

I. THE HIGHLANDS WATER PROTECTION AND PLANNING ACT

Through passage of the Highlands Water Protection and Planning Act (Highlands Act, P.L. 2004, c. 120), the New Jersey Highlands Water Protection and Planning Council (Highlands Council) was charged with the important task of developing a Regional Master Plan to restore and enhance the significant values of the abundant and critical resources of the Highlands Region. The Act establishes a fundamental goal to protect, restore and enhance water quality and water quantity in the Region and also includes important goals relating to the protection of agricultural viability, ecosystems, species and communities, as well as scenic and historic resources.

In the face of the growing challenge of protecting New Jersey's finite drinking water supply and providing for the needs of a growing human population, the continued loss and fragmentation of the remaining lands that serve as the source of that water supply is no longer tenable. Accordingly, a major purpose of the Regional Master Plan is to



Upland Pond, Highlands Region

“determine the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain.” (Highlands Act at Section 11.a.(1)(a) (hereafter “Section”). The Regional Master Plan provides the basis to determine the capacity of the Highlands Region to accommodate appropriate economic growth while ensuring the sustainability of the resources in the Region.

The Regional Master Plan seeks to evaluate how best to protect the natural and cultural resources of the Highlands Region while striving to accommodate a sustainable economy – the core of smart growth principles. The Regional Master Plan establishes the capacity limitations for future growth within the Highlands Region related to both natural systems, such as protection of our drinking water supplies, and the built environment, such as wastewater and transportation infrastructure. The Regional Master Plan evaluates the costs, and often unintentional consequences, of local land use

planning decisions, assesses the environmental and economic benefits of natural resource and open space protection, particularly as they relate to water supply, and further develops the tools and methods necessary to institute growth control measures, where necessary, to safeguard critical natural resources.

In order to integrate the environmental, social and economic goals of the Highlands Act, the Regional Master Plan provides a consistent framework upon which to base future land use decisions in a manner that fosters regional cooperation and community participation. It promotes a regional perspective while encouraging community-based planning that is both scientifically defensible and necessary.

The Regional Master Plan embodies a regional vision for the Highlands Region and will be implemented at all levels of government. Through conformance by municipalities and counties, financial and technical assistance by the Highlands Council, and State and Federal coordination, the Regional Master Plan will provide for the protection and preservation of significant values of the Highlands Region to the betterment of the residents of the State of New Jersey.

The Highlands Act, enacted on August 10, 2004, includes findings of the Legislature “that the New Jersey Highlands is an essential source of drinking water . . . for one-half of the State’s population, . . . that . . . [it] contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, [and that it] includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State.” (Section 2).

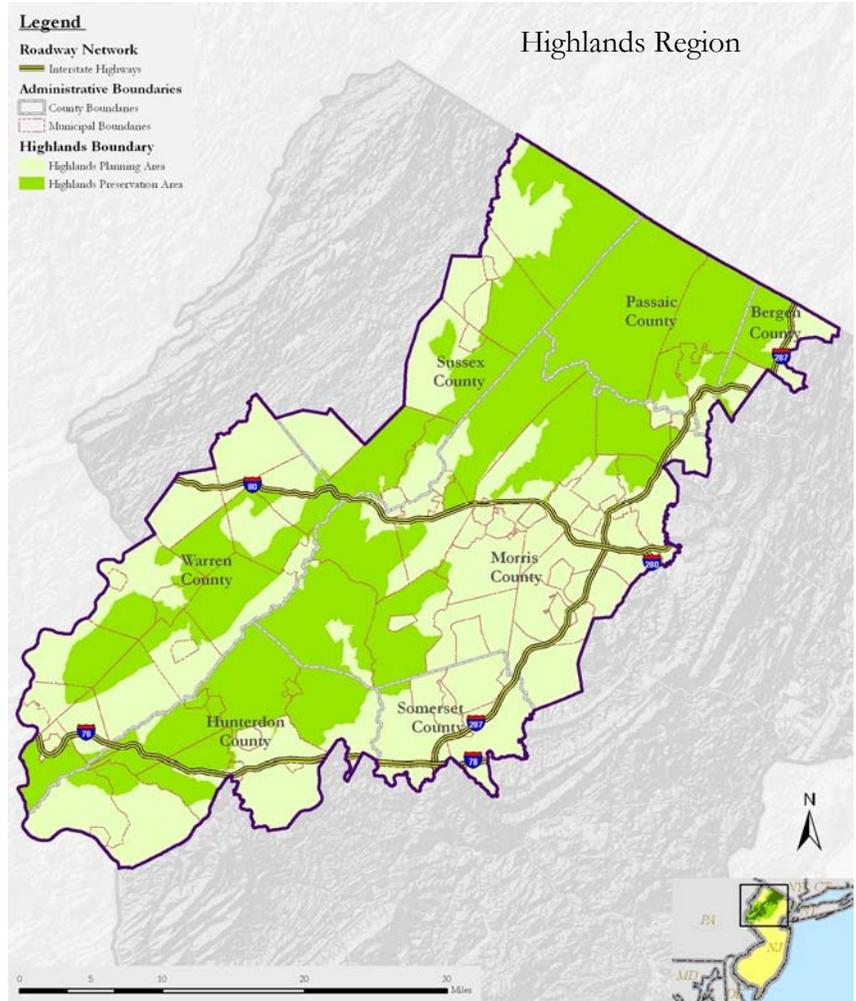
The Legislature also recognized that the resources of the Highlands Region are a vital part of the public trust. It declared that the measures of the Highlands Act “should be guided, in heart, mind, and spirit, by an abiding and

generously given commitment to protecting the incomparable water resources and natural beauty of the New Jersey Highlands so as to preserve them intact, in trust, forever for the pleasure, enjoyment, and use of future generations.” (Section 2). The Highlands Act protects the Region’s public trust resources through a “comprehensive approach” including the immediate imposition of stringent water and natural resource standards in the Preservation Area, a reorganization of land use powers to emphasize regional planning for the entire Highlands Region, and a “strong and significant commitment of the State to fund the acquisition of exceptional natural resource value lands.” (Section 2).

A. THE NEW JERSEY HIGHLANDS REGION

The New Jersey Highlands Region (Highlands Region) includes 859,358 acres comprised of two areas, the Preservation Area and the Planning Area (See figure *Highlands Region*). It is located in the northwest part of the State encompassing eighty-eight municipalities in the seven Highlands counties (Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren). The Highlands Region is noted for its scenic beauty and environmental significance and stretches from Phillipsburg, Warren County in the southwest to Mahwah, Bergen County in the northeast.

In the Highlands Act, the Legislature designated specific boundaries of the Preservation Area and found that “because of the imminent peril that the ongoing rush of development poses for the New Jersey Highlands, immediate, interim standards should be imposed on the date of enactment in the Preservation Area.” (Section 2). The lands within the Preservation Area were subject to the immediately effective standards in the Highlands Act and are governed by rules and regulations subsequently adopted by the New Jersey Department of Environmental Protection (NJDEP). The Preservation Area consists of nearly 415,000 acres located in fifty-two municipalities within the seven Highlands Counties.



The Planning Area was not subject to the immediately effective standards; however, the Act requires the Highlands Council to analyze the protection needs of the Planning Area through the preparation of a Regional Master Plan for the entire Highlands Region, including both the Preservation Area and the Planning Area. A fundamental distinction between the Preservation Area and the Planning Area is that municipal and county conformance with the Regional Master Plan is required in the Preservation Area and is voluntary in the Planning Area.

The Planning Area consists of nearly 445,000 acres located in eighty-three municipalities. There are five municipalities that lie entirely within the Preservation Area, 47 municipalities that have land in both the Preservation and Planning Areas and 36 municipalities that have land only in the Planning Area (See table *Acreage Of The Highlands Region In Municipalities And Counties*).

The municipalities that make up the New Jersey Highlands Region are as follows:

- **Bergen County**: Mahwah and Oakland;
- **Hunterdon County**: Alexandria, Bethlehem, Bloomsbury, Califon, Clinton Town, Clinton Township, Glen Gardner, Hampton, High Bridge, Holland, Lebanon Borough, Lebanon Township, Milford, Tewksbury, and Union;
- **Morris County**: Boonton Town, Boonton Township, Butler, Chester Borough, Chester Township, Denville, Dover, Hanover, Harding, Jefferson, Kinnelon, Mendham Borough, Mendham Township, Mine Hill, Montville, Morris Plains, Morris Township, Morristown, Mount Arlington, Mount Olive, Mountain Lakes, Netcong, Parsippany-Troy Hills, Pequannock, Randolph, Riverdale, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens, Washington, and Wharton;
- **Passaic County**: Bloomingdale, Pompton Lakes, Ringwood, Wanaque, and West Milford;
- **Somerset County**: Bedminster, Bernards, Bernardsville, Far Hills, and Peapack-Gladstone;
- **Sussex County**: Byram, Franklin, Green, Hamburg, Hardyston, Hopatcong, Ogdensburg, Sparta, Stanhope, and Vernon; and
- **Warren County**: Allamuchy, Alpha, Belvidere, Franklin, Frelinghuysen, Greenwich, Hackettstown, Harmony, Hope, Independence, Liberty, Lopatcong, Mansfield, Oxford, Phillipsburg, Pohatcong, Washington Borough, Washington Township, and White.

ACREAGE OF THE HIGHLANDS REGION IN MUNICIPALITIES AND COUNTIES

MUNICIPALITY	PLANNING AREA	PRESERVATION AREA	TOTAL
Bergen County			
Mahwah Township	7,082	9,687	16,769
Oakland Borough	3,007	2,622	5,629
Total Acres For Bergen County	10,088	12,309	22,398
Hunterdon County			
Alexandria Township	15,039	2,719	17,758
Bethlehem Township	1,137	12,173	13,310
Bloomsbury Borough	0	625	625
Califon Borough	0	632	632
Clinton Town	781	141	922
Clinton Township	21,054	639	21,693
Glen Gardner Borough	0	998	998
Hampton Borough	134	823	957
High Bridge Borough	1,558	0	1,558
Holland Township	13,361	1,961	15,322
Lebanon Borough	577	0	577
Lebanon Township	7	20,257	20,264
Milford Borough	812	0	812
Tewksbury Township	6,860	13,475	20,335
Union Township	2,665	10,482	13,146
Total Acres For Hunterdon County	63,984	64,924	128,909

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MUNICIPALITY	PLANNING AREA	PRESERVATION AREA	TOTAL
Morris County			
Boonton Town	1,593	0	1,593
Boonton Township	4,934	493	5,427
Butler Borough	1,318	0	1,318
Chester Borough	1,019	0	1,019
Chester Township	2,904	15,790	18,694
Denville Township	8,155	0	8,155
Dover Town	1,746	0	1,746
Hanover Township	6,878	0	6,878
Harding Township	13,162	0	13,162
Jefferson Township	3,297	24,033	27,331
Kinnelon Borough	340	11,954	12,295
Mendham Borough	3,827	0	3,827
Mendham Township	11,534	0	11,534
Mine Hill Township	1,927	0	1,927
Montville Township	8,793	3,440	12,233
Morris Township	10,120	0	10,120
Morris Plains Borough	1,657	0	1,657
Morristown Town	1,923	0	1,923
Mountain Lakes Borough	1,861	0	1,861
Mount Arlington Borough	1,651	132	1,783
Mount Olive Township	4,131	15,865	19,996
Netcong Borough	564	0	564
Parsippany-Troy Hills Township	16,216	0	16,216
Pequannock Township	4,060	475	4,535
Randolph Township	12,954	583	13,537
Riverdale Borough	1,319	0	1,319
Rockaway Borough	1,357	0	1,357
Rockaway Township	11,582	17,830	29,412
Roxbury Township	9,719	4,301	14,021
Victory Gardens Borough	93	0	93
Washington Township	3,490	25,227	28,717
Wharton Borough	1,362	0	1,362
Total Acres For Morris County	155,487	120,124	275,611
Passaic County			
Bloomington Borough	1,764	4,179	5,944
Pompton Lakes Borough	2,005	0	2,005
Ringwood Borough	0	18,068	18,068
Wanaque Borough	1,294	4,641	5,935
West Milford Township	0	51,901	51,901
Total Acres For Passaic County	5,063	78,789	83,853
Somerset County			
Bedminster Township	15,873	1,011	16,884
Bernards Township	15,636	0	15,636
Bernardsville Borough	8,265	0	8,265
Far Hills Borough	3,150	0	3,150
Peapack Gladstone Borough	3,693	0	3,693
Total Acres For Somerset County	46,617	1,011	47,628

MUNICIPALITY	PLANNING AREA	PRESERVATION AREA	TOTAL
Sussex County			
Byram Township	233	14,272	14,505
Franklin Borough	2,843	0	2,843
Green Township	10,198	281	10,478
Hamburg Borough	753	0	753
Hardyston Township	8,254	12,557	20,811
Hopatcong Borough	5,346	2,607	7,953
Ogdensburg Borough	1,232	199	1,431
Sparta Township	13,359	11,538	24,896
Stanhope Borough	1,399	5	1,404
Vernon Township	15,470	29,319	44,789
Total Acres For Sussex County	59,087	70,778	129,864
Warren County			
Allamuchy Township	7,683	5,228	12,911
Alpha Borough	1,098	0	1,098
Belvidere Town	950	0	950
Franklin Township	11,284	3,792	15,077
Frelinghuysen Township	15,278	0	15,278
Greenwich Township	5,986	792	6,778
Hackettstown Town	2,168	203	2,371
Harmony Township	7,018	8,387	15,405
Hope Township	11,702	0	11,702
Independence Township	6,510	6,250	12,760
Liberty Township	543	7,095	7,638
Lopatcong Township	3,673	1,051	4,723
Mansfield Township	5,966	13,047	19,014
Oxford Township	1,671	2,184	3,855
Phillipsburg Town	2,110	0	2,110
Pohatcong Township	1,210	7,582	8,793
Washington Borough	1,262	0	1,262
Washington Township	7,970	3,604	11,574
White Township	9,984	7,812	17,796
Total Acres For Warren County	104,066	67,030	171,096
Total Acres For Highlands Region	444,394	414,965	859,358

B. THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

The Highlands Water Protection and Planning Council (Highlands Council) is an independent agency of the State of New Jersey. The Highlands Council consists of fifteen members whose powers, duties, and responsibilities relating to environmental protection and land use planning are set forth in Section 6 of the Highlands Act. Among them are:

- To prepare, adopt and revise as appropriate a Regional Master Plan for the Highlands Region;
- To solicit public input on Council activities, the Regional Master Plan, and other matters of importance in the Highlands Region;
- To designate in the Regional Master Plan special areas in the Preservation Area within which development shall not occur in order to protect water resources and environmentally sensitive lands while recognizing the need to provide just compensation to the owners of those lands when appropriate, whether through acquisition, transfer of development rights programs, or other means or strategies;

- To identify any lands in which the public acquisition of a fee simple or lesser interest therein is necessary or desirable in order to ensure the preservation thereof, or to provide sites for public recreation, as well as any lands the beneficial use of which are so adversely affected by the restrictions imposed pursuant to this Act as to require a guarantee of just compensation;
- To comment upon any development applications before a local government unit, development regulation, or other regulation by a local government unit; and
- To promote conservation of water resources both in the Highlands Region and in areas outside of the Highlands Region for which the Highlands is a source of drinking water.

C. THE HIGHLANDS REGIONAL MASTER PLAN

The Highlands Council is charged with developing and implementing a Regional Master Plan for the Highlands Region. The primary goal of the Regional Master Plan “shall be to protect and enhance the significant values of the resources thereof.” (Section 10.a.).

The Highlands Act sets forth the following goals for the Preservation Area and the Planning Area:

Preservation Area Goals

- protect, restore, and enhance water quality and quantity;
- preserve extensive and contiguous areas of land in its natural state;
- protect the resources of the Highlands (contiguous forests, wetlands, stream corridors, steep slopes, scenic resources, and critical habitat for fauna and flora);
- preserve farmland and historic sites and resources;
- preserve outdoor recreation, hunting and fishing, on publicly owned land;
- promote conservation of water resources;
- promote brownfield remediation and redevelopment;
- promote compatible agricultural, horticultural, recreational, and cultural uses; and
- prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area. (Section 10.b.(1) through (9)).

Planning Area Goals

- protect, restore, and enhance water quality and quantity;
- preserve environmentally sensitive, recreational, and conservation lands;
- protect and maintain the essential character of the Highlands environment;
- preserve farmland and historic sites and resources;
- promote the continuation and expansion of agricultural, horticultural, recreational, and cultural uses;
- preserve outdoor recreation, hunting and fishing, on publicly owned land;
- promote conservation of water resources;
- promote brownfield remediation and redevelopment;
- encourage appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes and discourage piecemeal, scattered, and inappropriate development; and
- promote a sound and balanced transportation system. (Section 10.c. (1) through (10)).

To address these goals, the Highlands Act includes the following specific provisions relating to the development of the Regional Master Plan:

Resource Assessment

- Determine the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain while still maintaining the overall ecological values thereof; and
- Assess the scenic, aesthetic, cultural, historic, open space, farmland, and outdoor recreation resources of the Highlands Region, together with a determination of overall policies required to maintain and enhance such resources. (Section 11.a.(1)(a) and (b)).

Smart Growth and Transportation Component

- Assess, based upon the resource assessment, the opportunities for appropriate development, redevelopment, economic growth, and implementation of a Transfer of Development Rights (TDR) Program;
- Consider public investment priorities, infrastructure investments, economic development, revitalization, housing, transportation, energy resources, waste management, recycling, brownfields, and design such as mixed-use, compact design, and transit villages;
- Prepare a Land Use Capability Map;
- Identify existing developed areas capable of sustaining redevelopment;
- Identify undeveloped areas in the Planning Area, which are not significantly constrained by environmental limitations, are not prime agricultural areas, and are located near existing development and infrastructure, that could be developed;
- Identify transportation, water, wastewater, and power infrastructure that would support or limit development and redevelopment in the Planning Area. This analysis shall also provide proposed densities for development, redevelopment, or voluntary receiving zones for the TDR program;
- Identify potential voluntary receiving zones in the Planning Area for the TDR program through the appropriate expansion of infrastructure or the modified uses of existing infrastructure;
- Issue model minimum standards for municipalities and counties in the Planning Area, including density standards for center-based development to encourage the adoption of such standards;
- Identify special critical environmental areas and other critical natural resource lands where development should be limited;
- Identify areas appropriate for redevelopment and set appropriate density standards for redevelopment;
- Plan for transportation system preservation including all federally mandated projects or programs;
- Promote a sound, balanced transportation system; and
- Ensure that transportation projects and programs are reviewed and approved by the Highlands Council in consultation with the Department of Transportation. (Section 11.a.(5) and 11.a.(6)).

Financial Component

- Detail the cost of implementing the Regional Master Plan including property tax stabilization measures, watershed moratorium offset aid, planning grants and other State aid for local government units, capital requirements for the TDR bank, payments in lieu-of-taxes, projections for 2009 and 2014 of acquisition of fee simple or other interests in lands for preservation or recreation and conservation purposes, compensation, guarantees, general administrative costs, and any anticipated extraordinary or continuing costs; and
- Detail the sources of revenue for such costs, including, grants, donations, and loans from local, State, and federal departments, agencies, and other governmental entities and from the private sector. (Section 11.a.(2)(a) and (b)).

Local Participation Component

- Provide for the maximum feasible local government and public input into the Highland Council's operations; and
- Include a framework for developing policies for the Planning Area in conjunction with the municipalities and counties in the Planning Area who choose to conform to the Regional Master Plan. (Section 11.a.(3)).

Coordination and Consistency Component

- Detail the ways in which local, State, and federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the Regional Master Plan; and
- Detail how the land, water, and structures managed by governmental or nongovernmental entities may be integrated into the Regional Master Plan. (Section 11.a.(4)).

Preservation Area Requirements

- Prepare a Land Use Capability Map;
- Prepare a comprehensive statement of policies for planning and managing the development and use of land based upon the environmental standards adopted by NJDEP and the resource assessment prepared for the Regional Master Plan;
- Provide for the implementation of the Regional Master Plan by the State and local government units in the Preservation Area in a manner that will ensure the continued, uniform, and consistent protection of the Highlands Region;
- Identify zones within the Preservation Area where development shall not occur in order to protect water resources and environmentally sensitive lands and which shall be permanently preserved through use of a variety of tools, including but not limited to land acquisition and the TDR Program; and
- Develop minimum standards governing municipal and county master planning, development regulations, and other regulations concerning the development and use of land including standards for minimum lot sizes and stream setbacks, construction on steep slopes, maximum appropriate population densities, and regulated or prohibited uses for specific portions of the Preservation Area. (Section 12.a. and b.).

D. THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S HIGHLANDS RULES

In accordance with the Highlands Act, NJDEP adopted the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38, (NJDEP Highlands Rules). The NJDEP Highlands Rules establish the environmental standards for the Preservation Area, which form the basis for Council's Regional Master Plan as well as NJDEP's Highlands permitting program. (Section 34). These rules include, and expand upon, the immediately effective stringent water standards established by the Highlands Act including, but not limited to, 300-foot buffers adjacent to Highlands Open Waters, requirements to maintain, restore and enhance existing water quality, limits on water supply permits, septic system density standards to protect and restore water quality, limits in flood hazard areas, Category One antidegradation requirements for Highlands Open Waters, prohibitions to limit impervious surfaces and protect steep slopes, forested areas, and habitat for animal and plant species, and prohibitions to limit the construction or extension of water and wastewater systems. (Sections 32 through 43).

The NJDEP Highlands Rules include specific requirements for the Highlands permitting program to ensure a coordinated review of any Major Highlands Development in the Preservation Area, a term specifically defined in the Act. These rules also include application requirements for the permitting program, waiver provisions from any requirement for a Highlands Preservation Area Approval, or any applicability determinations specifying the standards for activities that are exempt from the Act (see table *Provisions of the Highlands Water Protection and Planning Act (P.L. 2004, c. 120)*).