

HIGHLANDS AFFORDABLE HOUSING IMPLEMENTATION GUIDELINES

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Highlands Municipal Affordable Housing Guidelines

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Highlands Municipal Affordable Housing Guidelines

1.1 Purpose and Scope

A. Overview

The New Jersey Highlands Region is an area of 859,358 acres located in the northwest part of the State which includes 88 municipalities and parts of 7 Highlands counties. This accounts for less than 15% of the State in land; however, the Highlands Region provides drinking water for 70% of New Jersey residents. In 2004, the State Legislature of New Jersey passed the New Jersey Highlands Water Protection and Planning Act (Highlands Act), recognizing the significance and value of the region and a desire to protect the State's drinking water supplies, other key natural resources and the economic viability of communities within the region.

The Highlands Act established the New Jersey Highlands Water Protection and Planning Council (Highlands Council), a regional planning entity charged with implementation of the Act. The Highlands Council works in partnership with municipalities and counties in the region to encourage a comprehensive regional planning approach to implementation of the Highlands Act. The Act recognizes that the protection of these resources is vital and "cannot be left to the uncoordinated land use decisions of 88 municipalities..." Implementation of the Highlands Act is guided by the Highlands Regional Master Plan (RMP), adopted by the Council in 2008.

The Highlands Act describes that because of the Highlands Region's unique features, the now defunct Council on Affordable Housing (COAH) must take into account the Highlands RMP. Consistently, the revised Fair Housing Act, which was adopted in March 2024 (P.L. 2024, c.2), compels the Department of Community Affairs (DCA) and municipalities to account for the RMP in several ways.

The interaction between the Highlands Act and the Fair Housing Act has a meaningful history that provides context for current and future guidance.

- In 2008, COAH published Round 3 regulations predicated upon a formula known as growth share. Growth share, in part, relies upon "capacity estimates" to calculate municipal obligations. COAH's regulations were adopted prior to the Highlands adoption of the RMP. However, COAH's comments and responses to those regulations confirm that the agency planned to adjust its regulations to account for the RMP -- including its capacity estimates.
- Later that year, the Highlands Council adopted the RMP, which became effective on September 8, 2008.
- Also in 2008, Governor Corzine issued Executive Order 114 mandating coordination between COAH and the Highlands Council to effectuate the intent and spirit of both the original Fair Housing Act and the Highlands Act. Thus, later that year, COAH and the Highlands Council entered into a Memorandum of Understanding (MOU) to cooperate as to the interplay between the two doctrines. The MOU provided that "[t]he Highlands Council shall prepare adjusted growth projections...through the development of a Build-out analysis at a municipal scale for conforming municipalities consistent with the RMP.
- On August 12, 2009, COAH adopted a guidance document, which recognized that the growth share projections could be adjusted for Highlands municipalities.
- Later that year, the Highlands issued guidance on its "Build-out" for individual towns and the impacts on its obligations under the Mount Laurel doctrine.
- In 2011, the Appellate Division decided In re Highlands Master Plan, 421 N.J. Super. 614, 633 (App. Div. 2011), which:
 - Upheld the validity of the RMP, Executive Order 114 and the MOU between COAH and the Highlands Council, but which also:

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- Invalidated the August 12, 2009 COAH Resolution and Highlands Guidance Document on the grounds that they were administrative rules COAH was required to adopt in accordance with the Administrative Procedures Act.
- In 2015, after the Supreme Court decided “Mount Laurel IV”, the Highlands revisited Modules 2 (Municipal Build-out) and 3 (Affordable Housing Instructions) and called for an updated Build-out analysis for each conforming municipality. The module update required, for Highlands conforming municipalities a summary of any vacant land adjustment proposed, if based on the Highlands Municipal Build-Out Report.
- In addition, the modules update required that all Fair Share Plan(s) “shall include a narrative analysis discussing the site-specific consistency issues and the viability for any affordable housing site proposed, based on the Highlands Consistency Review Report from the Highlands Consistency Review. . . “
- On March 20, 2024, Governor Murphy signed amendments to the New Jersey Fair Housing Act (FHA) into law. Although these amendments abolished COAH, they continue to recognize the importance of the Highlands Regional Master Plan as a necessary input for the responsible production of affordable housing in the Highlands Region.
- The amended FHA states that “The regional master plan shall be taken into account as part of the determination of obligations pursuant to the method in section 7 of (P.L. 2024, c.2) regarding the allocation of the prospective fair share of the housing need under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for any fair share period subsequent to the effective date of (P.L. 2024, c.2) if a municipality is in the Highlands Region.”
- On April 18, 2024 the Highlands Council adopted, after public comment, an Amendment to the RMP entitled Highlands Affordable Housing RMP Amendment. The Amendment provides standards based on the RMP and the FHA as to where it is appropriate to locate affordable housing based on the Goals, Policies and Objectives of the RMP.
- Given the above history, it is critical for the Highlands to offer guidance for compliance with the RMP in the context of affordable housing. The RMP at Policy 6O7 requires that conforming municipalities implement both the resource protection requirements of the RMP along with providing for a realistic opportunity for a fair share of its region’s needs for housing for low- and moderate-income households. Proposed affordable housing developments in conforming municipalities must therefore be consistent with the RMP Land Use Capability Zone designations while providing for the protection of individual resource protections.
- This document will specifically address compliance techniques and mechanisms to produce affordable housing with the least environmental impact. It is intended to assist with conformance with the RMP and is not intended to add any additional requirements not approved through an RMP Amendment. A subsequent or accompanying Build-out Guidance Document will address issues of land, sewer and water capacity issues in the context of Highlands Municipalities.

The Highlands region, by the terms of the Highlands Act and the Highlands RMP, is an area of the state designated for limited growth, both in terms of overall scale of new development and the portions of the region that are suitable for development. These guidelines are designed to provide guidance to planners, municipal officials and the development community regarding where affordable housing projects should be built, the appropriate scale of those projects and the manner in which these projects can be designed and built within that context. Long-term management of the region for the protection of its vital resources requires that all future development, including affordable housing, be appropriate in scale, location, and design to ensure that those resources will be available for future generations of New Jersey’s residents and businesses.

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1.2 Highlands Affordable Housing Guidance

A. Introduction

One of the goals of the RMP is to provide “Market rate and affordable housing sufficient to meet the needs of the Highlands Region within the context of economic, social and environmental considerations and constraints and Policy” (Goal 6O). In addition, the RMP seeks to “establish a region-wide, comprehensive approach to addressing housing needs in the Highlands Region, serving all age groups, income levels, and mobility options” (Policy 6O1). Furthermore, the RMP Policy 6O7 requires that conforming municipalities implement both the resource protection requirements of the RMP along with the New Jersey Supreme Court’s Mount Laurel doctrine. The RMP additionally includes goals, policies and objectives relating to the priority consideration of affordable housing including: the highest priority given to available water supply in Objective 2B4a, Objective 2B4b, and Objective 2J4c; priority consideration for wastewater capacity in Objective 2K3e; and priority consideration for land-based Map Adjustments in Objective 6G2b. All housing policies must be viewed in the context of the availability of resource capacities, and in particular the need and availability of water resources to service the growth necessary to provide for housing.

The RMP specifically requires “that conforming municipalities update and adopt a housing element, fair share plan, and implementing ordinance(s) to reflect current conditions and resource protection requirements of the RMP” (Policy 6O8). Municipalities conforming with the RMP must prepare a Housing Element and Fair Share Plan in accordance with the requirements of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the Municipal Land Use Law. To address the RMP requirements, the Housing Element and Fair Share Plan must be developed in compliance with all applicable RMP requirements and the Land Use Capability Zone Map (LUCZ); within water availability limits, wastewater utility capacity, water supply utility capacity; and in accordance with the RMP’s resource protection provisions.

Executive Order 114 (2008) directs the Highlands Council to ensure that municipalities that voluntarily conform to the Highlands Plan provide for affordable housing as follows:

1. Support redevelopment and development to maximize affordable housing opportunities while preserving critical environmental resources;
2. Identify sites and opportunities for affordable housing within the Highlands Region, including the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments;
3. Coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation;
4. Identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region’s affordable housing needs while preserving its critical resources;
5. Preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects; and
6. Provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.

The primary concern in the Highlands region is the protection of the region’s water resources that provide water for approximately 70% of the state’s population. The Highlands Council acknowledges the need to address a “full range of housing” in the RMP. The RMP further recognizes the need to site both market and affordable housing where it will have minimal impact on the environment. In RMP Policy 6O3 it is clear that

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the Highlands Council promotes the appropriate location of housing based on the “Land Use Capability Zones” in the region. Based on this policy and the requirements of E.O. 114, the Highlands Council seeks to further define criteria for siting affordable housing in the region.

In seeking to advance the production of affordable housing in accordance with the mission of the Highlands Act and the Legislature’s continuing regard for the protection of the sensitive Highlands ecosystem in the recent amendment to the FHA, our highest priority is the safeguard of drinking water for the state’s current and future residents. The primary tool for achieving this objective is to control and limit the intensity of development in areas and in ways that negatively impact the environmental features within the Highlands. Consequently, this means that in many areas within the Highlands, high density, high intensity multifamily development directly conflicts with the goals of the RMP. Thus, while the Highlands Council acknowledges the need for development that includes affordable housing, that need must yield to the higher order goals of the RMP. A failure to effectively protect the health and safety of our drinking water negatively impacts the interests of all citizens of all incomes. In addition, the Highlands supports less intensive and more environmentally friendly mechanisms to produce affordable housing. Therefore, compliance mechanisms that limit development should be favored over those that promote more development

B. Conformance Status

The recently adopted Affordable Housing legislation provides for a different methodology for determining affordable housing obligations and for drafting and implementing local Affordable Housing plans for conforming Highlands municipalities. N.J.S.A. 52:27D-304 (w) defines a conforming municipality as: a municipality that has adopted a land development ordinance implementing the municipality’s plan conformance petition and which land development ordinance has been certified by the Highlands Water Protection and Planning Council as consistent with the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.), the Highlands regional master plan, and the municipality’s plan conformance approval. The term "land development ordinance" shall be inclusive of any amendment to the municipality’s land development ordinances that is adopted to further the municipality’s petition of plan conformance. The new legislation also requires the Highlands Council to provide the Department of Community Affairs (DCA) with a list of all municipalities that meet this definition of conformance to be used in DCA’s calculations of municipal obligations.

Highlands conforming municipalities shall prepare and adopt a Fair Share Housing element of their municipal master plans along with appropriate supporting land use ordinances as set forth in this guidance document (RMP Policy 6O8). Additionally, any conforming municipality that currently is utilizing the version of the Highlands Land Use Ordinance known as the “checklist” or “referral” ordinance shall adopt as a replacement, the newest version of the Highlands Land Use ordinance, as required by the Highlands Affordable Housing RMP Amendment. A copy of the newest version can be found in Appendix B of these guidelines.

C. Highlands Municipal Build-out Report

Highlands conforming municipalities will update their Highlands Municipal Build-out Report in accordance with instructions that are to be released by the Highlands Council in October of 2024. The Highlands Municipal Build-out will provide for a parcel-based land analysis that provides an assessment of vacant lands against the RMP (including the LUCZs and resource restrictions). The Build-out will also include guidance for determining if there is a basis for any adjustments to a municipality’s new construction obligation. This may include vacant land adjustments based on appropriate standards pertaining to housing density and environmentally sensitive lands as identified by the Highlands Council in the 2024 Affordable Housing RMP Amendment. The information provided by the Highlands Council to the municipality is a basis for the

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municipality to review and confirm the accuracy of the analysis. The analysis will provide an amount of vacant land available with potential for wastewater service and, where wastewater service is not available, the number of units that could be developed based on RMP septic densities limitations. Within the parameters of sound land use planning, municipalities will generally have to determine appropriate densities for lands that have the potential to be serviced by public wastewater. For additional details on resource and LUCZ restrictions related to affordable housing please see the Affordable Housing RMP Amendment 2024-3.

Municipalities should review the net water availability provisions of the RMP and the net water availability for each HUC-14 subwatershed in the municipality. Subwatersheds found to be in a deficit shall prioritize any “conditional net water availability” (RMP Policy 2B3) towards affordable housing that is needed to comply with the municipalities’ established fair share obligation (RMP Objectives 2B4a and b). Where a major modification is required for any water allocation permit, said water allocation permit must be consistent with the net water availability provisions of the RMP. It must be noted that the location of the physical development is not always the source for the water for the development. Many projects source water from other subwatersheds that may be in deficit where the physical location of the structure is in a surplus of water availability. In these cases, the source subwatershed shall govern the net water availability for the project.

Municipalities should consider that although net water availability may be a limiting factor in overall development, it may be subject to future modification and as such may be appropriate as a durational adjustment. Net water availability limitations may be addressed through adoption of a Water Use and Conservation Management Plan (a mandatory component of plan conformance), site specific water use mitigation, or through refinement of the net water availability calculations.

The Highlands Municipal Build-out Report is based on the understanding that a municipality will continue to effectively implement its plan conformance petition approval. In accordance with the Highlands Act (N.J.S.A. 13:20-22) the municipal and county master plan and development regulations which have been approved by the council to be in conformance with the RMP shall be entitled to a strong presumption of validity. Should any municipality fail to meet the standards of its conformance petition, the Highlands Council may issue a notice that the municipality is no longer considered as a Highlands conforming municipality and this could have ramifications under the operative clauses in A4, which determination would presumably be made by the Program and may no longer avail of the benefits of plan conformance unless the municipality cures the concerns of the Highlands Council within a reasonable period of time as determined by the Council.

D. Preferred Affordable Housing Mechanisms within the Highlands Region

Municipalities are encouraged to select mechanisms that reduce demands on a sensitive ecosystem and a source of safe water for nine million present and future citizens of our state through mechanisms that reduce the demand for water. The following are taken from and are subject to the provisions of the Fair Housing Act, the limitations on the use of bonus credits, and the micro-requirements regarding families, tenure, etc.

- **Special needs and permanent supportive housing:** These projects may receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section N.J.S.A. 52:27D-304. (Depending on the type of facility the credit may be per bedroom.) These projects may include the conversion of existing single-family homes or the construction of new facilities. The conversion of existing homes in the Preservation Area may qualify as a Highlands Act Exemption #5, while new construction may qualify as a single-family home under the Municipal Land Use Law (N.J.S.A. 40:55D-66.1) and as a Highlands Act Exemption #2. This would permit the construction of new special needs or permanent supportive

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housing on vacant lots in the Preservation Area. This method may be of particular use to 100% Preservation Area municipalities with limited available land.

- **100% Affordable Municipally Sponsored Project:**
 - A project where all of the units are deed restricted and affordable to low- and moderate-income households. Due to funding source requirements, this type of project typically has between 60 and 100 units when serviced by public sewer and water. However, much smaller projects have also been developed as infill and small-site developments are or can be designed to fit within the existing neighborhood character.
 - A municipality may receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes towards the cost of the project. This contribution may consist of: (a) real property donations that enable siting and construction of the project; or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost;
 - Municipalities should consider the conversion or redevelopment of sites, particularly where the municipality may already own or may be able to acquire the property, which could potentially provide for the required municipal contribution.
 - All sites slated for a 100 percent project must qualify as suitable and consistent with the RMP as further detailed in Section 1.3 below.
- **Redevelopment and Reuse of Non-Residential Development for Affordable Housing:**
 - A project that involves the redevelopment and/or re-use of non-residential structures into the development of residential affordable housing.
 - Municipalities may receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is, or was previously developed and utilized for retail, office, or commercial space.
 - Redevelopment that proposes an increase in water usage must comply with the net water availability provisions of the RMP.
 - These projects may qualify for Highlands Act Exemption #4 (See Appendix A for a details on exemptions) and may be of particular use to conforming municipalities with limited available land.
- **Very Low-Income Units:** Municipalities may receive one unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
- **Non-Profit Housing Development Partnership:** A municipality may receive one unit of credit and one-half bonus credit for each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer.
- **Sites Proximate to Transit:**
 - Municipalities may receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius surrounding a New Jersey Transit rail or bus station.
 - The distance from the bus or rail station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property.

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- Mapping is available on the Highlands Interactive Map to provide ½ mile buffers from these facilities.
- **Accessory Apartments:** An Accessory Apartment is a self-contained residential unit reserved through a deed restriction for a low- or moderate-income household, created within an existing structure, by an addition to an existing structure, or by the construction of a new accessory structure on a site that already contains a housing unit. Also known as accessory dwelling units (ADUs), these are typically created within the existing unit or within an accessory structure on site. The site is usually ¼ acre or greater. Since accessory apartments require far less development than other techniques, this may be an effective type of development in the Highlands by eliminating one of the main impediments to the effectiveness of this technique – the requirement that households make the accessory apartment available to strangers.
- **Market to Affordable Units:**
 - This is a program that involves the purchase of a unit that is currently a market rate unit that becomes deed restricted and is re-sold or re-rented at a price affordable to a low- or moderate-income person or household. The sites are usually ¼ acre or greater or can be part of a larger development (e.g. condominium units).
 - Municipalities may receive one unit of credit and one bonus credit for each unit of low-or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit.
 - A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

1.3 Criteria for Identifying Sites Suitable for Affordable Housing in the Highlands Region

A. Core Planning Principles for Affordable Housing in the Highlands Region

In 2004 the Highlands Water Protection and Planning Act established special protections for the Highlands Region. The importance of the resources in the Highlands was recognized by the Act as were the threats to those resources posed by encroaching development. Because of the importance of the region's resources to the entire State, restrictions on development were imposed and the RMP was created to develop a strategy for protection of those resources. Unlike most of the State, the Highlands Region is a limited growth area. The limits on new development in the region and the priority for protection of the important natural resources of the Highlands must inform all decisions regarding providing affordable housing in the region. This means that both the number of new affordable units constructed (as well as the total number of all housing constructed in the region) and the manner in which those units are built must support the goals of the Highlands Act and the Highlands RMP.

- Municipalities in the Highlands Region have an obligation to provide low-and moderate-income housing opportunities. However, the provision of affordable housing units in these municipalities must be consistent with the policies and goals of the Highlands Act and the Highlands RMP, which establish the top priority.
- The majority of new development in the Highlands Region will likely consist of redevelopment of existing developed lands. Reuse/redevelopment of previously disturbed sites should be prioritized.
- Inclusionary developments provide density bonuses for developers to support the imposition of a set aside. Although municipalities have the right to rely on “inclusionary” developments to satisfy their

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affordable housing obligations, reliance on this technique is discouraged to limit the impact on the scarce resources of the region. Reliance on 100% affordable projects and other techniques that place less stress on infrastructure are encouraged to reduce impact on the ecosystem and water resources.

- The extent and capacity of existing infrastructure should be considered in site selection, zoning ordinance amendments, and total number of projected new units.
- Municipalities should not utilize changing existing residential zoning to non-residential zoning as a device to avoid construction of affordable housing units.
- All redevelopment projects with a residential component must reserve at least 20% of the total units created for low- and moderate-income households.
- Although sound planning calls for a balance of nonresidential development, municipalities that invite nonresidential development should seek to balance that development with residential development with an affordable housing component so that low- and moderate-income households have easier access to the jobs created.

B. Redevelopment

The Highlands RMP seeks to address a full range of affordable housing needs for the Region. The Region should support a variety of housing types such as rental housing, multi-family housing, age-restricted housing, and supportive and special needs housing. The Highlands RMP seeks to provide mechanisms to address the need for a full range of variety and choice in housing opportunities in the Highlands Region, while protecting the character and natural resources of the Region and acknowledging infrastructure limitations. One such method to work within the resource protection and infrastructure limitations of the Region is to use redevelopment as a method for the provision of affordable housing.

Redevelopment is a planning tool that converts underutilized areas, brownfields, and greyfields into new land uses through structure replacement, infill, and adaptive reuse approaches. Redevelopment will help to meet the Region's growth needs by optimizing the efficient use of previously settled areas within existing communities and available infrastructure, thus conserving natural resources. Brownfields and greyfields are two types of sites which commonly possess characteristics worthy of investigating for purposes of redevelopment, subject to appropriate remediation to support residential development. The definition of a brownfield is, "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been or there is suspected to have been, a discharge of a contaminant." Greyfields are sites usually containing industrial or commercial facilities exhibiting signs of abandonment or underutilization in areas with existing infrastructure, but without evidence or expectation of contamination.

Redevelopment of existing sites can provide many benefits to a community including preservation of the tax base, environmental cleanup, community improvement, reduced sprawl, and the preservation of Highlands resources including limited water and wastewater availability. In no event should any development, new or redevelopment, exceed the net water availability for the subwatershed in either the subwatershed where the project is located or where it sources its water. In addition, municipalities may receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space subject to Fair Housing Act limitations. These methods will help to provide for smart growth development within the region's resources and capacities.

Smart growth is an approach to resource planning and management where growth and development are concentrated and organized around "centers" with compact, walk-able, bicycle-friendly land use patterns, typically including mixed-use development with a range of housing choices. It generally reflects value for long-range, regional considerations of sustainability over short-term economic benefits. Smart growth promotes

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land use patterns with a sense of community and place, multi-modal and alternative modes of transportation, a balance of employment and housing, and an equitable distribution of the costs and benefits of development. It also includes the preservation and enhancement of natural and cultural resources.

C. Specific Site Criteria

A review and analysis of the RMP informed the following general affordable housing siting criteria. The minimum criteria are consistent with the objective of Policy 604: “To encourage the targeting of new housing to areas with compatible existing densities and within walking distance of schools, employment, transit, and community facilities and services”.

1. Sites should be proximate to public transportation options such as bus and/or train service. A site qualifies as being “proximate” to transit if it is within a half mile of an existing or proposed transit stop and that it is a walkable route (i.e. accessible by sidewalks). Sites within ½ mile of a transit stop may be eligible for one unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius surrounding a New Jersey Transit rail or bus station.
2. Sites should be accessible to schools.
3. Sites should be accessible to employment, using the walkable/transit criteria above.
4. Sites should be proximate to shopping areas, using the criteria above.
5. Sites should be served by public water and public sanitary sewer.

Other Criteria to be considered include:

1. Sites should be close to recreational opportunities.
2. Sites should avoid regulated environmental resources of the Highlands Region as set forth in the Highlands Act and/or the regulations of the New Jersey Department of Environmental Protection including but not limited to:
 - Special Environmental Zones
 - Highlands Open Water Buffers
 - Prime Groundwater Recharge Areas
 - Vernal Pool Buffers
 - Significant Natural Areas
 - Areas of severe steep slopes (20%+)
3. Sites that necessitate significant extension of water and sewer service should be avoided. Said another way, in accordance with the mission of the Highlands Act, municipalities should be extremely judicious in extending sewer and water service and thereby encouraging the development the Legislature enacted the Highlands Act to suppress.
4. Sites should comply with the most recent Flood Hazard Area rules.
5. Sites should not be located in close proximity to industrial or other uses with the potential for health and safety impacts.

Regarding the design of affordable housing projects, energy usage can increase the cost of housing, as can dependence on cars. Incorporation of green building standards [as outlined by the EPA](#) should be part of any housing project. Solar readiness should be considered in design as on site solar generating facilities can assist in offsetting electricity costs and the proper orientation of buildings can provide energy savings. Finally, planning for future electric vehicle (EV) charging is of particular importance for multi-family and apartment style housing where it is typically more difficult for occupants to install their own chargers than at a single family home.

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The matrix below provides recommendations for the location of certain types of affordable housing projects.

Table - Highlands Affordable Housing General Siting Criteria					
General Siting Criteria	<u>Criteria 1</u> Access to Public Transit	<u>Criteria 2</u> Proximity to Schools	<u>Criteria 3</u> Access to Employment	<u>Criteria 4</u> Proximity to Retail/Services	<u>Criteria 5</u> Public Water and Sewer
100% Affordable	X	X	X	X	X
Assisted Living Residence	X			X	X
Extension of Expiring Controls					
Accessory Apartments					
Market to Affordable	X	X	X	X	
Inclusionary Development (20% set-aside)	X	X	X	X	X
Special Needs and Supportive Housing					
Redevelopment and Reuse of Non-Residential Sites	X	X	X	X	X

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D. Selecting an Affordable Housing Site in the Highlands Region

This section is intended to coordinate all of the information above to the specific goals, policies and objectives applicable to the Preservation Area and the Planning Area. The recommendations below are meant to be the specific criteria to be followed in each of these areas in the Highlands.

E. Site Suitability in the Preservation Area

For development in the Preservation Area, municipalities should look towards previously developed sites as discussed in the Redevelopment section, through the use of Exemption 4 or Highlands Redevelopment Areas. The other option available in the Preservation Area is the conversion of existing single-family homes into special needs or permanent supportive group homes, or the use of Exemption 2 to construct new special needs or permanent supportive group homes (N.J.S.A. 40:55D-66.1). In addition, municipalities should implement programs such as accessory apartments, market to affordable and alternative living arrangements.

The Preservation Area is viewed as an area generally inappropriate for any type of high-density development on undeveloped land. This includes inclusionary developments as well as large 100% affordable housing projects. The NJDEP Highlands Rules (N.J.A.C. 7:38) and the RMP include a specific provision for allowing a waiver to permit 100% affordable housing projects in 100% Preservation Area municipalities (Bloomsbury, Califon, Glen Gardner, Ringwood and West Milford). However the protection of Highlands resources is still required by the Highlands Rules and the RMP. Overall, the identification of areas for redevelopment or reuse is still the preferred method for development in the Preservation Area.

Table - Highlands Preservation Area Potential Approval Path					
General Siting Criteria	Exemption 2	Exemption 4	Exemption 5	Exemption 17	Waiver
100% Affordable		X		X	X
Assisted Living Residence		X		X	X
Extension of Expiring Controls					
Accessory Apartments	X	X	X		
Market to Affordable					
Inclusionary Development (20% set aside)		X		X	X
Special Needs and Supportive Housing	X	X	X	X	X
Redevelopment and Reuse of Non-Residential Sites		X		X	X

For a description of Highlands Act Exemptions and Waivers please see Appendix A.

F. Site Suitability in the Planning Area

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In “Policy 603” the plan states “To promote, where appropriate and permitted by the Land Use Capability Zone, affordable housing within new residential and mixed-use development, redevelopment, or adaptive re-use projects.” The Planning Area Existing Community Zone is viewed as the most appropriate place for all types of affordable housing. In addition to the conclusions outlined below, certain general criteria based on Policy 604 were outlined that shall be utilized in siting affordable housing sites in the Planning Area without exception.

Table - Highlands Planning Area Potential Approval Path			
General Siting Criteria	Exemption 4	Regulated by local zoning	Waiver
100% Affordable	X	X	X
Assisted Living Residence	X	X	X
Extension of Expiring Controls	n/a	n/a	n/a
Accessory Apartments	X	X	X
Market to Affordable	n/a	n/a	n/a
Inclusionary Development	X	X	X
Special Needs and Supportive Housing	X	X	X
Redevelopment and Reuse of Non-Residential Sites	X	X	X

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G. Conclusions Based on Land Use Capability Zones

Where consistent with the RMP, higher density housing can be accommodated and is encouraged in the Existing Community Zone and Lake Community Sub-Zone within the Planning Area where public utility capacity exists. This is where the most diverse and flexible opportunities exist. The areas in these zones should be the first choice for municipalities seeking to construct inclusionary developments and large scale 100% affordable housing projects. However, there are limitations and requirements that must be met in order to allow higher densities. The lands with the least number of environmental conditions and special requirements have the higher priority for siting high density affordable housing projects.

Higher density housing in the Protection Zone (PZ), Conservation Zone (CZ) and all Environmentally Constrained Subzones (ECZ-ECSZ and CZ-ECSZ) will be permitted under very limited circumstances (primarily where a Highlands Redevelopment Area has been designated by the Highlands Council or for clustered development in accordance with RMP standards), and subject to stringent environmental standards. The most feasible situations should be where water and sewer capacity already exist, which rarely occurs due to the nature of these zones. These zones will be considered areas to be used as a last resort.

For communities within HUC14 subwatersheds that are deemed in water supply deficit by the RMP, neither amendments to water quality management plans nor water allocation permits will be approved by NJDEP until a Highlands Council-approved municipal water use and conservation management plan is adopted and fully implemented (Executive Order 114). This will reduce a municipality's ability to situate higher density housing outside of already-approved sewer service areas, at least for a limited period of time.

Table - Highlands Land Use Capability Zones for New Development					
General Siting Criteria	ECZ/LCSZ	ECZ-ECSZ	CZ/CZ-ECSZ	PZ	PRES
100% Affordable	X				
Assisted Living Residence	X				
Extension of Expiring Controls	n/a	n/a	n/a	n/a	n/a
Accessory Apartments	X	X	X	X	X
Market to Affordable	X	X	X	X	X
Inclusionary Development	X				
Special Needs and Supportive Housing	X	X	X	X	X
Redevelopment and Reuse of Non-Residential Sites	X	X	X	X	X

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- ECZ: Existing Community Zone (Planning Area)
- LCSZ: Lake Community Subzone (Planning Area)
- ECZ-ECSZ: Existing Community Zone – Environmentally Constrained Subzone (Planning Area)
- CZ: Conservation Zone (Planning Area)
- CZ-ECSZ: Conservation Zone - Environmentally Constrained Subzone (Planning Area)
- PZ: Protection Zone (Planning Area)
- PRES: Preservation Area

1.4 Land Use Ordinances

A. Highlands Conformance Ordinance

Any Highlands conforming municipality, including any that currently has adopted a “Highlands Referral Ordinance” or “Highlands Checklist Ordinance” but has not adopted the full Highlands Land Use Ordinance, is strongly advised to adopt the “Highlands Conformance Ordinance” (and associated master plan amendments) as part of the adoption of the required Housing Element and Fair Share Plan, to implement the Land Use Capability Zone and other RMP regulations directly through the municipality’s land use regulations. This will supply vital support to any adjustments made to the municipality’s fair share obligation and further confirm the municipality’s conformance status with the NJDEP, particularly related to wastewater management planning. The modified Highlands Conformance Ordinance is found at Appendix B of this document. A copy of the Conformance Ordinance may also be found on the Highlands Council’s website or by contacting the appropriate municipal liaison. Your municipal liaison can be found at this site: <https://www.nj.gov/njhighlands/planconformance/liaisons/>

B. Highlands Affordable Housing Ordinance

Any conforming municipality is required to adopt the following ordinance to implement the standards of the Fair Housing Act (C.52:27D-329.9). In accordance with the Fair Housing Act, all newly constructed residential developments within the Highlands Region (irrespective of conformance status) are required to reserve for occupancy by low- or moderate-income households at least 20 percent of the residential units constructed with appropriate affordability controls.

As the above 20 percent reservation requirement is found in the Fair Housing Act and not the Highlands Act, all municipalities located in the Highlands Region are responsible for the provision of the 20 percent reservation requirement, irrespective of plan conformance status. This includes developments exempt from the Highlands Act. Such compliance may be the subject of review at the mid-point, beginning, or end of any Fair Share period by the agency or court responsible for oversight of said review.

Highlands Region municipalities that conform to the RMP shall implement the following regulations consistent with the timelines for ordinance adoption found in the FHA consistent with requirements of the Highlands Act, the RMP, the MLUL, and the Fair Housing Act. A non-conforming municipality may adopt this ordinance but is not required to do so, and will not gain the legal protection benefits of a conforming municipality.

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Highlands Affordable Housing Ordinance

1. Any development consisting of five or more newly constructed residential units shall reserve for occupancy at least 20 percent (20%) of the residential units constructed for low- or moderate-income households.
2. Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.
3. A minimum of 13% of the affordable units shall be reserved for very low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
4. 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 implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.
5. Municipalities shall provide for the local review of the required 20% set aside of affordable units to be provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:
 - a. An Affordable Housing Production Plan shall detail all issues related to affordable units and must 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.
 - b. 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 proposing five or more new units.
 - c. The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.
 - d. All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning, Zoning, or Land Use Board for consistency with these guidelines, the RMP, and the municipality's certified Housing Element and Fair Share Plan.
 - e. Compliance with the RMP, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.
 - f. Any approval shall be accompanied by a requirement for a development agreement between the applicant and the municipality.
 - g. The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.

1.5 Resources for Municipalities

Planning for and providing affordable housing opportunities within the constraints of the Highlands Act and the RMP can be challenging for the region's municipalities. In particular, the costs involved in 100% affordable projects for wastewater and water infrastructure in areas not served by existing utilities can be difficult to navigate. There are resources available to assist with this effort.

A. Highlands Council

1. **Planning Grants**-Conforming municipalities will have access to grant funding from the Highlands Council to underwrite the costs of preparing a new Fair Share Housing element that is consistent with these guidelines and with the new Affordable Housing legislation. The Highlands Council grants are awarded on a reimbursement basis. Municipalities seeking this grant funding will submit a scope of work for review and

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approval by the Council. Grants are awarded on a rolling basis subject to approval by the Highlands Council and availability of funds.

2. **Technical Assistance**-Highlands Council staff is available to provide conforming municipalities and municipalities in the process of conformance with the RMP with technical assistance in the form of planning guidance, site evaluation, resource identification and evaluation, and GIS mapping. Conforming municipalities and municipalities in the conformance process are assigned a liaison from the Highlands Council planning staff. Additionally, Highlands Council staff can assist municipalities with the permitting process for water and wastewater infrastructure through cooperation with the Department of Environmental Protection. Find your community's Highlands liaison here: <https://www.nj.gov/njhighlands/planconformance/liaisons/>

B. New Jersey Housing & Mortgage Finance Agency

The New Jersey Housing and Mortgage Finance Agency (NJHMFA) advances the quality of life for residents of and communities throughout New Jersey by investing in, financing, and facilitating access to affordable rental housing and homeownership opportunities for low and moderate-income families, older adults, and individuals with specialized housing needs. Further information on the various NJHMFA programs can be found here: <https://www.nj.gov/dca/hmfa/>

C. Federal Low Income Housing Tax Credits

The Federal Low Income Housing Tax Credit Program enjoys the reputation of being the most successful federal housing program in history. The credit, a dollar-for-dollar reduction in federal tax liability, acts as a catalyst to attract private investment into the historically underserved affordable housing market. The additional capital mitigates the debt burden incurred in the construction and rehabilitation development process. Consequently, less rental income is necessary for operations. In New Jersey, the Federal LIHTC program is administered by the NJHMFA. Information on this program can be found here: <https://www.nj.gov/dca/hmfa/developers/uniap/index.shtml>

D. New Jersey Infrastructure Bank Financing

The I-Bank is an independent state financing authority, in but not of the Treasury authorized to issue revenue bonds to make loans to finance the construction of eligible environmental and transportation infrastructure projects. I-Bank financing is only available to public entities. I-Bank funding is generally in the form of very low interest loans that provide significant savings over private financing. Municipalities may enter into agreements with affordable housing developers to guarantee repayment of loans obtained to fund water, wastewater and stormwater infrastructure needed to facilitate construction of 100% affordable projects that would otherwise not be financially feasible. Information on the I-Banks water infrastructure financing programs can be found here: <https://www.njib.gov/njeit>

E. Non-Profit Affordable Housing Developers

Highlands municipalities should consider partnering with one of the many not-for-profit developers of affordable housing that are active throughout the state. Non-profit providers can facilitate the construction of 100% affordable projects through the use of subsidies and tax credits and also assume responsibility for long-term operation and maintenance, particularly in the case of special needs housing. Municipalities should also consider facilitating these projects through a contribution from affordable housing trust funds

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or through the contribution of suitable municipally-owned sites to make projects of this nature financially feasible. A partial directory of Affordable Housing developers can be found here:
<https://nj.gov/dca/announcements/pdf/20110909housing.pdf>

Appendix A – Highlands Act Exemptions and Waivers

Exemptions

1. **Construction of a single family dwelling for own use or family use:** The construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of this act or on a lot for which the individual has on or before May 17, 2004 entered into a binding contract of sale to purchase that lot;

2. **Construction of a single-family dwelling on existing lot:** The construction of a single-family dwelling on a lot in existence on the date of enactment of this act, provided that the construction does not result 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. **Developments with prior Municipal and DEP Approvals:** A major Highlands development that received on or before March 29, 2004:

(a) one of the following approvals pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.):

- (i) preliminary or final site plan approval;
 - (ii) final municipal building or construction permit;
 - (iii) minor subdivision approval where no subsequent site plan approval is required;
 - (iv) final subdivision approval where no subsequent site plan approval is required; or
 - (v) preliminary subdivision approval where no subsequent site plan approval is required;
- and

(b) at least one of the following permits from the Department of Environmental Protection, if applicable to the proposed major Highlands development:

- (i) a permit or certification pursuant to the "Water Supply Management Act," P.L.1981, c. 262 (C.58:1A-1 et seq.);
- (ii) a water extension permit or other approval or authorization pursuant to the "Safe Drinking Water Act," P.L.1977, c. 224 (C.58:12A-1 et seq.);
- (iii) a certification or other approval or authorization issued pursuant to the "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.); or
- (iv) a treatment works approval pursuant to the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.); or

(c) one of the following permits from the Department of Environmental Protection, if applicable to the proposed major Highlands development, and if the proposed major Highlands development does not require one of the permits listed in subparagraphs (i) through (iv) of subparagraph (b) of this paragraph:

- (i) a permit or other approval or authorization issued pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c. 156 (C.13:9B-1 et seq.); or
- (ii) a permit or other approval or authorization issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c. 19 (C.58:16A-50 et seq.).

The exemption provided in this paragraph shall apply only to the land area and the scope of the major Highlands development addressed by the qualifying approvals pursuant to subparagraphs (a) and (b), or (c) if applicable, of this paragraph, shall expire if any of those qualifying approvals expire, and shall expire if construction beyond site preparation does not commence within three years after the date of enactment of this act;

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4. **Reconstruction of buildings or structures within 125% of the footprint:** The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or non-horticultural use;
5. **Improvement to a single-family dwelling:** Any improvement to a single family dwelling in existence on the date of enactment of this act, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system;
6. **Places of worship, schools, or a hospitals:** Any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of this act, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility;
7. **Woodland and Forest management plans:** An activity conducted in accordance with an approved woodland management plan pursuant to section 3 of P.L.1964, c. 48 (C.54:4-23.3) or the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;
8. **Trails on public or private lands:** The construction or extension of trails with non-impervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established;
9. **Repair of transportation or infrastructure systems:** The routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of this act and does not result in the construction of any new through-capacity travel lanes;
10. **Transportation safety projects:** The construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit, provided that the activity does not result in the construction of any new through-capacity travel lanes;
11. **Public utility lines, rights of way, or systems:** The routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act;
12. **Reactivation of rail lines/rail beds:** The reactivation of rail lines and rail beds existing on the date of enactment of this act;
13. **Public Infrastructure:** The construction of a public infrastructure project approved by public referendum prior to January 1, 2005 or a capital project approved by public referendum prior to January 1, 2005;
14. **Mining or Quarrying:** The mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring or which are permitted to occur on any mine, mine site, or construction materials facility existing on June 7, 2004;

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15. **Site Remediation:** The remediation of any contaminated site pursuant to P.L.1993, c. 139 (C.58:10B-1 et seq.);

16. **Military lands:** Any lands of a federal military installation existing on the date of enactment of this act that lie within the Highlands Region;

17. **Affordable Housing:** A major Highlands development located within an area designated as Planning Area 1 (Metropolitan), or Planning Area 2 (Suburban), as designated pursuant to P.L.1985, c. 398 (C.52:18A-196 et seq.) as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. The exemption provided pursuant to this paragraph shall expire if construction beyond site preparation does not commence within three years after receiving all final approvals required pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.).

Waivers

The NJDEP may grant waivers from its Highlands rules for major Highlands developments in the Preservation Area on a case-by-case basis conditioned upon the NJDEP's determination that the statutory standards are met to the maximum extent possible. A major Highlands Development may obtain one of the following three waivers:

1. **Public Health and Safety**

A waiver of any provision of a Highlands permitting review on a case-by-case basis if determined to be necessary by DEP in order to protect public health and safety.

2. **Redevelopment in previously developed areas as identified by the Highlands Council**

A waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation area identified by the Highlands Council. Any areas identified for possible redevelopment by the Highlands Council shall be either a brownfield site designated by DEP or a site at which at least 70% of the area thereof is covered with impervious surface.

3. **To avoid a Taking of Property without Just Compensation**

A waiver of any provision of the Highlands permitting review on a case-by-case basis in order to avoid the taking of property without just compensation.

4. **100% Affordable Housing Developments**

a. In the Preservation Area for the construction of a 100% affordable housing development in a municipality that is designated in the Highlands Act as 100% Preservation Area and meets the standards of N.J.A.C. 7:38-6.9.

b. For the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP, for the construction of a 100% affordable housing development, where said development is consistent with the resource protection standards found in the Goals, Policies and Objectives of the RMP to the maximum extent possible, and is included in the municipality's adopted Fair Share Plan that has been deemed consistent with the RMP by the Highlands Council.

Definitions

"Major Highlands development" means, except as otherwise provided pursuant to subsection a. of section 30 of this act, (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

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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. Major Highlands development shall not mean an agricultural or horticultural development or agricultural or horticultural use in the preservation area.

Appendix B – Highlands Conformance Ordinance

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:

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[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

- A. 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.
- B. 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).
- C. 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 Water Buffers,
 - 4. Exhibit 4 entitled Highlands Riparian Areas,
 - 5. Exhibit 5 entitled Net Water Availability,
 - 6. Exhibit 6 entitled Forest Area,

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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:

D. 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.

E. In the Planning Area:

1. For residential development, creates three (3) or more new dwelling units.
2. For non-residential development:
 - a) Results in the ultimate disturbance of one (1) acre or more of land; or
 - b) Produces a cumulative impervious surface area of one-quarter ($\frac{1}{4}$) acre, or more.

F. 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, beginning as of the effective date of this Ordinance. 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. For purposes of this Ordinance, the phrases “Application for Development,” “Highlands Area,” “residential development,” “ultimate disturbance,” and “cumulative impervious surface area” shall be defined as provided herein.

III. HIGHLANDS COUNCIL CALL-UP

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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;

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- 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.
 - (iii) 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.

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- (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.

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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.

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- 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.]

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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, for a Highlands Redevelopment Area or Takings Waiver (RMP Policies 7G1 and 7G2) or to serve a cluster development that meets the requirements of RMP Objective 2J4b.
- 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 4 shall be regulated fully in accordance with the requirements of such Plan.

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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 5.
- 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 (½) 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 5 is proposed, a Forest Impact Report shall be prepared including the following:
 1. A map of Forest Area located on or within 500 feet of the subject property, as provided in Exhibit 5.
 2. A map indicating any Forest Area to be disturbed.
 3. 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.
 4. An analysis of the effects (direct and indirect) of the disturbance upon the Confirmed Forest Area.
 5. 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.
 1. 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.
 - a) 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:
 - b) Highlands Open Waters and Buffers
 - c) Riparian Areas, including Floodplains and Floodprone Areas
 - d) Critical Habitat
 - e) Steep Slopes and Ridgelines
 - f) Core Forests and Contiguous Forest Patches

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2. 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.
3. Mitigation Description.
 - a) 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.
 - b) Planting Plan indicating the specific plantings proposed, including size, species, quantity, location, separation distances, planting details, deer and pest management protections, and maintenance plans.
 - c) 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 Land Use 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 be consistent with the RMP
 4. 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.
 5. 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.
 6. 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, and the RMP

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7. Compliance with the RMP and the Affordable Housing Production Plan shall be a condition of any local approval.
- G. Any approval shall be accompanied by a development agreement between the applicant, the municipality, and any other party principal to the provision and/or the administration of the affordable housing units.
 1. The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.
 2. The cost of the construction of the units may be required to be covered by appropriate performance and/or maintenance guarantees to ensure the construction of the units.
- H. 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

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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).

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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.

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Ordinance 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).

Highlands Municipal Affordable Housing Guidelines

Ordinance 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.