra work product renders the need for appraisals typically moot. Landowners may challenge their HDC allocations based on lost lot determination and constraints. The only time new appraisals should come into play is at a landowner's specific request or for a complex specific situation where Integra's work is not applicable.

Adjustments for the time value of money since the Highlands taking should be by inclusion of a reasonable accrued interest.

5. Revalue the HDC. Section 13 h(1) states "The Council shall set the initial value of the development right." Note the word is value, not price. Price and value are different concepts. Prices are sometimes discounted¹, values are measurements of fact.

The only bona fide factual foundation for the setting of the tdr value is Integra's pre-discounting \$92,000² appraised value. The HDC must be allowed to float free in the marketplace as demand rises and falls. The Council and Bank should play no role whatsoever in price control.

Valuing the HDC at 17% of appraised value has no factual foundation and represents the essence of arbitrary and capricious.

The TDR Technical Report for the 2008 RMP page 35 implies falsely that 50% discounts were used to set prices in the Pinelands and LI Pine Barrens tdr programs. This 50% discount "factual foundation" is not true and represents a gross distortion/misrepresentation of true fact as it relates to setting tdr value.

¹ Initial pricing of capital market securities often includes a slight discount of a few percentage points to encourage market participation. An excessive ipo price discount in the financial world is considered a serious error that unnecessarily harms the issuing entity. Firms that repeatedly err on ipo pricing see their reputation's harmed and business decline.

² TDR Technical Report page 35 with elimination of 30% soft cost discount. While a 30% soft cost for a large tract development may be appropriate, it is too high for an existing roadside lot or two.

6. Strip the TDR. The lion's share of harmed Highlands landowners were the elderly. Those elderly are now ten years older. Many retirement and relocation plans have been put on hold pending the implementation of a bona fide just compensation program which has never happened. Harmed elderly landowners are hostages to the Highlands Act faced with the ransom of walking away from their lost property values or staying where they can no longer manage.

The TDR is a derivative and, as a derivative, should be strippable from its primary asset. Landowners need to be able to sell their property, put their HDCs in their safe deposit box (& will), and get on with their lives.

Properties that have had their tdrs stripped should not be deed restricted if the tdr is still held by the original property owner (or descendants) and has not been monetized or retired. The subject property's deed should note that an easement sale is not allowed and a deed restriction may be applied in the future, if and when the tdrs are monetized or retired. A right of first refusal of the subsequent property owners to repurchase the tdrs might be contemplated as this would enhance property resale values and possibly create an incremental tdr marketplace.

7. Minimize restrictions in the deed of easement. The Council currently has two "draft" deed restrictions which past Council counsel Borden dishonestly represented as "negotiable" with an evil twinkle in his eye. There should be one deed restriction, equal for all, and it should be minimalist. The thought that a harmed landowner in need of just compensation has any power to "negotiate" the deed restriction is both laughable and malicious. Please, put some integrity into the process.

The deed restriction should refer back to restrictions of the Highlands Act itself and nothing more.³ The value being paid to the landowner is only the value of the lost development right. A contract cannot overreach that for which is being paid. The landowner is not being paid one red cent for "resource protection".⁴ Ditto for privacy. The deed restriction must not allow any additional access to private property not otherwise provided by law.

The deed restriction must not deny economically viable businesses that rely on non-development land use including, but not limited to, agritourism.

It is a fool's venture to restrict agriculture. First, we need safe non-imported food. Second, well managed farm fields tended by someone with a strong vested interest in that

³ Attaching a sample deed restriction.

⁴ If highly restrictive deed of easements are desired, a separate program should be instituted that property owners can voluntarily choose to enter with a separate and distinct deed restriction from the HDC. Funding might come from conservation groups.

land's care is the best defense against the most serious cancer faced by the environment, that is invasive species.⁵

The environmentalists approach to invasive species control is to shoot the hapless nurseryman which only sows distrust. A better approach would be to recognize which lands are well cared for and to enable, not punish, those who care for the land. The battle against invasives is extremely expensive, very hard work and, at times, dangerous enough to require suiting up like an ebola worker.

8. Implement N.J.S.A. 13:8C-39(l)(1) The Highlands Act instructed the Council to provide recommendations to the State Agricultural Development Committee concerning farmland preservation strategies and priorities. Such recommendations must include the requirement that the Council's municipal averages be considered in all appraisals pursuant to N.J.S.A. 4:1C-31 for all Highlands Preservation Area properties if the property owner so requests.

Other recommendations might include Council input into Highlands appropriate appraiser choices and consideration of data from the above recommended Council data base. Simply, the Council should be a check and balance on manipulation of appraisal results that seek to underpay already harmed Highland property owners.

The Council is also instructed to provide recommendations to the SADC regarding priority. An area of concern is that the SADC is using scarce funds to preserve Planning Area properties colored yellow and designated "community developable" in the RMP at high prices apparently reflecting the properties special developable designation by the Council.⁶ Farmland preserving properties that are clearly appropriate receiving areas (without receiving area mitigation designations elsewhere) is a serious distortion of intent and misuse of funds.

9. Revisit Constraints. The "factual foundations" of the constraints in the allocator tool should be reviewed and revised. Too many landowners complain that the constraints identified are grossly inaccurate. Also, allocating zero HDCs for constrained land flies in the face of the land equity Committee's stated goal to prioritize sensitive lands.
10. Embrace the Highlands Currency. The HDC is complex and widely misunderstood. The HDC should be presented as the "Highlands currency", simply a unit of measure. The currency is to represent an accurate measurement of value with uniform applicability.

The marketplace for the Highlands currency must be broadened beyond "voluntary" receiving areas which have not happened and are unlikely to happen. Demand must be created from many diverse uses of the currency. Recommendations for marketplace broadening should be the focus of the landowner equity TAC.

⁵ I recently visited Kauai, an island that barred agriculture from its conservation lands. Today those conservation lands have been 100% overtaken by invasive growth with hardly a native flora remaining. Kauai is helpless to fix this problem. It's simply too late.

⁶ For example, Block 6801 Lots 10 in Mt Olive Township, Planning Area and Community Zoned.

OUTREACH/COMMUNICATION

1. Appoint a Landowner Advocate. I receive cold calls from harmed Highlands landowners who have read one of my editorials and are reaching out to a stranger who just might have a grasp of the Highlands Act complexity. They all want help in understanding their own personal Highlands Act mess. I help them the best I can but my own time is limited. Many tell me that I know more about the Highlands Act than anyone else to whom they've spoken.

The truth is that the number of lawyers who truly know the details of the very complex Highlands law can be counted on two hands, and they are very expensive. I cringe when I hear the Council chastise a landowner who has come before them seeking help with the advice "Get a new lawyer".

The Landowner Advocate should not be part of the staff. Simply, no one trusts the staff not to be negotiating from the other side of the table. Like it or not, that's the truth. The Landowner Advocate should be an independent person with both financial and legal knowledge of the Act who is called upon on an "as need" basis when a landowner so requests.

The Landowner Advocate might also play a role in coordination with the SADC for specific Preservation Area applications.

It is my opinion that resolutions exist for the specifics of many properties which, ultimately, would reduce the aggregate dollar amount of just compensation need as well as provide closure to the Highlands Act overhang on property owners' lives.

2. Provide Landowners Grant Access. Provide landowners with access to grant monies, possibly via their municipality, to study their specific property situation and to fund excessive application costs related to Highlands requirements.
3. Exemption Allocations. The tdr allocator tool should be revised to include a footnote regarding the number of additional HDCs that would be allocated if exemptions were foregone. Some landowners are confused regarding their low allocation of HDCs without a clear understanding that the tool considers their exemptions as a substitute for HDCs.
4. Show Respect. Landowners who comment before the Council are not treated respectfully. Landowners are rudely cut off mid-sentence making it clear no one was listening anyway. Council members leave as landowners speak making it clear no one is sincerely interested in the harmed landowners. A landowner who had the floor with time to spare was even arrested for the audacity of objecting to a Council member's description of farmers as dirty polluters. Commenting before the Council is a demeaning and painful experience. Consequently few landowners actually attend insuring no

communication at all. It is as if this is the Council's goal: when there are no landowners left in their face, just compensation is no longer due.

5. Intellectual integrity of all analysis. No junk science and no manipulated valuation data.

DATA/MONITORING

1. Disclose the total just compensation need. In a decade, the Council has failed to calculate and disclose the total dollar amount required to make all harmed landowners whole. An honest and fair disclosure of the total just compensation need is step one in the design of any program sincerely intended to compensate the harmed landowners.
2. Disclose all Highlands waivers/exemptions issued. This data base would greatly assist others. Equal protection of all landowners.
3. Track Highlands land sales with intellectual integrity. A publicly available "comps" data base analyzing all historical sales of open space properties in the Highlands would be useful. The data base should include downloadable supporting documentation and/or links for fact checking.

This data base must remove all non-land components of value (e.g. structures and remaining build rights such as exception areas and exemptions) prior to calculating the value per acre of non-developable open space Highlands land. It is critical that such a data base be prepared with intellectual integrity absent all intent to obfuscate or distort.^{7 8}

4. Beware ratables. An analysis of ratables may be useful in monitoring the Highlands Act impact on municipal financial health.

However, analyses of ratables are not relevant to open space land values and the financial harm inflicted on Highlands landowners. Virtually all Highlands open space is farmland assessed and appears in ratables at the acreage values determined annually by the Farmland Evaluation Advisory Committee. Farmland assessments are statistically invisible in aggregate ratables which largely reflect the value of existing residences (and a smaller component of commercials).

In a conscious campaign of disinformation selected environmental lobbyists⁹ are arguing that because ratables and home prices¹⁰ have recovered, therefore Highlands owners of open space have not been harmed. Beware the fallacious ratables spiel.

⁷ Morris County posts an analysis of preserved properties sold that includes the value of McMansions, existing residences and structures in its "per acre" value resulting in a gross misrepresentation of restricted land values. Appraisers routinely fail to adequately adjust for structures and build rights in their comparable sales analyses in order to provide their government clients' with the low valuations desired.

⁸ Attaching a sample recommended analyses.

⁹ For example, the submissions and writings of George Stafford of the Highlands Coalition.

¹⁰ Home prices would be expected to rise in a market with strong demand but where new supply has been stifled, even absent the current real estate recovery.

5. Why 2006 and not 2004? The Council's direction to consultants is to analyze from 2006 to present. The Highlands Act was passed in 2004 and harm began to leak into the market place a few months earlier. To begin impact analyses in 2006 when the marketplaces were already reflecting what would become a serious downturn biases the analyses to show upward trends. Any honest and fair analysis of the harm to landowners must begin in 2004 when the market was robust.

ACCESS

1. Stop denying open public record requests for Council activities. Transparency of process is critical.

TAC RECOMMENDATIONS

The following recommendations represent solely my personal opinion without the prior review or agreement of the individuals named. Landowners should be represented on the TACs.

Agriculture – Hank Klumpp, Bob Frey
Water Resource Protection – Pat Moffit
Future Land Use – David Shope, Pat Moffit
Economic Development – Jerry Kern, Jack Fera
Water and Wastewater Utilities – David Shope
Implementation – Sam Race
Land Owner Equity – Deborah Post (writer herein)

See Post letter to Chairman Rilee dated September 18 , 2014 with attachment.

ATTACHMENTS

Sample deed restriction.

Sample open space land sale analysis

Plan Implementation Contents

Highlands TDR/HDC

DEED RESTRICTION

THIS DEED RESTRICTION, made and entered into this _____ day of _____, 2002, by ~~D. Jan~~ Black.

WITNESSETH

WHEREAS, D. Jan Black ("Owner") is the fee simple owner of that certain real property in Pitkin County, ^{N.J.} Colorado, that is more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "Property"); and

WHEREAS, contemporaneously with the execution of this Deed Restriction, Pitkin County is executing and delivering to the Owner one separate Irrevocable Certificate of Transferable Development Rights, bearing Certificate No. _____, evidencing the permanent severance from the Property of all development rights; and

WHEREAS, the Owner has represented that no development or improvements currently exist on the property; and

WHEREAS, in exchange for the issuance of said Certificate by Pitkin County, the Owner is prepared to deed restrict the Property against any future development.

NOW, THEREFORE, for and in consideration of the issuance to D. Jan Black of TDR Certificate No. _____, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Owner agrees as follows:

- Deed Restriction of Property.** D. Jan Black hereby permanently restricts the Property against any future development, as the term development is defined in the ~~Pitkin County Land Use Code~~ ^{the Highlands Act} ~~the Highlands Act~~ ^{N.J.S.A. 13:20 -}
- Covenants Running With The Land; Binding Effect.** The provisions of this Deed Restriction shall constitute covenants that run with the title to the Property for the benefit of Pitkin County, ^{Colorado} its successors and assigns and shall be deemed an appurtenance to the title to such lands. ^{N.S.}

IN WITNESS WHEREOF, D. Jan Black has executed this Deed Restriction as of the day and year first above written.

^{New Jersey}
STATE OF COLORADO)
COUNTY OF PITKIN _____) ss.

The foregoing Instrument was acknowledged before me this _____ day of _____, 2002, by D. Jan Black.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ACCEPTED BY ~~PITKIN~~ COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Title: _____

Mark-up of actual deed restriction used
in Pitkin City CO's TDR program.

Summary of Recent Sales of the farmland preserved Scott Farms for agricultural purposes

	<u>Scott Farm I</u>	<u>Scott Farm II</u>
Buyer	Promised Land LLC	Wild Boar Cider LLC
Sales Price (JA617, JA626)	\$ 2,525,000	\$ 2,750,000
Sales Date (JA617, JA626)	Nov 14, 2011	Dec 28, 2011
Washington Township Block 34, Lots: (JA617, JA626)	41,42,45,&46.02	13,28,29,43,44, 46,&46.01
Exception Area	13.634 acres ¹ Right to build future residence	50.008 acres ² municipal bypass; residential rights
Exception Area	2.146 acres ³ Access easement	2.812 acres ⁴ 2 existing residences
Preserved Farmland	332.22 acres ⁵	339.18 acres ⁶
<u>Components of Value:</u>		
Preserved land	\$1,746,400	\$ 952,400
Exception area	300,000 ⁷	128,000 ⁸
Exception area	0 ⁹	160,000 ¹⁰
Existing Structure	478,600 ¹¹	214,800 ¹²
Existing Structure		1,109,400 ¹³
Cell Tower		185,400 ¹⁴
Total Purchase Value:	<u>2,525,000</u>	<u>2,750,000</u>
<u>Preserved Farmland Acreage:</u>	\$5,257 per acre	\$2,808 per acre

¹ Residential exclusion area #4 per deed of easement dated 10/7/96.

² Residential exclusion area #1 per deed of easement dated 12/3/97.

³ Exclusion area #5 (20' wide access easement) per deed of easement dated 10/7/96.

⁴ Residential exclusion area #2 per Deed of easement dated 12/3/97.

⁵ 348 acres per broker, Max Spann Real Estate Company, adjusted for 15.7 acre exception areas.

⁶ 392 acres per broker, Max Spann Real Estate Company, adjusted for 52.8 acre exception areas.

⁷ Value range of a large buildable lot in Wash Twnshp: \$300,000 to \$500,000. Conservatively assume lower range end.

⁸ Estimate based on tax assessed value per tax records; lot 44.

⁹ Diminimus value of unpreserved access acreage, conservatively assume zero.

¹⁰ Estimate based on tax assessed value per tax records; lot 46.

¹¹ Estimate based on tax assessed value per tax records; lot 42.

¹² Estimate based on tax assessed value per tax records; lot 44.

¹³ Estimate based on tax assessed value per tax records, lot 46.

¹⁴ Estimate based on tax assessed value per tax records, lot 46.01.

Larison Road, Chester Township, a 203 acre farm less than a mile from the subject property, Larison Road sold for a sale price of \$3,240,000 on September 1, 2003. Of the total 202.8 acres, 190.4 were encumbered with an SADC development easement and 12.4 acres were unrestricted severable lots and a 4 acre exception area. The sale included five separate lots (of which only two had been farmland preserved) with three residences, agricultural buildings and a four acre severable exception area with the right to build an *exceptionally large* residence.

In order to determine the sale price of land only, the separate unpreserved lots, the existing improvements and the build right value of the 4 acre exception area allowing the construction of a 19,000 sq ft home, must be removed from the gross sale price of \$3.24 million.

Gross Sale Price	\$3,240,000
Remove lots (with residences) not farmland preserved:	
Block 46, Lot 19.01: Reval'd at \$530,700 ¹	
-20% market adjustment for 2003	-425,000
Block 46, Lot 19.02: Reval'd at \$886,500 ²	
-20% market adjustment for 2003	
-25% for non-severability	-532,000
Block 46, Lot 19.03: Reval'd at \$483,300 ³	
-20% market adjustment for 2003	-387,000
Adjust for structures/improvements:	
Block 46, Lot 19: Reval'd at \$42,300 ⁴	- 34,000
Block 40, Lot 14: None	
Adjust for 4 acre exception area for buildable lot ⁵ :	
With right to build 19,000 sq ft residence:	-750,000
	<hr/>
Sale Price – Land Only, market adjusted	1,112,000
Sale Price based on 190 eased acres	\$5,853 / acre

¹ See Tax records.

² See Tax records.

³ See Tax records.

⁴ See Tax records.

⁵ Despite the deed restriction allowing the construction of a 10,000 sq ft home, a 19,000+ sq ft home was in fact built on Block 40 Lot 14 as the buyer knew that Chester Township, also the seller, would allow the construction of a residence 9,000 sq ft larger than the deed restriction, adding significant value to the build right.