



FOR DISCUSSION AND ILLUSTRATIVE PURPOSES ONLY



Highlands Water Protection and Planning Council

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October 18, 2005

SECOND ROUND OF THE HIGHLANDS PARTNERSHIP **Update of the development of the Regional Master Plan**

In accordance with the Highlands Water Protection and Planning Act (“Highlands Act”), the Highlands Council created an advisory process for elected and appointed representatives of Highlands communities, the “Partnership”, to provide input into the crafting of the Regional Master Plan (“RMP”).

The first set of regional Partnership meetings was conducted on May 16th, May 23rd, and May 24th, 2005. This first step in plan development included the solicitation of public input into the scope, impact, and range of the RMP. The Highlands Council prepared a Partnership Report (see <http://www.highlands.state.nj.us/OutReach.html>) to discuss the major issues raised by local Partnership representatives.

The following abstract and analysis on the present status of the RMP has been prepared for distribution at the second set of Partnership meetings on October 18th, October 19th, and October 20th. The Highlands Council seeks the input from municipalities and counties in the Highlands Region, as well as input from the public, on these important issues that follow as the RMP continues to be developed.

Mandatory and Voluntary Conformance with the Regional Master Plan

The Highlands Act creates a bifurcated system for conformance with the RMP. The Act requires mandatory conformance (“Plan Conformance”) for each municipality and county located wholly or partially in the Preservation Area. For these municipalities and counties, the Plan Conformance process requires the submission of revised master plans and land use ordinances as applicable to land in the Preservation Area.

In contrast, the Act creates a voluntary Plan Conformance mechanism for municipalities and counties with lands in the Planning Area where they have the option to submit a Plan Conformance petition to the Highlands Council. Plan Conformance will occur after the Highlands Council adopts the RMP in June of 2006 and the Highlands Council will be providing funding assistance, via grants to municipalities and counties, to bring local master plans and land use ordinances into conformance with the RMP.¹

¹ In addition to grant funds, the Highlands Act provides numerous benefits and incentives which are available to municipalities and counties that conform to the RMP. One of the most important incentives is the legal shield where master plans and development regulations which have been “approved by the council to be in conformance with the regional master plan . . . shall be entitled to a strong presumption of validity.” N.J.S.A. 13:20-22. In addition, “[i]n any cause of action filed against such a local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to the “Municipal Land Use Law,” . . . the “State Uniform Construction Code Act,” . . . or this act, the court shall give extraordinary deference to the local government unit.” N.J.S.A. 13:20-22. In addition, The Highlands Act specifies that any municipal master plan and development regulations or county master plan and associated regulations that have been approved by the Highlands Council during Plan Conformance shall be deemed the equivalent of having those plans endorsed by the State Planning Commission.

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Plan Conformance requires that municipalities and counties submit to the Highlands Council any revisions to their municipal master plan and land use ordinances or county master plan and associated regulations that may be necessary to bring them into conformance with the goals, requirements, and provisions of the RMP. Given this, one of the important policy issues under discussion by the Highlands Council is the distinction between those standards in the RMP that are necessarily required during Plan Conformance and those that are left to the discretion of the municipality or county.

Required and Discretionary Standards in the Regional Master Plan

The policy issue of which standards in the RMP are required during Plan Conformance is difficult to resolve at this stage because the Highlands Council is still in the middle of plan development. However, the Highlands Council is soliciting input on these issues in order to frame the types of standards in the RMP which will be necessary requirements during Plan Conformance.

The Highlands Council is considering establishing two categories of standards in its RMP. One category would be those standards which must be incorporated into conforming master plans and land use ordinances (“required standards”). The second category would be standards that are not necessary for conformance with the RMP and thus would be left to the discretion of the municipality or county (“discretionary standards”).

The Highlands Council envisions that the required standards would include those standards that are necessary for the protection of critical resources identified in the Highlands Act and the RMP’s resource assessment. Examples of possible discretionary standards, on the other hand, include the adoption of voluntary TDR receiving zone ordinances, higher densities to support transit villages or centers designated in the State Plan, tools for maximizing intensity of development with unit density, floor area ratios, set backs, lot coverage and height, or adaptive re-use standards.

Simply put, the required standards would be those necessary for environmental resource protection and the discretionary standards would be all or most of those addressing growth issues relating to receiving areas, redevelopment areas, or other development areas which are not significantly constrained.

Envisioning the Regional Master Plan

In order to further discuss the implementation of the RMP, it is important to describe the anticipated design of the plan. The primary component of the RMP will be a resource assessment which will be designed to protect the quality and quantity of the waters of the Highlands, environmentally sensitive lands, lands needed for recreation and conservation, farmland, and historic and cultural resources.² The Highlands Council has repeatedly declared that its planning for the Highlands Region will be blind to the line

² The Highlands Act creates a master planning process that prioritizes the protection and enhancement of the natural resources in the Highlands Region. N.J.S.A. 13:20-10. The RMP must first conduct a resource assessment in order to establish the extent and intensity of land use controls that are necessary to maintain the ecological values of the Highlands Region. N.J.S.A. 13:20-11. This resource assessment will “determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain.” N.J.S.A. 13:20-11. Based on this resource assessment, the RMP must then address a smart growth component which assesses the “opportunities for appropriate development, redevelopment, and economic growth” and includes a land use capability map identifying areas for protection, development, and redevelopment. N.J.S.A. 13:20-11.

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between the Preservation Area and the Planning Area. In other words, the RMP will be guided by the results of the resource assessment. As a result, there may be areas in the Planning Area that require equivalent protection as that provided in the Preservation Area. There also may be areas in the Preservation Area that are appropriate for some types of development or redevelopment.

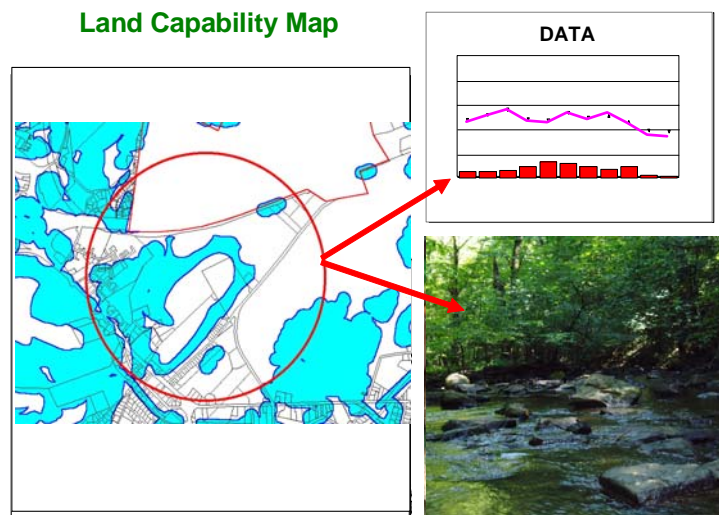
The RMP will include a land use capability map, see the example below, which will encompass both the Preservation Area and the Planning Area. The Highlands Act requires that the Preservation Area requirements be based both on the environmental standards adopted by the New Jersey Department of Environmental Protection (“NJDEP”) and the resource assessment prepared by the Highlands Council. Because the NJDEP’s Highlands standards are not applicable in the Planning Area, the RMP’s land use capability map for the Planning Area will be based solely on the standards developed by the Highlands Council through the resource assessment.

There is a widely held misconception that the Highlands Council will develop a land use capability map for the Planning Area simply by extending NJDEP’s Highlands standards for the Preservation Area into the Planning Area. This is simply not the case because NJDEP’s standards only apply in the Preservation Area. The science inherent in NJDEP’s standards will certainly be considered in the analysis; however, it is likely that various gradations and levels of protection will be adopted based on the resource assessment conducted in the Planning Area. Accordingly, Plan Conformance for a municipality in the Planning Area does not mean that NJDEP’s rules are simply incorporated in the local land use ordinance.

The land capability map will serve as a tool for mapping of the results of the resource assessment and will be used to create zoning overlay districts for use in Plan Conformance. A zoning overlay district, see below for an example of a water resource district, would then have specific ordinance provisions associated with that particular zone. This technique is presently used by municipalities where specific planning areas, such as historic districts or steep slope areas, are mapped in the zoning ordinance and specific standards relating to any development in these areas are included in the land use ordinance.

Examples of Required and Discretionary Standards

The following discussion provides examples of the categories of standards in the RMP under consideration by the Highlands Council.

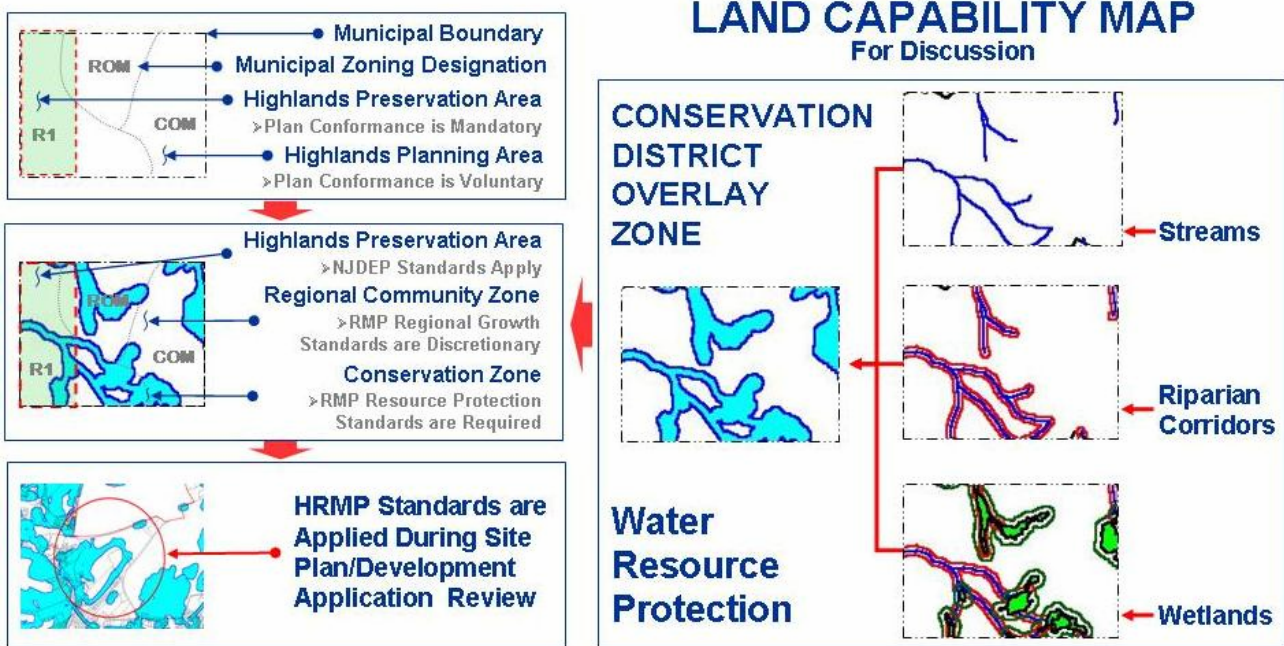


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Required Standards

The required standards will be identified based upon the results of the resource assessment and the identification of the critical environmental areas in the Highlands Region. As examples, the Highlands Council will likely require the revision of zoning and land use ordinances for the protection of the following resources: surface and ground water quality and supply, stream and riparian corridors, carbonate geological formations, wellhead protection and aquifer recharge areas, septic/wastewater management areas, contiguous woodlands and forests area, steep slope and ridgeline areas, areas with critical habitat for rare, threatened or endangered animals and plants, prime agricultural areas, historic resource areas, and open space areas.

It is important to emphasize that the approach under consideration would include required standards for resource protection even in areas considered appropriate for development, and that these required standards would vary depending on the relative quality of the underlying resources and the degree to which they contribute to the Highlands Region as a whole. In other words, development might be deemed suitable for a specified area but only if it met conditions that would be articulated in the RMP.



Discretionary Standards

It is envisioned that the RMP will also include standards that would not be required under Plan Conformance, but that a municipality or county might choose to address. The clearest example of a possible discretionary standard is the adoption of voluntary TDR receiving zone ordinances which is specifically identified in the Highlands Act as a voluntary tool for local planning. There has been some public misconception that the Highlands Act mandates growth in the Planning Area. However, the Highlands Act does not mandate growth and only requires the Highlands Council to identify areas within the Planning Area that are appropriate for development as voluntary receiving zones for a transfer of development rights program. Accordingly, a

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municipality with land in the Planning Area could choose to come into compliance with the RMP and then, in a separate deliberation and action, decide whether or not it wanted to adopt a transfer of development ordinance to implement this voluntary receiving zone.

Plan Conformance Process

The Highlands Council has also been discussing the policy questions surrounding the process for Plan Conformance itself. The Council recognizes that the development of the RMP will likely result in the exposure of conflicts between the RMP and local plans for future development and is discussing whether it should provide a procedure in the RMP whereby a municipality or county could seek relief from the strict application of specific required standards in the RMP. Examples of when such a procedure might be invoked would be where new information, not available when the RMP was adopted, was made known by the Council, where vested rights were previously secured, where affordable housing projects had been previously approved by a municipality or ordered by a court, or where a municipality or county has other data it wants to present to the Council to support an argument that the application of specific policies in the RMP is not appropriate for part of its jurisdiction.

Lastly, the Highlands Council is seeking input on the procedural framework it should adopt for working with municipalities and counties to bring them into conformance with the RMP to assure processes with meaningful public involvement and full public visibility.

Conclusion and request for input

The Highlands Council seeks input on the issues discussed above and any other related issues triggered by this abstract. In summary form, the Highlands Council seeks input on the following questions:

- Does the proposed use of “required” and “discretionary” standards provide an appropriate and adequate framework for the discussion of the continued development of the RMP?
- What other approaches or modifications to the proposed approach can provide a mechanism to discuss standards in the RMP?
- What suggestions do you have for the types of standards that should be required?
- What suggestions do you have for the types of standards that should be discretionary?
- What approaches or modifications to the proposed approach can provide an appropriate mechanism to resolve conflicts in the Plan Conformance process?
- What processes should the Council adopt to ensure meaningful public outreach and involvement in its review and consideration of municipal and county plans and ordinances to determine their conformance with the Highlands RMP?