

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MODEL HIGHLANDS CHECKLIST ORDINANCE FOR THE PRESERVATION AREA

**BOROUGH OF MOUNT ARLINGTON,  
MORRIS COUNTY, NEW JERSEY**

**Pending Ordinance No. \_\_\_\_\_**

AN ORDINANCE AMENDING THE LAND USE ORDINANCE OF THE  
BOROUGH OF MOUNT ARLINGTON TO UPDATE SUBMISSION  
REQUIREMENTS FOR APPLICATIONS FOR DEVELOPMENT

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, Resolution 2008-27 included the adoption of Highlands Regional Master Plan as well as the adoption of various technical reports and guidelines that accompanied the Plan including the 2008 Plan Conformance Guidelines; and

WHEREAS, the Plan Conformance Guidelines provide an overview of the Highlands Act’s bifurcated system for municipal conformance with the Highlands Regional Master Plan – mandatory Plan Conformance for any portion (or if applicable, the whole) of a municipality located within the Preservation Area and voluntary Plan Conformance for any portion (or if applicable, the whole) of a municipality lying within the Planning Area; 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,

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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 Plan Conformance Guidelines detail the requirements for Plan Conformance 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; and

WHEREAS, the Plan Conformance Guidelines require conforming municipalities to adopt Initial Revisions as a first step of Plan Conformance; the initial revisions are revisions of the existing master plan and development regulations which are deemed necessary by the Highlands Council for prompt enactment by a petitioning local government in order to ensure the protection and enhancement of the resources of the Highlands Region; and

WHEREAS, the Plan Conformance Guidelines include the adoption of a Development Application Checklist Ordinance as an Initial Revision in order to ensure that any Application for Development not be deemed complete until such time as certain documents have been submitted by the Applicant and to ensure that Applications for Development are consistent or revised to be consistent with the Regional Master Plan; and

WHEREAS, the Borough of Mount Arlington 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 the Borough of Mount Arlington has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect only to Borough lands located within 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 Borough; and

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

WHEREAS, due to the limited extent and development potential of the Preservation Area in the Borough of Mount Arlington it has been determined by the Highlands Council that the adoption of the complete Highlands Preservation Area Land Use Ordinance is not necessary to implement the Plan Conformance standards of the RMP; and

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WHEREAS, the Highlands Council has determined that the adoption of revised submission requirements pertinent to Applications for Development is sufficient to ensure that such Applicants achieve compliance with the standards and protections required under the Highland Regional Master Plan; and

WHEREAS, the Governing Body finds that the adoption of such submission requirements are important not only to provide effective resource protections, but to ensure the proper management of Applications for Development involving lands within the Highlands Preservation Area of the municipality; and

WHEREAS, the Highland Council deems the protections ascribed by this Ordinance to lands in the Preservation Area of the municipality, eligible for application of the provisions of the Highlands Act at N.J.S.A. 13:20-22 and N.J.S.A. 13:20-24 regarding legal representation to municipalities filing for Plan Conformance and regarding the strong presumption of validity and extraordinary deference afforded to such ordinances;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Mount Arlington that the Land Use Ordinance of the Borough of Mount Arlington be and is hereby amended to incorporate the following provisions:

**SECTION 1**

**A. APPLICATIONS FOR DEVELOPMENT IN THE PRESERVATION AREA.**

No Application for Development (as defined pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) involving property located (or partially located) in the Preservation Area of the Highlands Region (as shown in attached Exhibit 1 entitled “Borough of Mount Arlington Highlands Preservation Area”), for which application submission requirements apply under this Ordinance, shall be deemed complete or considered for review by the applicable Borough land use Board until and unless the Applicant has obtained and provided a copy of:

1. A Consistency Determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
2. A Consistency Determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan, accompanied by a certification, as detailed in Section 1.B below, by the Applicant’s professional(s) that the application has been revised since review by the Highlands Council to achieve consistency with the Highlands Regional Master Plan.

**B. FINDINGS OF INCONSISTENCY.** Where a Highlands Council Consistency Determination indicates that an Application for Development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by the applicable Borough land use Board, until or unless the Applicant has obtained from the professional(s) responsible for preparation of the Applicant’s plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the plans have been revised to achieve consistency with the Highlands

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Regional Master Plan and specifically describing the revisions made to achieve such consistency.

C. EXCLUSIONS. The following specific improvements and related applications shall be excluded from the provisions of this Section:

1. Any improvement to a single family dwelling in lawful existence as of the effective date of this Ordinance, provided that such improvement: a) is related and dedicated solely to the single-family residential use of either the dwelling or the property upon which it is situated; b) results in results in the ultimate disturbance of less than one (1) acre of land; and c) produces a cumulative impervious surface area of less than one-quarter ( $\frac{1}{4}$ ) acre.
2. 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.
3. The repair or maintenance of any building or other structure lawfully existing as of the effective date of this Ordinance. This exclusion shall not be construed to permit repairs or maintenance activities that alter the footprint of such building or structure.
4. The interior improvement, rehabilitation, or modification of any building or other structure lawfully existing as of the effective date of this Ordinance. This exclusion shall not be construed to permit activities that alter the footprint of such building or structure.
5. The attachment of signs or other ornamentation to any building or structure, to the installation of windows, doors, chimneys, vents, shafts, heating, ventilation, or air conditioning equipment, or to any other such improvement to a building or structure provided it occupies a surface area footprint of not more than 50 square feet. This exclusion shall not be construed to permit ultimate disturbance or cumulative impervious surface in excess of that provided at 1, above, for single-family dwellings.
6. 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.
7. Any activity, improvement or development project located (or partially located) in the Preservation Area for which a Highlands Applicability Determination is not required as a pre-condition of NJDEP permitting, as provided pursuant to N.J.A.C. 7:38-2.4(b)1 through 2.4(b)10.

D. EXEMPTIONS. Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the provisions of this Section.

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1. Demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Preservation Area shall consist of a Highlands Applicability Determination issued by the NJDEP pursuant to N.J.A.C. 7:38-2.4.

E. **WAIVER.** The Borough may issue a waiver from the provisions of this Section where it can be established by the Applicant and can be verified by the designated representative(s) of the Borough that:

1. The activity, improvement or development proposed by the subject Application for Development has not yet been formally determined to be exempt from the Highlands Act, but eligibility for an exemption has been sufficiently established by the Applicant; or
2. The activity, improvement or development proposed in the Application for Development will neither encroach upon a Highlands Resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The Applicant's professional(s) responsible for preparation of the Applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands Resources and Resource Areas and related policies and objectives as identified in Chapter 4 of the Highlands Regional Master Plan.

F. **HIGHLANDS COUNCIL CALL-UP.** All municipal waivers or findings of application completeness issued pursuant to this Section shall be subject to Highlands Council call-up review and the municipality shall specifically include conditions of this review consistent with this paragraph. In all such cases, the municipality shall within five (5) calendar days of issuance, provide notice to the Applicant and to the Highlands Council of any waiver or finding of application completeness made pursuant to this Section. The Highlands Council call-up review period shall expire 15 calendar days following its receipt of such notice. Absent any notice to the municipality from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or application completeness to be as of the date of first issuance by the municipality. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the Applicant and the municipality.

G. **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.

**Applicant** – means any entity applying to the Board of Health, Planning Board, Zoning Board of Adjustment, Zoning Officer, Construction Official or other applicable authority of

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the municipality for permission or approval to engage in an activity that requires an Application for Development.

**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 permits pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).t

**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.

**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** – 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 Preservation Area Approval (HPAA)** – means a permit to engage in a regulated activity in the Highlands Preservation Area issued by the NJDEP pursuant to the Highlands Act and the NJDEP Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b. Highlands Preservation Area Approval includes Highlands general permits issued pursuant to N.J.S.A. 13:20-33d and promulgated at N.J.A.C. 7:38-12. HPAA, when used in this Ordinance, includes Highlands general permits unless explicitly excluded.

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

**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.

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**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.

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

**NJDEP** – New Jersey Department of Environmental Protection

**NJDEP Preservation 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 Guidelines.

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

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

**Structure** – 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.

## **SECTION 2**

Copies of this Ordinance are on file in the office of the municipal Clerk, located at: 419 Howard Blvd., Mount Arlington, New Jersey for public inspection or purchase during regular weekday business hours (8:30 a.m. to 4:30 p.m.).

## **SECTION 3**

The municipal Clerk is directed to give notice at least ten days prior to the hearing on the final adoption of this Ordinance to the clerks of all adjoining municipalities and the Morris County Planning Board, and to all others entitled to notice under N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63. Upon final passage of this Ordinance, the municipal Clerk is further directed to publish notice of passage and to file a copy of this Ordinance as finally adopted with the Morris County Planning Board as required by N.J.S.A. 40:55D-16.

## **SECTION 4**

If any portion, paragraph, clause, sentence or phrase of this Ordinance is determined to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Ordinance.

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**SECTION 5**

All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 6**

This Ordinance shall take effect after final passage and publication in the manner prescribed by law.