

ORDINANCE FOR HIGHLANDS COUNCIL REGIONAL MASTER PLAN CONFORMANCE

WHEREAS, the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) was enacted by the State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, in particular the water resources, which provide drinking water to over 5 million New Jersey residents; and

WHEREAS, the Highlands Act created the Highlands Water Protection and Planning Council (the “Highlands Council”) and charged it with crafting a comprehensive master plan for the New Jersey Highlands Region; and

WHEREAS, the Highlands Regional Master Plan was adopted by the Highlands Council through the adoption of Resolution 2008-27 on July 17, 2008, and became effective on September 8, 2008 as the product of a long-term, participatory, and region-wide planning effort; and

WHEREAS, Section 14 of the Highlands Act expressly requires that municipalities must revise and conform their local master plan and development regulations for that portion of their lands within the Preservation Area, as related to development and use of said lands, with the goals, requirements and provisions of the Regional Master Plan within 15 months of the effective date of adoption thereof, or December 8, 2009; and

[WHEREAS, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may at any time voluntarily revise and conform its local master plan and development regulations, as related to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan; and]

WHEREAS, the TOWN is located in the Highlands Region with lands lying within [both] the Preservation Area [and the Planning Area], as defined by section 7 of the Highlands Act; and

WHEREAS, the Governing Body of TOWN has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to TOWN lands located within [both the Planning Area portion and] the Preservation Area portion of the Highlands Region; and

WHEREAS, the Petition filed with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the TOWN; and

WHEREAS, the Governing Body finds that the proposed changes to the municipal planning program are of broad and significant effect, are vital to the protection of the Highlands resources of the municipal Highlands Area, and are compelling to the interests and general welfare of the community;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of TOWN that the following is hereby adopted as an amendment to the TOWN land use ordinances:

[Planning Area Conformance Only] Section 1 Petition for Plan Conformance

TOWN is located [fully/partially] within that portion of the New Jersey Highlands Region defined by the Highlands Act, as the “Planning Area” (see definitions). This Ordinance is enacted pursuant to Section 15.a. of the Highlands Water Protection and Planning Act (Highlands Act, N.J.S.A. 13:20-1 et seq.), which provides that a municipality may choose to conform its master plan, development regulations, and other regulations to the provisions of the Highlands Regional Master Plan, with respect to lands located within the Planning Area, and by Ordinance, petition the New Jersey Highlands Water Protection and Planning Council (Highlands Council) for Plan Conformance approval of such planning and regulatory documents.

By adoption of this Ordinance, the Governing Body of the **TOWN** establishes that the municipality shall conform its master plan, development regulations, and all other regulations applicable to the use and development of land within the [Preservation Area and] Planning Area of the municipality, to achieve consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan. Said conformance shall be in accordance with the provisions of Highlands Council approval of the municipality’s Petition for Plan Conformance, which was approved by Highlands Council Resolution No. **XXX**, adopted on **_____**. Further, this Ordinance specifically reserves the rights of the municipality as specified by the Highlands Act, with respect to the voluntary nature of Plan Conformance for the Planning Area.

Section 2 - Highlands Council Review of Land Development Ordinance Amendments

Any amendment to the **TOWN** Land Development Regulations [that falls within the Highlands Area] shall not be effective until deemed consistent with the Regional Master Plan or deemed not subject to review by the Highlands Council.

Section 3 - Amendment to Land Development Regulations

I. Establishment of Highlands Districts

1. Highlands Preservation Area and Planning Area

1. In accordance with the delineation as set forth in the Highlands Act (C.13:30-7) the **TOWN** hereby establishes the [Preservation Area and Planning Area] of the Highlands Region.
2. For purposes of this Ordinance, this/these Area/s shall henceforth be known and designated as the **TOWN** Highlands Area.

2. Highlands Land Use Capability Zones:

In accordance with the Highlands RMP there are hereby established three primary Land Use Capability Zones (LUCZ) (the Protection Zone, Conservation Zone and Existing Community Zone) and four LUCZ sub-zones (Wildlife Management Sub-Zone, Conservation Zone–Environmentally Constrained Sub-Zone, Existing Community Zone–Environmentally Constrained Sub-Zone and Lake Community Sub-Zone).

3. Exhibits:

The following exhibits are hereby adopted.

1. Exhibit 1 entitled Highlands Area and Highlands Land Use Capability Zones depicting the municipality along with delineation of the Highlands Area and Highlands Land Use Capability Zones,
2. Exhibit 2 entitled Wellhead Protection Areas,

3. Exhibit 3 entitled Highlands Open Waters and Buffers,
4. Exhibit 4 entitled Highlands Riparian Areas,
5. Exhibit 5 entitled Net Water Availability,
6. Exhibit 6 entitled Forest Area,
7. Exhibit 7 Prime Groundwater Recharge Areas, and
8. [as necessary] Exhibit 8 entitled Special Environmental Zone.

II. Applicability

The following Applications for Development involving lands located within (or partially within) the TOWN Highlands Area (as illustrated in Exhibit 1, “TOWN Highlands Area”) shall comply with the provisions of this ordinance:

A. In the Preservation Area:

1. any non-residential development in the Preservation Area;
2. any residential development in the Preservation Area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more;
3. any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or
4. any capital or other project of a State entity or local government unit in the Preservation Area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.

B. In the Planning Area:

1. For residential development, creates three (3) or more new dwelling units or lots.
2. For non-residential development:
 - a) Results in the ultimate disturbance of one (1) acre or more of land; or
 - b) Produces a cumulative increase of impervious surface area of one-quarter (1/4) acre, or more as of the date of enactment of this Ordinance.

C. In either the Preservation or the Planning Area:

1. Introduces or expands on any of the following land uses/facilities:
 - a) Landfills;
 - b) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
 - c) Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
 - d) Industrial treatment facility lagoons; or
 - e) Any Major or Minor Potential Contaminant Source (as identified in Appendix A and Appendix B of this Ordinance, respectively) on lands located within 200 feet of the wellhead of any public community well or public non-community well, as these are defined herein.

“All thresholds in A and B, above, shall be interpreted to apply cumulatively over time on the lot as it existed, beginning [on the date of enactment of the Highlands Act in the Preservation Area and as of the effective date of this Ordinance in the Planning Area]. If or when any one of the thresholds is reached, the Ordinance shall apply to any and all development in excess of that threshold. Where an application

proposes a mixed use, the thresholds in B, for non-residential development shall apply to the whole of the project, while that in A, shall apply to the residential component.’

III. HIGHLANDS COUNCIL CALL-UP

The municipality shall, within fifteen (15) calendar days of issuance of any decision under this ordinance, provide a copy of the decision to the Highlands Council. The Highlands Council call-up review period shall expire 15 calendar days following the Highlands Council’s receipt of same. Any decision issued under this ordinance shall not be effective until the expiration of the call-up period, or upon notification that the Highlands Council is exercising its review authority and an approval issued by the Highlands Council. Absent any notification from the Highlands Council within the 15-day timeframe, the decision shall be considered effective.

IV. EXCLUSIONS AND EXEMPTIONS

The following applications shall not be subject to the standards of this ordinance:

- A. Exclusions: Any application for development as follows below shall not be subject to any provisions of this ordinance.
 - 1. The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Ordinance, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
 - 2. Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Ordinance, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
 - 3. Any Agricultural or Horticultural Use or Development that would not result in either:
 - a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in Section 4, below); or
 - b) Construction of three (3) or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).
- B. Highlands Act Exemptions: Any application for development exempt from the provision of the Highlands Act (C.13:20-28) shall be exempt from all provisions of this ordinance (with the exception of Section XVI Affordable Housing). Demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Highlands Area shall consist of one of the following:
 - 1. State Agency Determination. State Agency Determinations shall include either, a Highlands Applicability Determination (HAD) issued by the NJDEP for a Preservation Area proposal [, or a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal, in either case,] indicating that the proposal qualifies as a Highlands Act Exemption.
 - 2. Municipal Determination. Pursuant to TOWN Ordinance #_____, entitled “TOWN of _____ Highlands Area Exemption Ordinance,” effective as of [insert date] _____, for any application involving Highlands Act Exemptions #1, #2, #4, #6, #7, or #8 indicating that the proposal qualifies as a Highlands Act Exemption.

V. Prohibited Uses

Any of the following uses are prohibited uses within the Highlands Area [*municipal edit: unless a prior consistency determination is received from the Highlands Council*]:

- A. Landfills;
- B. Facilities for the permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
- C. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials; and
- D. Industrial treatment facility lagoons.
- E. Any principal or accessory use, or structure related or devoted to such use, which is designated by the Highlands Council as a Major or Minor Potential Contaminant Source (PCS) (see Appendix A and Appendix B is expressly prohibited from that portion of any Tier 1 Wellhead Protection Area lying within 200 feet of the wellhead as shown on Exhibit 2.

VI: Highlands Open Waters

- A. Highlands Open Waters and Buffers: All Highlands Open Waters shall include a minimum 300-foot-wide protection buffer, as measured from the edge of the Highlands Open Waters feature indicated in Exhibit 3.
 - 1. No disturbances of Highlands Open Waters are permitted except where previously approved by the Highlands Council.
 - 2. Highlands Open Waters buffers shall be maintained in their undisturbed or pre-existing condition, unless a disturbance is approved in accordance with following:
 - a) Where a NJDEP a Letter of Interpretation (LOI) or Highlands Resource Area Determination (HRAD) has been issued delineating the location a wetland, the boundaries of said wetland as identified shall govern. However, the buffer shall be 300 feet irrespective of the buffer identified in the LOI.
 - b) With respect to any wetlands and other Highlands Open Waters features not mapped in Exhibit 3, each shall include a 300-foot wide protection buffer measured from a delineated wetlands line described in a LOI, from a field-delineated boundary line for other features, or as indicated by a Highlands Resource Areas Determination (HRAD) issued by the NJDEP.
 - c) Any lawful pre-existing structure or improvement located within a Highlands Open Waters protection buffer area may remain and be maintained or rehabilitated, provided that the existing area of disturbance attributed to or associated with such structure or improvement shall not be increased.
 - d) Disturbances of Highlands Open Waters buffers located in the Existing Community Zone are permitted in previously disturbed areas as follows.
 - (i) Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Existing Community Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.

- (ii) Any disturbance in a previously disturbed buffer must be accompanied by the finding that there will be no net loss of functional value of the buffer. This may include the use of mitigation and restoration of the Highlands Open Water Buffer.
 - (a) If existing land uses create a natural or developed barrier to the buffer, then the buffer may be considered to be developable.
 - e) Protection and Conservation Zone Standards: Disturbances of Highlands Open Waters buffers located in the Protection and Conservation Zone are permitted in previously disturbed areas but in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters.
 - (i) Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Protection and Conservation Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.
 - (ii) Any proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers:
 - (a) avoid the disturbance of Highlands Open Waters buffers;
 - (b) minimize impacts to Highlands Open Waters buffers; and
 - (c) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer.
- B. Riparian Area Standards: Disturbance of any portion of a Highlands Riparian Area, as shown in Exhibit 4, in the Protection Zone is prohibited except for linear development, which shall be permitted only where it has been shown that there is no feasible alternative for the linear development outside of the Riparian Area.
 - 1. To address the “no feasible alternative for linear development” standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Riparian Area
 - 2. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:
 - a) The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
 - b) Shared driveways are used to the maximum extent possible to access multiple lots.
 - c) An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.

VII: Critical Habitat

- A. The location, extent and type of Critical Wildlife Habitat, Certified Vernal Pools and Natural Heritage Priority Sites are those areas defined in Section VXII and identified by the NJDEP. Details on the areas may be found on the Highlands Council’s interactive map or through the NJDEP.
- B. Critical Wildlife Habitat
 - 1. No disturbance is permitted in any Critical Wildlife Habitat as defined in Section XVII accept in accordance with the following:

2. A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
 - a) The nature of the site is such that it does not provide habitat for species of concern;
 - b) The species of concern are not present on the site during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species' recovery in the Region; or
 - c) Existing land uses present a human, natural or development barrier to the use of the site by species of concern.
 - d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.
 3. Where disturbance of any Critical Wildlife Habitat has not been confirmed to be in accordance with the above standards, no disturbance shall be authorized without prior written approval of the Highlands Council.
- C. Certified Vernal Pools
1. No disturbance is permitted in any 300-meter buffer of a certified vernal pool.
 2. A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
 - a) The nature of the buffer is such that it does not provide habitat for species of concern;
 - b) The species of concern are not present within the buffer during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species' recovery in the Region; or
 - c) Existing land uses create a natural or developed barrier to the use of the buffer by species of concern.
 - d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.
- D. No disturbance is permitted in any New Jersey Department of Environmental Protection Natural Heritage Priority Site.

VIII: Steep Slopes

- A. Severely Constrained and Moderately Constrained Slopes as defined herein shall be calculated at the time of application submission and are hereby made a mandatory submission item for any application that falls under the applicability thresholds of this ordinance.
- B. Disturbance of Severely Constrained and Moderately Constrained Slopes is prohibited, with the exception of that required in connection with a linear development. Such linear development, however, shall be permitted only in the event that there is no feasible alternative for such development outside of the Severely Constrained or Moderately Constrained Slopes.
- C. To address the "no feasible alternative for linear development" standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Severely Constrained or Moderately Constrained Slopes. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:

1. The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
 2. Shared driveways are used to the maximum extent possible to access multiple lots.
 3. An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.
- D. The reviewing municipal authority shall not approve any application pursuant to this subsection if, after review of the information submitted to support an approval, it finds that there is a reasonable alternative to the proposed linear development.

IX: Prime Groundwater Recharge Areas

- A. Disturbance of Prime Ground Water Recharge Area (PGWRA), as shown in Exhibit 7, [or Municipally Important Groundwater Recharge Area (MIGWRA)] by any regulated development is prohibited and shall be permitted only upon a finding by the reviewing board that the proposal complies with the provisions of this subsection.
- B. Development shall not occur in PGWRA [MIGWRA] unless either, the entirety of the subject property is located within a Prime Ground Water Recharge Area and thus cannot be avoided, or the disturbance represents the only viable alternate means to avoid Critical Habitat, Highlands Open Waters buffers, Vernal Pool Buffers, Moderately Constrained Steep Slopes, or Severely Constrained Steep Slopes, to the extent that these resources are also present upon the subject property.
- C. Where total avoidance is not feasible, total recharge area disruption (i.e., alteration of natural recharge patterns or volumes) shall not exceed 15% of the PGWRA [MIGWRA] located within the affected parcels, placed where feasible on those parts of the PGWRA [MIGWRA] having the lowest relative recharge rates and the least potential for aquifer recharge based upon site analysis.
- D. Low Impact Development practices shall be used in the design of the development proposal to reduce total recharge disruption to the minimum feasible, within the 15% cap.
- E. Any development application involving disturbance of a PGWRA [MIGWRA] shall be accompanied by a mitigation plan, providing for an equivalent of 125% of pre-construction recharge volumes for that portion of the PGWRA [MIGWRA] that will be disturbed. The recharge mitigation shall occur within the following areas, in order of priority: (1) the same development site to the maximum extent feasible; (2) the same HUC14 subwatershed; or (3) where no feasible option exists in the same HUC14 subwatershed, an interrelated HUC14 subwatershed approved by the Highlands Council.

X: Highlands Special Environmental Zone [review for applicability]

- A. Development in Highlands Special Environmental Zone as shown in Exhibit 8 is prohibited unless prior approval from the Highlands Council has been received.

XI: Septic Density

- A. Nothing herein shall be deemed to apply to the replacement or repair of an existing septic system.
- B. **Preservation Area.** Development proposals involving new or increased demand for septic system capacity in the Preservation Area shall be regulated in accordance with NJDEP Highlands Area Rules (N.J.A.C. 7:38).
- C. **Planning Area.** All development proposing new or increased demand for septic system capacity in the Planning Area shall be regulated in accordance with this subsection. The following are gross septic density requirements and shall not modify any minimum lot size requirements contained in the TOWN land development ordinance. Every development shall provide for a minimum acreage for each dwelling unit (or equivalent) as noted below.
 - 1. **Septic System Density Allowances.** Septic system density (gross acres per septic system) shall not exceed the following allowances, for each Highlands Zone:
 - a) Existing Community Zone: X acres/septic system
 - b) Conservation Zone: X acres/septic system
 - c) Protection Zone: X acres/septic system
 - 2. These allowances indicate the minimum acreage required per septic system, where that system is designed for a one-family household generating a maximum flow of 300 gallons of wastewater per day. The resulting acreage shall be applied as the minimum average acreage necessary to support every 300 gallons of daily wastewater flow generated by any proposed use where the unit/square footage figures below shall be applied as 300 gallon-per-day equivalents.
 - 3. **Equivalent Yields.** The following unit/square footage figures shall be applied as 300 gallon-per-day equivalents:
 - a) Residential Uses (All Types, except as provided below) – 1 dwelling unit
 - b) Deed-Restricted Senior Citizen Residential Units, or Mobile Home Parks with dwelling units less than 500 square feet in size – 1.5 dwelling units
 - c) Office and Commercial Uses – 2,400 square feet of floor area
 - d) Industrial (Including Warehousing/Distribution) Uses – 18,182 square feet of floor area (Excluding Process Wastewater Flow)
 - e) Specific Non-Residential Uses by Facility Type – In lieu of iii., or iv., above, 300 gallon-per-day equivalents may be computed based on the average sewage volumes provided in N.J.A.C. 7:9A-7.4.]

XII: New or Extended Water and Wastewater Infrastructure

- A. **Preservation Area.** New, expanded or extended public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are prohibited unless approved by the NJDEP in accordance with the issuance of either a Highlands Applicability Determination or a municipally issued exemption indicating that a project is exempt from the Highlands Act, or a Highlands Preservation Area Approval with waiver pursuant to N.J.A.C. 7:38.
- B. **Planning Area – Protection Zone, Conservation Zone, and Environmentally-Constrained Sub-Zones.** New, expanded or extended public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are prohibited unless approved through a waiver to address a documented threat to public health and safety [, and/or] for a Highlands Redevelopment Area or Takings Waiver (RMP Policies 7G1 and 7G2)[. Where the municipality has adopted a Highlands cluster ordinance , or to serve a cluster development that meets the requirements of RMP Objective 2]4b.]

- C. ***Planning Area – Existing Community Zone*** (excluding *Environmentally-Constrained Sub-Zone*) and ***Lake Community Sub-Zone***. Expansion or creation of public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are permitted: to serve lands which are appropriate for designated TDR Receiving Zones, infill development, or redevelopment; to address public health and safety; or to serve new areas for development.

XIII: Net Water Availability

- A. Water Conservation Requirements. All development proposals shall incorporate, as applicable, the following water conservation measures to promote sound resource use, reduce supply deficits, and reduce the need for additional utility infrastructure:
1. No irrigation systems should be utilized. Where required, they must provide automatic controls based on rain sensors (or soil moisture) for all new and replacement lawn irrigation systems, as required by the electrical subcode at N.J.A.C. 5:23-3.16;
 2. Design all non-potable irrigation water uses to ensure that only the necessary amounts of water are used to achieve optimum plant growth, to the maximum extent practicable;
 3. Provide for internal recycling or beneficial reuse of reclaimed water in new commercial development projects, to the maximum extent practicable;
 4. Rely on stormwater for irrigation purposes to the maximum extent practicable, including but not limited to methods recommended by the U.S. Green Building Council through its Leadership in Energy and Environmental Design (LEED) program;
 5. Reduce water losses to the maximum extent practicable, in the rehabilitation of on-site water supply utility infrastructure, through such means as application of American Water Works Association/International Water Association water loss analysis methods (AWWA Manual M-36 or most recent version).
- B. The following shall apply for any development application proposing a new or increased use of potable or non-potable water averaging 6,000 gallons per day or more, derived from: a) any groundwater source in a Highlands Area HUC14 subwatershed, whether through a public community or non-community water supply system well, a non-public well, or an individual private well; or b) any surface water source in a Highlands Area HUC14 subwatershed that is not associated with a safe yield determined by the NJDEP through a water allocation permit.
1. Where a Highlands Council-approved Water Use and Conservation Management Plan has been adopted, any development application involving the use of water derived from a subwatershed(s) with a deficit net water availability as shown in the Exhibit 5 shall be regulated fully in accordance with the requirements of such Plan.
 2. Absence of Water Use and Conservation Management Plan: No application shall be deemed complete or considered for review by the applicable Board until or unless the Highlands Council has determined that the proposed water use will not exceed the remaining Net Water Availability for the source HUC14 subwatershed(s).

XIV. Forest Resources

- A. All portions of the Highlands Area identified as Forest Area are found in Exhibit 6.
- B. Any disturbance of more than ¼ acre within the Total Forest Area shall be permitted only upon a finding by the reviewing board that the following requirements have been satisfactorily addressed:

1. Demonstration that the proposed disturbance can neither be avoided nor reduced in extent, while adequately providing for a proposed use that otherwise addresses the requirements of this Ordinance;
 2. Incorporation of Low Impact Development techniques appropriate to the activity or development project proposed;
 3. For any proposed disturbance of one half (1/2) acre or more, other than that associated with the maintenance of a legally pre-existing use or structure (expressly excluding the expansion of any such use or structure), submission, approval and implementation of a Forest Mitigation Plan designed to minimize the extent of such disturbance, protect forest areas adjacent or proximate to the disturbance area, and mitigate for loss of trees or other forest vegetation removed during the course of such disturbance; and
 4. Notwithstanding the preceding provisions, in the case of any proposed disturbance that by definition constitutes deforestation; submission, approval and implementation of a Forest Mitigation Plan designed to minimize the extent of deforestation, protect forest areas to remain, and restore or mitigate for forest area loss.
- C. Forest Impact Report Required. Where disturbance of 1 acre or more of Forest Area as shown on Exhibit 6 is proposed, a Forest Impact Report shall be prepared including the following:
- a) A map of Forest Area located on or within 500 feet of the subject property, as provided in Exhibit 6.
 - b) A map indicating any Forest Area to be disturbed.
 - c) A determination of whether the disturbance area qualifies as a Forest under the NJDEP Highlands Area Rules, at N.J.A.C. 7:38-3.9(c). This shall be the Confirmed Forest area.
 - d) An analysis of the effects (direct and indirect) of the disturbance upon the Confirmed Forest Area.
 - e) All Forest Impact Reports must be prepared by a State of New Jersey Approved Forester or other qualified professional.
- D. Forest Mitigation Plan. Where the Forest Impact Report confirms that disturbance of 1 acre or more of Confirmed Forest Area will occur, a Forest Mitigation Plan shall be prepared in accordance with the following.
- a) All Forest Mitigation Plans must be prepared by a State of New Jersey Approved Forester or other qualified professional. A Forest Mitigation Plan must include each of the components listed herein.
 - b) Mitigation Priority Area Map. Priority Areas are forested locations within the site having the highest ecological value to be targeted for conservation, restoration, or mitigation, including such areas as:
 - (i) Highlands Open Waters and Buffers
 - (ii) Riparian Areas, including Floodplains and Floodprone Areas
 - (iii) Critical Habitat
 - (iv) Steep Slopes and Ridgelines
 - (v) Core Forests and Contiguous Forest Patches
 - c) Forest Protection Plan. A plan incorporating pre-construction and construction best management practices to ensure the well-being of forest areas adjacent or proximate to the disturbance area.
 - d) Mitigation Description.
 - (i) A description of the proposed forest restoration, tree planting plan or other mitigation initiative proposed to provide equivalent or enhanced forest ecosystem

benefit in consideration of the extent and type of disturbance or deforestation that would result if the use or activity is approved.

- (ii) Planting Plan indicating the specific plantings proposed, including size, species, quantity, location, separation distances, planting details, deer and pest management protections, and maintenance plans.
- (iii) Maintenance Agreement. A minimum 5-year maintenance agreement that outlines care-taking responsibilities of the applicant once the proposed planting has been completed. The maintenance agreement must include monitoring of newly planted stands, provide for protection devices in working order for 5 years, and ensure a survival rate of 70% in year 1, 75% in year 2, 80% in year 3, and 85% in years 4 & 5, plus each year <10% invasive or noxious species.

XVI. Affordable Housing

- A. In accordance with the requirements of the Fair Housing Act, any development consisting of newly constructed residential units shall reserve for occupancy at least 20 percent (20%) of the residential units constructed for low-or moderate-income households.
- B. Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.
- C. *[for partially conforming towns only]* Development outside of the designated Highlands Area must also comply with the provisions of this section.
- D. A minimum of 13% of the total units residential units reserved for low- or moderate-income households should be designated for very low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
- E. No density bonus or presumptive density increase over existing zoning shall be required to be granted by the municipality for the construction of the affordable housing units on site. Density bonuses or presumptive density increases may be provided through Fair Share Plans and associated implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.
- F. Municipalities shall provide for the local review of any proposed affordable units provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:
 - 1. An Affordable Housing Production Plan detailing all issues related to the affordable units shall be submitted to the municipality's Development Review Board at the time application is made for any development requiring affordable housing pursuant to this ordinance.
 - 2. The Affordable Housing Production Plan shall be a condition of the completeness determination and is hereby added to the submission requirements checklist for any new residential development or major residential subdivision.
 - 3. The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, estimated rent or sales prices, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.
 - 4. The Affordable Housing Production Plan shall include a phasing plan detailing the proposed time frames for the construction and occupation of the affordable housing units.

5. All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning or Land Use Board for consistency with these guidelines, the RMP, and the municipalities certified Housing Element and Fair Share Plan.
6. Compliance with the RMP, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.

G. Optional: *Where it has been determined that the provision of some or all affordable housing units on-site would not be consistent with the RMP (i.e., regarding septic system density or resource protection), the units may be provided off-site within the municipality wherever feasible.*

XVI. Waivers and Exceptions

In addition to any variance relief required under the Municipal Land Use Law, relief from sections V. (Prohibited Uses), XI. (Septic Density) and XII. (New or Extended Water and Wastewater Infrastructure) of this Ordinance shall require issuance of a Highlands Act waiver. Highlands Act waivers may be issued only by the NJDEP or the Highlands Council in accordance with the respective rules and criteria established by each agency in accordance with the provisions of the NJDEP Highlands Area Rules, the Highlands Act and the Highlands Regional Master Plan. The issuance of a Highlands Act Waiver shall in no case be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances.

[PRESERVATION AREA ONLY] Where the Highlands Council and the NJDEP have approved a waiver for a development project in the Preservation Area, the standards of any such approved waiver may be utilized by the municipality in the review of the project, in lieu of the standards found herein.

XVII. Definitions

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Application for Development – means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

Critical Wildlife Habitat - means within the Planning Area, Critical Wildlife Habitat consists of those areas within NJDEP's Landscape Project Version 3.3 (or more recent version as amended) that are Landscape Rank 3 through 5. In addition, it includes areas that are designated Landscape Rank 2 and have a Highlands Conservation Rank of Critically Significant or Significant. Within the Preservation Area, Critical Wildlife Habitat consists of those areas within Landscape Rank 2 through 5, including all Highlands Conservation Ranks. Parcel level mapping may be found on the Highlands Council's interactive map available through the Highlands Council website.

Development – means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the MLUL.

Disturbance – means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

Disturbance, Ultimate – means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

Forest – means a biological community as determined by the method set forth under the NJDEP Highlands Rules, at N.J.A.C. 7:38-3.9.

Highlands Council – means the New Jersey Highlands Water Protection and Planning Council.

Highlands Act – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 *et seq.*

Highlands Applicability Determination (HAD) – means the determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

Highlands Area – means that portion of the municipality for which the land use planning and regulation are, or are intended or proposed to be, in conformance with the Highlands Regional Master Plan.

Highlands Open Waters – means all springs, streams including intermittent streams, wetlands, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but not including swimming pools. Highlands Open Waters include seeps, lakes, ponds, and vernal pools; all categories (including springs, streams, and wetlands) as described and identified in Figure XX or subsequently identified or modified by a Letter of Interpretation issued by the New Jersey Department of Environmental Protection.

Highlands Region – means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

Highlands Resource Area Determination (HRAD) – means a formal determination issued by the NJDEP that confirms the presence or absence of a Highlands Resource Area on a site, and if present, its location and applicable boundary lines. A person may apply for an HRAD only, or in connection with an application for an HPAA.

Highlands Special Environmental Zone - means those areas as designated as Special Environmental Zone in the Regional Master Plan. Special Environmental Zones are only located in the Preservation Area.

Impervious Surface – means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

Impervious Surfaces, Cumulative – means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

Major Potential Contaminant Sources (PCS) – means land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see Appendix A).

Minor Potential Contaminant Sources (PCS) – means land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see APPENDIX B).

Municipal Land Use Law (MLUL) – means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Natural Heritage Priority Site - means any of the 95 NJDEP Natural Heritage Priority Sites, including habitat for documented threatened and endangered plant species, and lands that include unique or regionally significant ecological communities and other significant natural sites and features.

NJDEP – means the New Jersey Department of Environmental Protection

NJDEP Highlands Area Rules – means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 et seq.

Planning Area – means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

Plan Conformance – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Procedures.

Preservation Area – means that portion of the Highlands Region so designated by subsection b. of section 7 of the Highlands Act.

Prime Ground Water Recharge - means those lands designated in the Regional Master Plan as being within a HUC14 subwatershed that most efficiently provide, in the aggregate, 40 percent of total drought recharge volume for the HUC14 subwatershed.

Qualified Environmental Professional - means someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions.

Regional Master Plan (RMP) – means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

Residential Development – means development dedicated to the creation of new dwelling units or the improvement or expansion of existing dwelling units, whether by new construction or conversion of existing building areas or portions thereof, to dwelling use, including any type of residential structure whether a single-family home (including group home), duplex, townhouse, apartment or any other form of multi-family housing construction. For purposes of this ordinance, residential development shall include property improvements associated with and either, required in support of or customarily accessory to, the residential use, including but not limited to porches, patios, decks, driveways, garages, storage sheds, swimming pools, tennis courts, drywells, utility facilities, septic systems, yard grading and retaining walls.

Riparian Area - means areas adjacent to and hydrologically interconnected with Highlands Open Waters rivers and streams consisting of flood prone areas, wetlands, soils that are hydric, alluvial, or have a shallow depth to ground water, and including wildlife passage corridors within 300 feet of surface Highlands Open Waters features.

Slopes, Moderately Constrained – means all forested non-Riparian Area lands having a slope of 15% to less than 20%.

Slopes, Severely Constrained – means all lands having slopes of 20% or greater and all lands within Riparian Areas having slopes of 10% and greater.

Structure – means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

Vernal Pool - means a NJDEP-certified vernal pool plus a 300-meter-wide protection buffer surrounding the perimeter of each such pool. Vernal Pools consist of confined, ephemeral wet depressions that support distinctive, and often endangered, species that are specially adapted to periodic extremes in water pool levels.

Appendix A: MAJOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

1. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.).
2. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center (repair & maintenance).
4. Dry cleaning processing facility.
5. Road salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
11. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at NJAC 2:91.
12. Quarrying and/or mining facility.
13. Asphalt and/or concrete manufacturing facility.
14. Junkyard/auto recycling and scrap metal facility.
15. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

Appendix B: MINOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant Sources include the following:

1. Underground storage of hazardous substances or waste of less than 50 gallons.
2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by a NJPDES permit granted under NJAC 7:14A.
4. Industrial waste line.
5. Septic system disposal field.
6. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C 7:14A et seq.
7. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
8. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
9. Waste oil collection, storage and recycling facility.
10. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
11. Above-ground storage of hazardous substances or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at NJAC 2:91.