



NEW JERSEY HIGHLANDS COALITION
508 Main Street • Boonton, New Jersey 07005 • 973.588.7190

August 27, 2009

Lucy Vandenberg
Executive Director
New Jersey Council on Affordable Housing
P.O. Box 813
Trenton, NJ 08625-0813

**Re: Motion to Stay COAH's August 12, 2009 Action Involving the Highlands
COAH Docket #09-2151**

Dear Ms Vandenberg:

Please accept the following comments, in lieu of a cross motion, in opposition to the Fair Share Housing Center's (FSHC) August 19, 2009 motion to stay the Council on Affordable Housing's (COAH) August 12, 2009 adoption of "Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan" and August 12, 2009 Resolution for Extending Deadlines for the Highlands municipalities.

FSHC claims that decisions made by COAH on August 12, 2009 relating to the [New Jersey] Highlands Region were not in conformance with the rulemaking procedures of the Administrative Procedures Act N.J.S.A. 52:14B-1 to -25, thus violating the public's right to participate in agency rulemaking. A member of our staff attended the August 12, 2009 COAH public meeting and provided oral comments on behalf of the New Jersey Highlands Coalition in support of the proposed resolutions regarding the Highlands Region. We have no evidence to suggest that his comments were not duly considered by the COAH Board before it moved on the resolutions.

However, COAH's Third Round Procedural Rules at N.J.A.C. 5:96-15.2 provide COAH with the authority to waive "specific provisions of its rules". The resolution to adopt "Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan" is a waiver, though broad in scope and with respect to a regional plan and a regional planning authority. The New Jersey Fair Housing Act (N.J.S.A. 52:27D-329.9) recognizes the special role and the jurisdiction of regional planning entities, including the Highlands Water Protection and Planning Council (Highlands Council), in determining region-wide growth and affordable housing needs, that may differ from statewide mandated goals.

FSHC attempts to make a case that "irreparable harm will result...if a stay is not executed" because of the resulting "loss of faith in government". In fact, COAH's August 12, 2009 resolutions were a good faith and laudable effort to recapture faith in government. Citizens, municipalities and counties in the Highlands region were reeling from the conflicting mandates of COAH and the Highlands

Council—and were instead much calmed, if not encouraged, by the August 12, 2009 framework to move forward.

FSHC characterizes the August 12, 2009 deadline extension (until June 2010 to fully conforming Highlands municipalities) as “unnecessary” and that the “Highlands Council is taking over the review of fair share plans” because “immediately after the [August 12] meeting [Highlands Council Executive Director Eileen Swan] wrote to Highlands mayors to advise them that their [fair share] plans must be submitted to the Highlands Council in December, 2009.” FSHC claims Ms Swan “contradicted COAH’s resolution.”

The Highlands Water Protection and Planning Act of 2004 (Highlands Act) *requires* conformance of a municipality’s Preservation Area within 15 months of adoption of the Highlands Regional Master Plan (P.L. 2004 Ch. 120, C.13:20-14). The Plan was adopted in September, 2008, making December, 2009 an immutable date for mandatory conformance. COAH had previously granted a 12 month extension for the filing Third Round Fair Share Plans to municipalities that filed a notice of intent to conform to the Regional Master Plan in order that conformance and Fair Share planning could be synchronized (it should be noted that FSHC was unsuccessful in their challenge to this deadline extension). However, it soon became clear that the 74 municipalities that had filed notices of intent to conform both their Planning and Preservation Areas with the Highlands Council and file Fair Share Plans with COAH were creating a strain upon their own municipal resources as well as those of the Highlands Council, that the further extension granted by COAH provided much needed relief. For the Preservation Area, however, the December, 2009 conformance deadline remains in effect. The extension until June 2010, granted by COAH for filing Fair Share Plans allowed the Highlands Council to require conforming municipalities to file only “draft” Fair Share Plans rather than “final” Plans by December, 2009. This was what was communicated to Highlands mayors by Highlands Council Executive Director Eileen Swan. Under the circumstances, COAH’s cooperative action and Ms Swan’s communication to the mayors make perfect sense, was not a contradiction of COAH’s resolution and provided confidence to New Jersey citizens that state agencies can work together towards achieving common goals.

In granting the June 2010 extension to file Fair Share Plans, municipalities are provided with the time to work more effectively with COAH and the Highlands Council and to make more thoughtful planning decisions that will affect their communities well into the future.

The accusation that the Highlands Council is using “the exclusion of the poor and the reductions of Mount Laurel obligations as carrots to entice municipal conformance” reveals a lack of regard for the overall societal benefits achieved by regional planning. If municipalities were eager to meet their obligations for affordable housing, Mt. Laurel would not have been necessary and threats of builder’s remedy lawsuits would not have been needed to stir them into compliance. Conformance to the Highlands Regional Master Plan does not relieve a municipality of its prior obligations and all future development requires meeting COAH mandated growth and employment shares. Since conformance of a municipality’s Planning Area is optional, it will take “carrots”, not a cudgel to get them to the table. If full conformance is achieved in the Highlands, a water supply that half of New Jersey relies upon will be saved; significant features of our cultural heritage will be preserved; lasting and sustainable development will be built; and affordable housing needs will be met as a component of an enduring landscape.

COAH’s actions concerning the Highlands on August 12, 2009 were made in good faith and within its jurisdiction and authority. To stay defensible and unanimously passed resolutions that indicate

an agency's ability to meet a variety of socially beneficial goals, at the appeal of a singularly focused interest group, would undermine a renewed confidence in our state agencies that COAH's actions have generated.

Respectfully submitted,



Julia Somers
Executive Director
New Jersey Highlands Coalition

And on behalf of:

Association of New Jersey Environmental Commissions (ANJEC)
Sandy Batty, Executive Director

Burnham Park Association
Dr. Lynn Siebert, President

Citizens to Save Tewksbury
Basil Hone, Director

Hon. Sally Dudley

Friends of Holland Highlands
Michael Keady

Sierra Club, New Jersey Chapter
Jeff Tittel, Director

Trout Unlimited, New Jersey State Council
Rick Ege, Regional Vice President

Preserve Historic Hackettstown
Lynn Haberkern, Chairperson

cc: Carl Bisgaier, Esq.
Donna T. Urban, Esq.
Stephen Eisdorfer, Esq.
Henry Kent-Smith, Esq.
Guliet Hirsch, Esq.
Dean Gaver, Esq.
Walter Wilson, Esq.
Barbara L. Conklin, DAG

Eileen Swan, Executive Director, NJ Highlands Council