

## **Overview of 300-foot Highlands Open Waters Buffers in Planning Area**

### **300-foot Highlands Open Waters Buffers in Planning Area in Final Draft RMP**

In the Final Draft Plan, Objective 1D4d identified when exceptions may be made to the 300-foot Highlands Open Waters buffer in the Planning Area for specific water categories. These were:

- 1) “Exceptional Waters” (waters that are not in the Preservation Area and are not Category 1 (C-1) streams but that include habitat for threatened and endangered species) within a HUC14 subwatershed that exhibits a Low Resource Value Watershed and a Low Integrity Riparian Area. The 300-foot buffer may be reduced to 150 feet at a minimum; and
- 2) “Intermediate Waters” (waters that are not in the Preservation Area, are not C-1 streams, and do not include habitat for threatened and endangered species) within a HUC14 subwatershed that exhibit a Low Resource Value Watershed and a Low Integrity Riparian Area. The 300-foot buffer may be reduced to 75 feet at a minimum.
- 3) Further, in both cases, the applicant needed to demonstrate that “the exception will not cause measurable degradation to the quality and ecological integrity of Highlands Open Waters.”

The Final Draft RMP did not specifically address instances when there were existing disturbances within the 300-foot Highlands Open Waters buffers. In the Preservation Area, the NJDEP Preservation Area rules (N.J.A.C. 7-38-3.6) state that structures or other land improvements existing within a Highlands Open Waters buffer in the Preservation Area on August 10, 2004 may remain, provided that the area of disturbance is not increased other than through a Highlands Preservation Area Approval (HPAA). The expectation was that the RMP would likewise accept existing disturbances within the 300-foot buffer, but no provisions addressed how proposed developments within that area would be regulated.

Finally, the Final Draft RMP did not address scenarios where high quality streams existed within a HUC14 subwatershed that was of Low Resource Value overall. Further research shows clearly that some subwatersheds have both highly developed and minimally developed areas, and the stream quality and buffer quality would be very different within the two areas.

### **300-foot Highlands Open Waters Buffers in Planning Area Proposed for Final RMP**

New Objective 1D4e proposed for the Final RMP states that in the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Waters 300-foot buffers shall only occur in previously disturbed areas and such disturbances must demonstrate full utilization of the following performance standards in the listed order:

- 1) avoid the disturbance of Highlands Open Waters buffers;
- 2) minimize impacts to Highlands Open Waters buffers; and
- 3) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of any of the functional values of the buffer (e.g., habitat, water quality maintenance, temperature moderation, and maintenance of stream channel integrity).

Minimization and mitigation opportunities shall be considered only upon a clear and convincing demonstration by the applicant that the buffer can not be avoided and in no case shall the remaining buffer be reduced to less than 150 feet.

New Objective 1D4f states that in the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Waters 300-foot buffers shall only occur in previously disturbed areas and that such disturbances shall employ low impact development (LID) best management practices to mitigate all adverse modifications to Highlands Open Waters buffers so that there is no net loss of any of the functional values of the buffer.

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AT THE MAY 22, 2008 COUNCIL MEETING**

With respect to the concept of “no net loss,” new Objective 1D4h requires that an applicant conduct a scientifically valid and site-specific Highlands Open Waters buffer functional value assessment that demonstrates improvement or no net loss of the functional values of the buffer. The functional values are specified in this new objective.

Finally, new Objective 1D4i calls for the development and implementation of Stream Corridor Protection/Restoration Plans that identify restoration opportunities and “Provide for a systematic procedure for alternative Highlands Open Waters buffers based on an evaluation of specific stream corridors in the subwatershed to determine the extent of the features critical to supporting the functions of a healthy Highlands Open Waters buffers, which shall protect buffer functional values that are no less protective than the requirements of Objectives 1D4d through 1D4g.” The intent of these plans is to provide better protection to Highlands Open Waters and the functional value of buffers than can be achieved through site-by-site regulation through a science-based approach, which can incorporate such tailored techniques as larger buffers, consideration of topography, restoration and enhancement of buffers, and filtration approaches that will improve buffer function even where existing disturbance or limited modification of buffers are addressed. Buffer “averaging” – a modification of buffers to address development needs – is not an appropriate technique under this objective. The standard is improved protection of buffer functional values through methods appropriate to the stream systems. Another intent of this objective is to address the situation discussed above, where a subwatershed has streams and buffers of very different quality due to development in one part of the subwatershed. The Stream Corridor Protection/Restoration Plan should address each stream corridor based on its actual quality, stresses and protection or restoration needs.

**Comparison of Buffer Protection – Final Draft RMP versus Proposed Policies for Final RMP**

The proposed buffer policies for the Final RMP are more stringent than the buffer policies in the Final Draft RMP and provide enhanced buffer protection as follows:

- The new policies provide that proposed disturbances of Highlands Open Waters 300-foot buffers in the Planning Area shall only occur in previously disturbed areas. There is no provision for encroachment into undisturbed buffers with the new policies. (Note: as with all policies, the impacts of exemptions and waivers under the Highlands Act are addressed separately.) The policies in the Final Draft RMP did not make a distinction between disturbed and undisturbed buffers. Thus, under the Final Draft RMP policies, undisturbed buffers along Exceptional and Intermediate waters in low value watersheds and low integrity riparian areas would have been potentially subject to disturbance. This issue would be corrected.
- The exceptions to the 300-foot Highlands Open Waters buffers in the Final Draft RMP did not provide a measurable or scientific approach to ensure no net loss of buffer functional value; the requirement of a functional value assessment in the new proposed policies does so. Under the Final Draft RMP policies, disturbance of both previously disturbed and undisturbed buffers along Exceptional and Intermediate waters in low value watersheds and low integrity riparian areas could result in a net loss of buffer functional values. The use of a functional value assessment in the proposed policies provides a tool to set measurable management objectives for restoration and enhancement of impaired Highlands Open Waters and their buffers. New Objective 1D4g speaks to that point and notes that restoration activities shall be targeted to ensure improvements to one or more of the functional values that buffers provide.
- The Final Draft RMP did not address instances when there are existing disturbances within the 300-foot buffers in the Planning Area, and therefore did not facilitate opportunities for restoration and enhancement of impaired Highlands Open Waters within already disturbed buffers. For example, in an already disturbed buffer, there may be opportunities for incorporating state-of-the-art stormwater management techniques to improve water quality. The proposed policies and objectives would facilitate such opportunities.

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- The proposed policies place a much greater emphasis on watershed-based protection, restoration and enhancement of Highlands Open Water buffers through the Stream Corridor Protection/Restoration Plans, which will be valuable in identifying restoration opportunities, especially within Low Resource Value Watersheds and Low Integrity Riparian Areas. In this manner, the Council will be able to focus municipal efforts and partnership development on areas where existing buffer losses and damages should be remedied over time, making use of the watershed and riparian area integrity scores from the technical report released in January 2007.
- The proposed policies more explicitly require compliance at a minimum with both the RMP policies and with NJDEP rules for flood hazard areas, stormwater rules, freshwater wetlands rules and adopted regional stormwater management plans. The Final Draft RMP was less detailed in this regard.