



DRAFT FOR PUBLIC COMMENT

Please Note: This document should be read in concert with the Final Draft Consistency Review and Recommendations Report prepared by Highlands Council Staff for the Township of Boonton, for consideration by the Highlands Council at the Public Hearing of April 16, 2015.

Township of Boonton Draft Highlands Preservation Area Master Plan Element

Prepared by the State of New Jersey Highlands Water Protection and Planning Council in Support of the Highlands Regional Master Plan

February 2015

HIGHLANDS ELEMENT

MASTER PLAN SUPPLEMENT

TOWNSHIP OF BOONTON

MORRIS COUNTY, NEW JERSEY

FOR SUBMISSION TO THE NEW JERSEY HIGHLANDS WATER
PROTECTION AND PLANNING COUNCIL TOWARD ACHIEVING
PLAN CONFORMANCE WITH THE HIGHLANDS REGIONAL
MASTER PLAN

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The Planning Board initially presented, discussed, and accepted public comment on this draft Master Plan supplement at its duly-noticed public meeting of February 6, 2012. Copies of the document were made available for review by the public at least 10 days prior to that meeting, and adequate notice of the meeting advising that the Highlands Element was on the agenda for discussion and public comment, was provided.

This document is based on a model Highlands Element prepared and provided to the Township by the New Jersey Highlands Water Protection and Planning Council.

TABLE OF CONTENTS

INTRODUCTION 1

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

POLICIES, GOALS & OBJECTIVES..... 3

 A. PRESERVATION AREA GOALS..... 3

 B. RELATIONSHIP BETWEEN HIGHLANDS ACT & MLUL 4

LAND PRESERVATION AND LAND STEWARDSHIP PLAN..... 5

REDEVELOPMENT PLANNING 6

HOUSING PLAN..... 9

 A. GOALS AND OBJECTIVES 9

RELATIONSHIP OF MASTER PLAN TO STATE/REGIONAL/LOCAL PLANS 10

EXHIBITS..... 11

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

INTRODUCTION

The Township of Boonton is located in the New Jersey Highlands Region. It is one of 88 municipalities protected by and subject to the provisions of the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.). The Highlands Act was enacted by the State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring Highlands natural resources, in particular water resources, which provide drinking water to over 5 million New Jersey residents. 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 Highlands Region.

The Highlands Regional Master Plan (RMP) was adopted by the Highlands Council on July 17, 2008, and became effective on September 8, 2008. As the product of a long-term, participatory, and region-wide planning effort, the RMP is representative of the collective response of the wider community to the Legislature’s call for a Highlands comprehensive master plan. The Highlands Region encompasses some 1,343 square miles in the northwest part of New Jersey. The Highlands Act designates about half of the seven-county Region as Preservation Area (415,000 acres) and the other half as Planning Area (444,000 acres). The Act requires that jurisdictions having lands in the Preservation Area conform to the Highlands RMP with respect to that area, while for lands located in the Planning Area, conformance is voluntary.

The Township of Boonton is located partially in each the Preservation and Planning Area. The municipality is compelled to align its land use planning program with the provisions of the RMP with respect to that portion of the municipality located only within the Preservation Area (see Exhibit A, Township Highlands Preservation Area).

The Preservation Area in the Township of Boonton consists of 493 acres, encompassing just 9% of the municipality’s total land area. Of the 493 acres, 301 acres (61 percent) are preserved open space. A detailed review of the properties located within the Township’s Preservation Area indicates that there is extremely limited development potential. The area consists of developed residential properties, county parkland and a private recreation lake club. Municipal zoning for the majority of this area requires a minimum lot area of six acres per residential unit.

The Township recognizes the Highlands Preservation Area within the municipality and the requirements of the Highlands Act. Accordingly, the Highlands Element sets forth the policies that shall guide future land use and development (to the extent applicable) within the Township Highlands Preservation Area. It provides the rationale and the framework for the adoption of land use requirements that are protective of Highlands resources and consistent with the Highlands RMP. In large part, these policies will be effectuated by adoption of a “Highlands Checklist Ordinance.” This ordinance will require that applicants seeking development approvals for projects within the Preservation Area either provide confirmation of a Highlands Act exemption (pursuant to N.J.S.A. 13:20-28), as demonstrated by issuance of a Highlands Applicability Determination from the NJDEP; or obtain evidence of RMP-compliance in the form of: a) a Consistency Determination from the Highlands Council, or b) a Highlands Preservation Area Approval from the NJDEP. The Township anticipates that all or nearly all proposals for development in this area will qualify for

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

Highlands Act exemptions. Development not covered by such exemptions will, as applicable, be subject to the provisions of the Regional Master Plan, or the New Jersey Department of Environmental Protection (NJDEP) “Highlands Water Protection and Planning Act Rules” (NJAC 7:38-1 et seq), or both.

The Highlands Checklist Ordinance and any other regulatory requirement deemed necessary to effectuate these Highlands land use policies, shall apply to non-exempt land use activities in the Highlands Preservation Area. “Non-exempt” land use and development refers to uses, activities, and development projects not expressly listed as exemptions in the Highlands Act (N.J.S.A. 13:20-28). Land use activities, improvements, and development projects that are exempt from the Highlands Act shall remain subject to all other applicable provisions of the underlying municipal Master Plan and Land Use Ordinance.

The Highlands Element supplements the existing Boonton Township Master Plan, as provided in the sections that follow. The Highlands Element is intended to apply in conjunction with the language of the existing Township Master Plan to the maximum extent feasible. In the event of conflicts between the two, the Highlands Element shall supersede, unless the existing municipal Master Plan provisions are more restrictive.

POLICIES, GOALS & OBJECTIVES

The overarching land use policy with respect to the Township Highlands Preservation Area is to place priority emphasis on the protection, enhancement and restoration of Highlands natural and cultural resources while ensuring that land use and development activities within the Preservation Area occur only in a manner and location that is consistent with the Highlands Regional Master Plan.

Detailed information concerning Highlands resources within Boonton Township, is provided in the Township Highlands Environmental Resource Inventory (ERI), dated February 2015. Herewith incorporated by reference, the ERI includes all of the information available through the Highlands Regional Master Plan and supporting technical documents, which document the wide array of natural and cultural resources that characterize the New Jersey Highlands Region.

To ensure the protection, enhancement and restoration of Highlands natural and cultural resources, the Township incorporates herewith as its own, the applicable goals and objectives of the Highlands Act and Highlands RMP with respect to the Preservation Area. Specifically, the following goals shall guide future land use and development within the Township Highlands Preservation Area:

A. PRESERVATION AREA GOALS

1. To protect, restore, and enhance the quality and quantity of surface and ground waters;
2. To preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state, thereby ensuring retention of the unique and significant natural, scenic, and other resources representative of the Township Highlands Preservation Area;
3. To protect the natural, scenic, and other resources of the Township Highlands Preservation Area, including but not limited to contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat for fauna and flora;
4. To preserve farmland, historic sites, and other historic resources;
5. To preserve outdoor recreation opportunities on publicly owned land;
6. To promote conservation of water resources;
7. To promote Brownfield remediation and redevelopment, where applicable;
8. To promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities within the framework of protecting the environment of the Township Highlands Preservation Area; and
9. To prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area.

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

B. RELATIONSHIP BETWEEN HIGHLANDS ACT & MLUL

The Municipal Land Use Law gives authority to New Jersey municipalities to govern land use and development within their borders. The Highlands Act augments that authority to allow municipalities the power to enforce the goals, policies, objectives, and programs of the Highlands Regional Master Plan. The Highlands Act and the RMP together provide the regional perspective from which local decisions and actions will emanate.

As a result of the passage of the Highlands Act, the future of land use planning has significantly changed for both municipalities and counties in the Highlands Region. The New Jersey Supreme Court, in upholding the constitutionality of the Highlands Act in OFP, LLC v. State, 197 N.J. 418 (2008), affirmed the Appellate Division's decision, which emphasized the broad scope of the Highlands Act to protect the natural and agricultural resources of the Highlands through a coordinated system of regional land use controls. The Highlands Act creates a system in which a regional plan is designed to be implemented primarily through local government units. The net effect is that the statutory authority of local government units in the Highlands Region, inclusive of that provided under the Municipal Land Use Law (MLUL), is not preempted by the Highlands Act, but rather is supplemented through the passage of the Highlands Act and the adoption of the Highlands Regional Master Plan. The Highlands Act provides, through the conformance of municipal master plans and ordinances with the Highlands RMP, authorities for municipal regulation that are in addition to those of the MLUL.

Accordingly, the criteria for approval of development applications under the ordinances that ultimately effectuate this Highlands Element (specifically including the aforementioned Highlands Checklist Ordinance) will incorporate aspects of both the Municipal Land Use Law and the Highlands Act.

The Highlands Council will coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in accordance with a Highlands Redevelopment Area Designation (see Redevelopment Planning); or 3) in order to avoid the taking of property without just compensation.

LAND PRESERVATION AND LAND STEWARDSHIP PLAN

A mapped inventory of Preserved Lands in the Township Highlands Preservation Area, current through 2015, appears at Exhibit B, “Preserved Lands” (duplicated from the ERI). This Plan in addition incorporates (from the ERI) Exhibit C, “Highlands Conservation Priority Areas” and Exhibit D, “Highlands Special Environmental Zone.” This Plan recognizes and incorporates the definitions, derivations and delineations used to develop these maps, as provided in the ERI.

Preserved Lands in the Township Highlands Preservation Area include 111 acres under ownership by the County of Morris and 190 acres owned by the non-profit Deer Lake Club, for a total of 301 acres or 61 percent of the 493 acres comprising the Preservation Area..

Highlands Conservation Priority Area lands are those designated a high priority for preservation due to exceptional water and ecological resource value. The priority order derives from the Highlands Council Resource Assessment methodology, which identifies and ranks Highlands lands based on a combination of indicators, including but not limited to: watershed conditions, Highlands Open Waters, riparian areas, prime ground water recharge areas, forests, critical habitat and steep slopes. As indicated in Exhibit C, the Township Highlands Preservation Area contains 457 acres of land within the Highlands Conservation Priority Area.

Lands within the Highlands Special Environmental Zone are those having the highest priority ranking for preservation based on the Highlands Council Resource Assessment and for which development is expressly prohibited. Preservation of these lands is vital to: a) protecting Highlands Preservation Area water resources and environmentally sensitive lands; b) protecting water supply reservoirs and other critical water features; c) creating large contiguous areas of environmentally sensitive lands; d) creating habitat corridors; and e) connecting existing preserved open space. As illustrated in Exhibit D, the Township Highlands Preservation Area contains 59 acres of land within the Special Environmental Zone.

Future prioritization for acquisition/dedication and stewardship of Preserved Lands in the Township Highlands Preservation Area will be guided by application of Highlands Council criteria, which rank lands for consideration in the following order:

1. Lands within the Highlands Special Environmental Zone;
2. Lands within Highlands Conservation Priority Areas; and
3. Lands within Highlands Resource Areas generally, including but not limited to forested portions of Forest Resource Areas, Critical Habitat Areas, and Riparian Areas, particularly any portion of a Resource Area designated as “High Integrity” or “High Resource Value” (all Resource Areas and classifications referring to those as defined, discussed, and illustrated in the RMP and Township Highlands ERI).

REDEVELOPMENT PLANNING

The Planning Board will examine the potential for redevelopment opportunities within the Highlands Preservation Area. The term “redevelopment” is used herein to refer to reconstruction or re-use of previously developed and underutilized properties (which include Preservation Area sites having 70% or more area in impervious surface), and to the rehabilitation and re-use of “brownfield” sites (identified as such by New Jersey Department of Environmental Protection). Unless specifically stated otherwise, neither the term “redevelopment,” nor the phrase “in need of redevelopment” is used herein to invoke the definitions, processes, powers or any other facet of the provisions of the New Jersey Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.).

Rather, Highlands Preservation Area redevelopment planning refers to the identification of previously developed areas that: a) are suitable for re-use and/or reconstruction, or reversion to “greenfields,” such as parklands, conservation areas, or open space; and/or b) may be eligible for designation by the Highlands Council as Highlands Redevelopment Areas. Highlands Redevelopment Areas are typically characterized by ready access to or potential for water and wastewater utility infrastructure (and available or potential capacities); existing transportation infrastructure and/or services with links to viable transportation networks; proximity to supporting community facilities and services; and suitability for increased development intensity in keeping with smart growth planning principles. Where brownfields are involved, the New Jersey Department of Environmental Protection identification of the brownfield site is a necessary step prior to Highlands Council designation of a Highlands Redevelopment Area. Subsequent to such designations, applications for any Major Highlands Development must be submitted to the New Jersey Department of Environmental Protection for a Highlands Preservation Area Approval (HPAA) with Redevelopment Waiver.

It is the intent of this Plan to encourage redevelopment where appropriate within the Highlands Preservation Area, to ensure optimal and efficient use of land. By maximizing the use of previously developed areas and areas in need of environmental clean-up or other improvements, the municipality may provide for desirable new development (or new green spaces), while protecting lands that contain sensitive environmental features and important Highlands resources. This approach is intended to guide development toward the most suitable locations in the municipality, to encourage environmental clean-up where needed, and to maximize the use of existing infrastructure to meet future needs.

Redevelopment projects and activities that conform to density/intensity allowances and meet all other requirements (specifically including the Highlands Preservation Area Rules at N.J.A.C. 7:38), do not require Highlands Redevelopment Area designation and may proceed as of right in accordance with all municipal procedural requirements. Any municipally-sponsored redevelopment project proposed pursuant to N.J.S.A. 40A:12A, while perhaps also requiring Highlands Council designation of a Highlands Redevelopment Area, must be advanced in accordance with all applicable statutory requirements, including preparation and adoption by the Township committee of a Redevelopment Plan. The Planning Board, in making any Highlands Preservation Area determination of “area in need of redevelopment” pursuant to N.J.S.A. 40A:12A, will incorporate the

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

considerations listed below for Highlands Redevelopment Area designations in evaluating the applicable criteria under N.J.S.A. 40A:12A-5.

1. Definitions.

- a. A “brownfield” site consists of a commercial or industrial site that is currently vacant or underutilized and on which there has been or is suspected to have been, a contaminant discharge.
- b. A “grayfield” site consists of a site supported by existing infrastructure that contains an industrial or commercial facility (not excluding one having a residential component) exhibiting signs of abandonment or underutilization, but without evidence or expectation of contamination.
- c. A “redevelopment project” or “redevelopment activity” refers to the re-use, reconstruction, or conversion to alternate use, of a brownfield site, a grayfield site, or a previously developed site that is currently vacant or underutilized in the Highlands Preservation Area. Redevelopment projects and activities may include but are not limited to: removal, reconstruction, or adaptive reuse of existing buildings and other structures; construction of new buildings and other structures; and conversion/restoration of a site or portions of a site for open space, recreation or conservation purposes of any kind.
- d. A “Highlands Redevelopment Area” consists of a property or group of properties designated as such by the Highlands Council, and which includes one or more of the following: a) a brownfield site; b) a grayfield site; and c) any previously developed site in the Highlands Preservation Area. A Highlands Redevelopment Area may include the intervening or surrounding lands which are significantly affected by or are necessary to support such sites, and will be subject to a Highlands Council-approved redevelopment plan setting forth the full scope and details of the proposed redevelopment project(s) and/or activities.

2. Redevelopment Projects and Activities.

- a. Redevelopment projects and activities that comply with all applicable land use ordinances (specifically including those developed for the Highlands Preservation Area) are encouraged in all Areas, Zones, and Subzones of the Highlands Preservation Area. Such projects and activities are also subject to all applicable county, state, and federal regulatory requirements.
- b. Redevelopment projects and activities involving conversion to greenfields are particularly encouraged in environmentally constrained areas, where compliance with Highlands Preservation Area ordinance provisions for new development may not be feasible.

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

3. **Highlands Redevelopment Areas.** In assessing the potential for Highlands Redevelopment Area designations, the Planning Board incorporates the following relevant considerations:
- a. Highlands Redevelopment Area designation in the Preservation Area is confined to: a) sites having 70% or greater impervious coverage, and/or b) sites designated as “Highlands brownfields” in accordance with New Jersey Department of Environmental Protection Preservation Area Rules (at N.J.A.C. 7:38-6.6). In addition to Highlands Council approval, a waiver is required from the New Jersey Department of Environmental Protection in conjunction with a Highlands Preservation Area Approval (HPAA).
 - b. Highlands Redevelopment Area designation will only be considered where lands are particularly suited to the proposed redevelopment plan, by virtue of a preponderance of existing characteristics such as, but not limited to: appropriate community location; availability of water and wastewater utility infrastructure and capacity; access to transit and/or other suitable transportation systems and networks; suitability for increased land use intensity or conversion to greenfields, as applicable; extensive coverage by impervious surfaces; proximity to community facilities and services; potential to embody and/or further smart growth principles; opportunity to protect resources; and potential to contribute to a sustainable local and/or regional economy.
 - c. Any redevelopment project or activity permitted under the auspices of Highlands Redevelopment Area redevelopment plan must be designed and developed in accordance with smart growth and Low Impact Development principles, consistent with the RMP.

HOUSING PLAN

The overriding policy of the Housing Plan is to ensure provision of a variety of housing opportunities sufficient to address the needs of the community, including the need for affordable housing, while at the same time respecting the density limits of the Highlands Element Land Use Plan, the resource constraints applicable to the Highlands Preservation Area, and the numerous other policies, goals and objectives set forth by the Township Master Plan. The Housing Plan furthers MLUL purposes of zoning (at N.J.S.A. 40:55D-2, specifically 2a., 2e., 2g., 2l.) and fulfills the requirements of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) which in keeping with New Jersey Supreme Court doctrine, as expressed in the “Mount Laurel” decisions, recognizes that every municipality in a “growth area” has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for provision of a fair share of its region’s present and prospective needs for housing for low- and moderate-income families.

A. GOALS AND OBJECTIVES

In furtherance of Township efforts to ensure sound planning, this Plan incorporates the following goals and objectives with respect to future housing in the Highlands Preservation Area:

1. To provide a realistic opportunity for the provision of the municipal share of the region’s present and prospective needs for housing for low- and moderate-income families.
2. To preserve and monitor existing stocks of affordable housing.

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

RELATIONSHIP OF MASTER PLAN TO STATE/REGIONAL/LOCAL PLANS

By adoption of this Highlands Element, the Township Master Plan is brought into alignment with the Highlands Regional Master Plan. The Highlands Element incorporates all of the policies, goals, and objectives of the Highlands Regional Master Plan that are relevant to the use and development of land in the Township Highlands Preservation Area. The Highlands Element calls for the development and adoption of specific regulatory provisions, land preservation/stewardship planning, redevelopment planning, and housing planning, which together will effectuate its vision and in so doing, advance the intents and purposes of the Highlands Regional Master Plan.

The Highlands Act provides that any portion of a municipality located in the Highlands Preservation Area is exempt from the State Planning Commission Plan Endorsement process. It provides further that once the Regional Master Plan has attained Plan Endorsement from the State Planning Commission for the Planning Area, Highlands Council approval of Plan Conformance with respect to lands in the Planning Area shall be deemed the equivalent of Plan Endorsement.

By aligning the municipal Master Plan with the Highlands Regional Master Plan, its consistency with the State Development and Redevelopment Plan (SDRP) is achieved. A map depicting the municipality's SDRP Planning Areas appears at Exhibit E. The Highlands Element furthers State Development and Redevelopment Plan policies, goals, and objectives in many ways, not least of which are the following:

1. Seeking to protect, preserve, restore, and enhance the natural resources of the Highlands Preservation Area;
2. Encouraging the use of smart growth principles in locations of the Area deemed appropriate for development and/or redevelopment;
3. Encouraging a sustainable local economy; and
4. Preserving open space and providing for an array of active and passive recreational opportunities.

The Highlands Element modifies the relationship of the Township development plan to those of the county and contiguous municipalities insofar as it affects the intents for land use and development within the Township Highlands Preservation Area. Given that the Highlands Element introduces a number of new constraints to development based on environmental resources and carrying capacities, it is anticipated that the future impacts from development of the Highlands Preservation Area will be reduced from previous trends. Moving forward, it will be important to understand which of the adjoining municipalities conform to the Highlands Regional Master Plan and for what portions of their land areas. The land uses, the permitted densities and intensities of development, and the locations and extent of anticipated growth in neighboring Highlands communities that are also pursuing conformance with the Regional Master Plan are all subject to change. Until information is available concerning such decision-making, a comparison between these master plans will not be meaningful. Further discussion of these aspects will therefore be provided in the next amendment to the Master Plan.

TOWNSHIP OF BOONTON
DRAFT HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT

EXHIBITS

- A.** Township Highlands Preservation Area
- B.** Preserved Lands
- C.** Highlands Conservation Priority Areas
- D.** Special Environmental Zone
- E.** SDRP Planning Areas