

Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan
Well Head Protection Conformance Standards
New Jersey Highlands Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General: Incorporate by reference the Highlands Council or NJDEP maps of Well Head Protection Areas (WHPAs) for public community and noncommunity nontransient water supply wells, including Tiers 1, 2 and 3. Identify through an accompanying narrative the WHPAs that are within the municipality and are associated with wells in or near the municipality. LUC Zones: WHPAs do not vary by LUC Zone. Preservation Area Special Provisions: Not applicable. 	<p>WHPA delineations for the RMP (except where modified through RMP Updates) are available from the NJDEP web site at: http://www.state.nj.us/dep/njgs/geodata/dgs02-2.htm. Highlands Council WHPA delineations, where different from those of NJDEP due to RMP Updates, will be available at: http://www.highlands.state.nj.us/njhighlands/act/maps/maps/gis_data.html. The Highlands Council and NJDEP will coordinate on the approval of any modified WHPA delineations.</p> <p>A municipality may submit to the Highlands Council for approval an improved WHPA delineation based upon site specific data that complies with NJGS OFR 03-1 “Guidelines for Delineation of Wellhead Protection Areas.”</p>
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Mapping: Update the identification of public community and noncommunity nontransient water supply wells and their associated WHPAs, including any modified or new WHPA delineations from NJDEP or the Highlands Council. On a voluntary basis, a municipality may also include WHPAs for dense clusters of non-public (e.g., domestic) wells. Narrative: Include tables and text describing the public community and noncommunity nontransient water supply wells, with pumping capacity, pumping rates, and the characteristics of the land use/land cover within Tiers 1, 2 and 3 of the WHPAs (with emphasis on Potential Contaminant Sources). For clusters of non-public wells, if included, identify the quantity and types of wells, and the characteristics of the land use/land cover within Tiers 1, 2 and 3 of the WHPAs (with emphasis on Potential Contaminant Sources). Identify any WHPAs for which improved delineation methods would be appropriate due to hydrogeological conditions or major Potential 	

¹ This column is for the municipal self-assessment. C = fully complete. P = partially complete, with a need for improvement. IP = in progress. NS = not started. NA = not applicable (e.g., for a municipality for which this component is not relevant).

		Contaminant Sources that may not have been addressed by the current WHPA delineation.	
Municipal Master Plan and Conservation Plan Element		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): Adopt by reference the Highlands Council or NJDEP maps of Well Head Protection Areas (WHPAs) including Tiers 1, 2 and 3, from the Environmental Resource Inventory. Policy Statement: Adopt by reference RMP Policies 2H1 through 2H5 and their underlying Objectives, as applicable to municipal development regulation into the goals, policies and objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. Also, relate the policies to board of health responsibilities as appropriate. LUC Zones: RMP policies do not vary by LUC Zone. Preservation Area Special Provisions: Not applicable. 	The purpose is to protect the public health, safety and welfare through the protection of the ground water resources that directly provide water to potable water supply wells, and to ensure a supply of safe and healthful drinking water for the present and future generations of local residents, employees and the general public in this municipality, as well as users of these water supplies outside the municipality. Areas of land have been delineated surrounding each public community water supply well, public noncommunity nontransient water supply well, and cluster of non-public wells (if applicable), known as Well Head Protection Areas (hereinafter "WHPA"), from which contaminants may move through the ground to be withdrawn in water taken from the well. Through regulation of land use, physical facilities and other activities within these areas, the potential for ground water contamination can be reduced by preventing the introduction and migration of pollutants from land areas within a WHPA into ground water that supplies the well.
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish well head protection as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Element. Conservation Plan Element Requirements: Establish the importance of well head protection. Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by well head protection. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of WHPAs as the initial identification of WHPAs in the municipality, to be supplemented and amended as needed by RMP Updates that result in more accurate delineations. 	
Institutional Capability		<ol style="list-style-type: none"> Planning: The Council will provide assistance should planning board and zoning board of adjustment members and staff require assistance with this issue to ensure that the development review ordinance is properly implemented, that conformance with the RMP is maintained, and that exceptions and waivers to the well head protection ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for well head protection. 	<p>WHPAs are delineated using computer models and are not subject to on-site verification. Therefore, the focus in planning and project review is on the land uses and development practices affecting the project site within the delineated WHPAs and their three Tiers.</p> <p>To assist board members and staff regarding this topic and the implementing ordinance the Council will provide educational and training opportunities as requested. Council will work with the municipality's professionals if requested.</p>
		<ol style="list-style-type: none"> Project Review: Municipality must have capacity to interpret digital and surveyed data on land uses and development practices affecting WHPAs, and apply the ordinance requirements to the WHPAs identified on a property. 	Same as for planning
		<ol style="list-style-type: none"> Site Visit Authority: Municipality staff and development review boards 	Ensure that the appropriate review body and staff

		must have ability to conduct site visits to verify the relationship of land development and Potential Contaminant Sources within WHPAs and related resources.	have the ability to visit the site in support of project review, planning and other activities
		4. Board of Health: The Board of Health must have sufficient authority to impose requirements for the control and long-term management of actual and potential pollutant discharges from land uses that are Potential Contaminant Sources within the WHPAs, in accordance with the RMP Policies for each Tier.	Well head protection has two critical aspects: prevention of new land uses that pose threats to the wells, and control of pollution threats from both existing and new land uses. The Board of Health (either County or Municipal) has local jurisdiction regarding the latter responsibility, except where pre-empted by NJ Department of Environmental Protection regulations.
		5. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., hydrology studies) developed and implemented regarding well head protection and regulation, as related to Plan Conformance or RMP implementation.	
Development Review Checklists		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require the following for all applications to which “Well Head Protection Regulations” apply (see below, #4 Applicability”):</p> <ul style="list-style-type: none"> a. Highlands Council consistency determination. b. Information identifying WHPAs on the site using RMP definitions in Objective 2H1c and Appendix A of this guidance. Where more than one WHPA Tier intersects a particular development, the development must be assigned to the more protective Tier unless the applicant demonstrates the appropriate Tier for each Potential Contaminant Source. c. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Objectives 2H2a, 2H2b, 2H2c, 2H4b and 2H5c, including identification and description of each major and minor Potential Contaminant Source on the property, whether existing or proposed, and that Objective 2H5d will be addressed to ensure consistency with the Areawide WQMP Plan. d. Where the applicant claims a Highlands Act exemption, require submittal of information necessary for municipal decision, or of a determination by NJDEP or the Highlands Council, as a condition for completeness. (See “Development Review Ordinance, #5 Exemptions” below.) e. Plans showing all WHPAs and Tiers based on the RMP Objective 2H1c. f. Plans showing the proposed area of disturbance for all aspects of the 	With respect to d. even if a Highlands exemption is granted, the applicant may not be exempt from the provisions of the Well Head Protection Ordinance.

		<p>development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures.</p> <p>g. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan.</p> <p>h. Plans showing conservation easements to be imposed through the development approval on lands within WHPAs for which no disturbance will be allowed (with clear and permanent on-site monuments, such as concrete posts, that minimize the need for land clearing or obstruction of wildlife movement). The easement must be depicted on the plan of record and described in the deed with metes and bounds, including GPS coordinates using the State Plane coordinate system, and complying with Highlands Council easement requirements regarding enforcement rights.</p> <p>i. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</p> <p>j. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications).</p> <p>k. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</p> <p>l. Copies of any related surveys, site plans, professional and/or environmental site assessments.</p> <p>m. Copies of any related hydrogeologic/geologic reports, remediation reports, results of soil or groundwater analyses or other environmental assessment reports (i.e., Phase I or Phase II reports)</p> <p>2. LUC Zones: RMP policies do not vary by LUC Zone.</p> <p>3. Preservation Area Special Provisions: Not applicable.</p>	<p>In many cases, an EIS submitted as part of a development application is a very general document and does not usually include detailed hydrogeologic or geologic information etc. Detailed hydrogeologic and geologic reports provide critical information necessary to evaluate a land use's suitability to its environment especially within a WHPA.</p>
<p>Land Use Ordinance: Well Head Protection Regulations</p>		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. Statement of Purpose: Specify at a minimum that the purpose of the ordinance is to achieve the purposes of and to implement RMP Policies 2H1 through 2H5 and their underlying Objectives, as applicable to municipal development regulation. Make a direct link between the ordinance and municipal policy as stated in the Master Plan.</p>	<p>See the commentary in the section on the Municipal Master Plan and Conservation Plan Element regarding the ordinance purposes.</p>
		<p>2. Special Definitions: Include definitions of WHPAs and Tiers 1, 2 and 3 (as outlined in RMP Objective 2H1c), and the other definitions in Appendix A of these Plan Conformance Standards, and the definition of "site disturbance" as provided by the Highlands Act at N.J.S.A. 13:20-3. Provide references to the NJ Erosion Control Standards at N.J.A.C. 2:90-1.</p>	
		<p>3. Special Standards: <u>The control of underground storage tanks must comply with all applicable NJDEP regulations. At this writing, these include compliance with N.J.A.C. 7:14B unless NJDEP approves under N.J.A.C.</u></p>	<p>As needed, such as specific local, NJDEP or Council methods of identifying the regulated resources</p>

		<u>7:14B-11.2 any alternative or additional standards used within the local ordinance.</u>	
		Applicability: The ordinance must apply to any project for which a permit from, or determination by, the municipality is required (including any application for development as defined under the MLUL (N.J.S.40:55D-3)) and which involves the presence of a WHPA, other than exemptions as specified below. All land uses and activities located or proposed within the WHPA are subject to the provisions of this ordinance. It shall be the responsibility of any persons owning real property and/or owning or operating a business within the WHPA to determine if all or part of his property lies within the WHPA. A person's failure to do so does not excuse any violations of this ordinance.	
		<p>5. Exemptions: Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p>a. Highlands Act Exemptions (N.J.A.C. 7:38-2.4(b))</p> <p>i. Local Action: Where a municipality can conclude that a proposed project qualifies for an exemption under the NJDEP Preservation Area rules at N.J.A.C. 7:38-2.4(b) (which relate to Highlands Act (N.J.S.A. 13:20-28) Exemptions 5, 7, 9, 10 and 15), the municipality may process the application without formal determination by the NJDEP or the Highlands Council. A decision to process an application under this provision does not constitute, and the applicant may not rely upon, municipal action under this provision as constituting a municipal decision regarding Highlands Applicability Determination.</p> <p>ii. NJDEP or Highlands Council Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Area, respectively, may be relied upon regarding applicability of these exemptions.</p> <p>b. Other Highlands Act Exemptions</p> <p>i. Local Action: The municipality shall not consider an application complete for review that proposes the use of any other Highlands Act exemptions, unless a NJDEP or Highlands Council Applicability Determination is provided with the application in the Preservation or Planning Area, respectively.</p> <p>i. NJDEP or Highlands Council Applicability Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Areas, respectively, must be provided prior to municipal consideration of the proposed activity.</p>	The Highlands Rules exempt or have special provisions for many single-family dwellings and agriculture/horticulture activities. Municipality may want to consider including some of these actions within the municipal regulations. The RMP does not and cannot require that municipalities be more stringent than the RMP or the Highlands Act, including exemption provisions. Because eligibility for the "legal shield" under the Highlands Act is linked to conformance with the Regional Master Plan, and the RMP cannot address exempt projects, municipalities that include exempt development in their ordinance will not benefit from the legal shield for that portion of the ordinance. However, a municipal ordinance may, under the Highlands Act at N.J.S.A. 13:20-15a(5), be more stringent than the RMP standards for non-exempt development, and still will be eligible for the legal shield.
		6. Application: Provide for an application process applicable to all proposals to which these conformance standards are applicable. Require submission of the materials required under the Development Review Checklist for review	Review by the municipal engineer may entail professional fees. The municipality should consider its fee and escrow ordinances. Review procedures

		<p>by the municipal engineer or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP, the ordinance may authorize the reviewing professional to grant an approval if the application does not otherwise require approval by the Planning Board or Zoning Board of Adjustment as an “application for development” under the Municipal Land Use Law. If the application is inconsistent with RMP policies, the reviewing professional must clearly identify the deviations. The ordinance must require that approval of such deviations be authorized only by grant of waivers or exceptions from the Planning Board or Zoning Board of Adjustment in accordance with the provisions at #13, Waivers and Exceptions, below.</p>	<p>may provide for completeness determination, timeframes for review and decision-making, and options for conditional approvals.</p>
		<p>7. Completeness: Stipulate that no application for development (as defined by the MLUL at N.J.S. 40:55D-3) may be scheduled for local Board review until after it has been deemed complete by the applicable Board or completeness designee.</p>	<p>The MLUL at N.J.S. 40:55D-10.3 allows a municipality to delegate completeness review to a committee or designee.</p>
		<p>8. Notification to Highlands Council: Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to the Highlands Council at the same time these are provided to the reviewing Board.</p>	<p>This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.</p>
		<p>9. Requirements for Deed Restrictions: Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement and deed restriction on the undisturbed WHPA of the property. The conservation easement and deed restriction must meet applicable requirements of the Highlands Council.</p>	<p>The Highlands Council has developed conservation easement and deed restriction requirements that apply to all situations where these are required through any conformance standard.</p>
		<p>10. Limitations on Potential Contaminant Sources: The ordinance must include the following minimum requirements regarding the creation of Potential Contaminant Sources within a WHPA. Where more than one WHPA Tier intersects a particular development, the development must be assigned to the more protective Tier unless the applicant demonstrates the appropriate Tier for each Potential Contaminant Source:</p> <p>a. Sources of Pathogens, Tier 1: Prohibit the creation of Major and Minor Potential Contaminant Sources that have a significant potential to result in the discharge of pathogens (including but not limited to septic systems, engineered stormwater infiltration from surfaces with significant potential for contact with pathogenic contaminants, and sewer lines that have significant potential for exfiltration including</p>	<p>These are the key standards for site development regarding the resources affected by the ordinance.</p> <p>The ordinance may include provisions in addition to and/or that are more restrictive than those required pertinent to the RMP, subject to the special standards at #3 above.</p> <p>These are the primary requirements for new developments that entail the creation of Potential Contaminant Sources</p>

		<p>through breaks due to karst topography or geologic faults) to ground water, to surface water bodies that provide recharge to the underlying aquifer or to the land surface within Tier 1, such that they might degrade or contribute to the degradation of ground water quality. Stormwater reuse for non-agricultural irrigation and other non-potable water purposes shall be encouraged, to minimize the volume of stormwater discharges from surfaces with significant potential for contact with pathogenic contaminants within Tier 1.</p> <p>b. Sources of Other Pollutants, Tiers 1 and 2: Prohibit the creation of Major Potential Contaminant Sources within Tier 2 (inclusive of Tier 1) and prohibit Minor Potential Contaminant Sources within Tier 1, that have a significant potential to result in the discharge of persistent toxic and hazardous pollutants (including but not limited to discharges of industrial or other non-sanitary wastewater effluent) to ground water, to surface water bodies that provide recharge to the underlying aquifer or to the land surface, such that they might degrade or contribute to the degradation of ground water quality. Stormwater reuse for non-agricultural irrigation and other non-potable water purposes shall be encouraged, to minimize the volume of stormwater discharges within Tier 2 that may include persistent toxic or hazardous pollutants.</p> <p>c. Sources of Other Pollutants, Tier 3: Major Potential Contaminant Sources that have a significant potential to result in major discharges of persistent toxic or hazardous pollutants to ground water or to surface water bodies that provide recharge to the underlying aquifer, to the land surface (including but not limited to non-sanitary wastewater effluent and any major sources of potential discharges such as spills and leaks), such that they might degrade ground water quality within Tier 3 but outside of Tiers 1 and 2, shall be required to incorporate ongoing best management practices and to file and routinely implement an Operations and Contingency Plan regarding such pollutants and the prohibition of unregulated discharges. The Plan must minimize the potential for ground water contamination and potential releases of contaminants to surface water bodies that provide recharge to the underlying aquifer, and maximize the opportunity for discharge discovery and control.</p> <p>d. Replacement of Existing Potential Contaminant Sources: <u>Development proposals for any change in an existing land use or activity that involves replacing an existing Major or Minor Potential Contaminant Source with an equivalent Major or Minor Potential Contaminant Source within a WHPA (e.g., a replacement septic system, sewer line, parking lot or underground storage tank), shall be permitted if the replacement:</u></p>	
--	--	--	--

		<ul style="list-style-type: none"> i. <u>Does not involve the replacement of a Potential Contaminant Source that has been abandoned. All such replacements shall fully comply with the provisions of 10(a) through (c) above;</u> ii. <u>Minimizes the need for replacement of the Potential Contaminant Source wherever feasible;</u> iii. <u>Replaces the existing Potential Contaminant Source with a facility that has less potential for an unregulated discharge wherever feasible (including but not limited to inside storage instead of outside storage, above ground storage instead of underground storage);</u> iv. <u>Does not involve an increase in pollution potential;</u> v. <u>Will implement the relevant best management practices;</u> vi. <u>Will be located as far from the affected well as is reasonably feasible within the development project area;</u> vii. <u>Will result in a reduction of risk to ground water quality; and</u> viii. <u>For a Major Potential Contaminant Source in any Tier, will implement an Operations and Contingency Plan.</u> <p>e. Best Management Practices: <u>All Potential Contaminant Sources shall be designed in a manner that prevents the unintentional discharge of toxic or hazardous pollutants to ground water, surface water bodies or the land surface from internal areas, loading and storage areas, transfer areas, etc. Best management practices include but are not limited to: primary and secondary containment; and prevention of contact between pollutants and precipitation, stormwater and flood waters. A NJPDES permit for a proposed discharge shall be considered equivalent to the best management practices of this ordinance.</u></p> <p>f. Operations and Contingency Plans: <u>As a condition of approval of any application for development of a Potential Contaminant Source within a WHPA, the ordinance must require that the applicant submit an Operations and Contingency Plan for approval by the Board of Health and other appropriate agencies such as municipal fire and police or local office of emergency management. No certificate of occupancy (or approval) for the development shall be issued until or unless the Board of Health verifies that the Operations and Contingency Plan has been approved by and is on file with the appropriate entities. Operations and Contingency Plans must address the following elements directly or by inclusion of a permit or authorization from the NJ Departments of Environmental Protection or Agriculture, as appropriate:</u></p> <ul style="list-style-type: none"> i. <u>Documentation of the Major and Minor Potential Contaminant Sources for the site;</u> ii. <u>Types and quantities of toxic or hazardous substances or wastes</u> 	<p>In the event of an incident, facility personnel will be the first responders followed by the local fire and police. The local OEM officials will respond next followed by the BOH. It is important that any Contingency Plan include specific language as to the training of facility personnel and chain of command, etc.</p>
--	--	---	---

		<p><u>that may be used, discharged or stored on site;</u></p> <p>iii. <u>Means used to prevent the spillage, leakage or discharge of such materials;</u></p> <p>iv. <u>Means to be used to contain or remedy accidental spillage, leakage, discharge or migration of such materials from the site directly or indirectly into ground water, surface water bodies, or the land surfaces</u> that provide recharge to the underlying aquifer;</p> <p>v. <u>Procedures for notifying the appropriate administrative authorities, including but not limited to the NJ Department of Environmental Protection and the local board of health, regarding any accidental spillage or discharge of such materials;</u></p> <p>vi. <u>Demonstration that the proposed Potential Contaminant Sources are designed to employ best management practices to the maximum extent feasible.</u></p>	
		<p>11. Reporting Requirements: Require that prior to issuance of a final Certificate of Occupancy or Approval and/or to release of any performance bonding held in relation to the project, that the applicant provide an “as-built” survey depicting the final site conditions.</p>	
		<p>12. Municipal Approvals Conditioned On State Approvals:</p> <p>a. Applicable to Preliminary Approvals: Preliminary approval shall be conditioned such that land modification affecting WHPAs shall not occur until such time as the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Preliminary approval shall also be conditioned upon review and approval by the municipal or board attorney of the language to be included in a deed restriction pertinent to any conservation easement that is a part of the approval.</p> <p>b. Applicable to Final Approvals: Final approval shall be conditioned such that land modification affecting WHPAs shall not occur unless the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval.</p> <p>c. Applicability of Highlands Council Review. The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more, the reviewing board</p>	<p>The purpose of this provision is to ensure that applicants do not assume approval prior to the legal fact of final approval, and that site disturbance based on preliminary findings does not harm resources that might be protected through a Highlands Project Review, Highlands Council “call up,” or HPAA permit process.</p> <p>The Highlands Council has “call up” rights under N.J.S.A. 13:20-17.c, allowing for a determination, “within 15 days after any final local government unit approval, rejection, or approval with conditions thereof,” on whether to review “any application for development in the preservation area.” Once a municipality comes into conformance in the Planning Area, the same approach applies. Because disturbance of regulated resources based on <u>preliminary</u> municipal approval would contradict the clear intent of the Act to allow Council review upon <u>final</u> approval, conditions on local preliminary and final approval are necessary. In addition to Council review authority for specific projects, the Council may determine that a municipal decision does not</p>

		<p>shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form. All resolutions memorializing a final decision shall include conditions requiring these submittals, and that no local decision shall be deemed final until the Highlands Council has received the information required in this paragraph.</p> <p>d. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affecting WHPAs shall commence until the municipal development approval is final. If the building permit is the only applicable municipal approval, the building permit shall not be approved unless the applicant has proved that the project is in compliance with the standards of this ordinance, that the project is eligible for a Highlands Act exemption, that the Highlands Council has determined that the building permit will not result in the disturbance of a WHPA, or that the project has received an Highlands Act Waiver from the Highlands Council.</p>	<p>conform to the RMP as agreed to under Plan Conformance, and may act to determine that the municipality is no longer in conformance. Doing so would trigger provisions of the Act regarding loss of the legal shield, funding priorities and return of any prior funding provided by the Council.</p>
		<p>13. Waivers and Exceptions: The ordinance must provide clear guidance to the reviewing Board, specifying that any waivers may be granted only in cases where the following review standards are met:</p> <p>a. Highlands Act Preservation Area Provisions: Not applicable.</p> <p>b. Highlands Act Waiver Provisions: No waiver may be approved by the development review board for creation of a Potential Contaminant Source within a WHPA unless conditioned upon or subsequent to approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>c. Exception Provisions: No exception to the standards in #10, Limitations on Potential Contaminant Sources, may be approved by the development review board for the creation of a Potential Contaminant Source within a WHPA, except where the applicant can demonstrate that: a) the deviation is unavoidable and represents the minimum feasible under the particular circumstances surrounding the project proposal; and b) the grant of relief is reasonable, necessary, supports the general purpose and intent of the well head protection development regulations, and does not involve the creation of a Major Potential Contaminant Source in Tier 1; or c) the literal enforcement of the provision(s) of the ordinance at issue is impracticable or will exact</p>	<p>NJDEP Highlands Rules, which do not directly address well head protection, may provide for certain waivers – the municipality may wish to more clearly define the limits of exceptions to the ordinance provisions where they won’t conflict with the NJDEP rules or the RMP, which incorporates the same categories of waivers with regard to the Planning Area.</p> <p>Exceptions are applicable where site-specific conditions prevent complete application of a standard. Exceptions are not available for factors other than site conditions, such as any scheduling or financial constraints of the applicant. The mandatory statement of justification for an exception shall be used by the Highlands Council as the basis for its review of a municipal approval under the call-up provisions.</p>

		<p>undue hardship because of peculiar conditions pertaining to the land in question. The approval of an exception must be accompanied by a detailed justification, and is subject to review by the Highlands Council. The justification must include at a minimum an explanation of how and to what extent the following conditions are addressed:</p> <ul style="list-style-type: none"> i. no alternative exists that will allow for at least a minimum practical use of the property; ii. the application incorporates adequate measures to ensure protection of the ground water supply; iii. the exception provides relief only to the minimum extent necessary, and for a Minor Potential Contaminant Source in Tier 1, meets the requirements for such sources in Tier 2; and iv. other environmental features are not damaged in the process of protecting WHPAs. <p>d. Additional Provisions: All waivers and exceptions granted by the review board must be reported to the Highlands Council upon local approval.</p>	
Enforcement		<p>1. Site Inspections: Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. b. Sequencing of compliance inspections to ensure the protection of on-site and off-site resources, achievement of site construction and environmental impact requirements, placement of conservation easement monuments, etc. c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation. 	Specific provision for site inspections is critical to the protection of the features protected by this ordinance and all other sensitive environmental features.
		<p>2. Administrative Compliance: The appropriate municipal official or designee shall make a prompt investigation of any person or entity believed to be in violation of the ordinance. If, upon inspection, a condition which is in violation of the ordinance is discovered, provide for issuance of a stop-work order, revocation of building permits, refusal to approve further work, or denial of certificates of occupancy, plus mandatory remedial and corrective measures including full restoration of any resources that are improperly disturbed.</p>	Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.
		<p>3. Penalties: Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the MLUL will be sufficient.

	<p>4. Severability: Provide that if any section, sentence, clause or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holdings shall in no way affect the validity of the remaining portions of the ordinance</p>	
<p>Regulation of Potential or Ongoing Pollutant Discharges to Ground Water Within WHPAs</p>	<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> 1. Mapping: Incorporate by reference or directly adopt the WHPAs identified within the Well Head Protection Development Review Ordinance. 2. Existing Minor and Major Potential Contaminant Sources: Each owner or operator of a Potential Contaminant Source within a WHPA located in the municipality shall, within six months of the adoption of the ordinance by Board of Health, submit an Operations and Contingency Plan addressing each Potential Contaminant Source they own or operate. The Board of Health shall distribute copies of the Operations and Contingency Plan to the local Fire and Police Departments and the local Office of Emergency Management. These agencies shall review and make their recommendations for approval or modifications to the Operations and Contingency Plan to the Board of Health. The Board of Health shall notify the owner or operator of a Potential Contaminant Source regarding its decision within two months of receipt. If disapproved, the plan must be resubmitted within one month. The owner or operator shall fully implement the approved Operations and Contingency Plan within six months of approval, unless the Board of Health approves an alternative schedule due to site constraints or fiscal hardship. 3. Proposed Potential Contaminant Sources: The applicant shall submit to the Board of Health an Operations and Contingency Plan addressing each Potential Contaminant Source. The Board of Health shall distribute copies of the Operations and Contingency Plan to the local Fire and Police Departments and the local Office of Emergency Management. These agencies shall review and make their recommendations for approval or modifications of the Operations and Contingency Plan to the Board of Health. The Board of Health shall then provide recommendations to the local development review board. The Operations and Contingency Plan shall be implemented as a condition of local development approval, prior to the storage, use or discharge of any pollutants from a Potential Contaminant Source. 4. Operations and Contingency Plans: <u>Each Potential Contaminant Source shall be included in an Operations and Contingency Plan that addresses the following elements directly or by inclusion of a permit or authorization from the NJ Departments of Environmental Protection or Agriculture, as appropriate:</u> <ol style="list-style-type: none"> a. <u>Documentation of the Major and Minor Potential Contaminant</u> 	<p>The provisions here are a separate body of regulation from the development review provisions above. They apply to the ongoing control and management of Potential Contaminant Sources, through implementation of Operations and Contingency Plans by source owners or operators, and periodic inspections by the Board of Health to ensure compliance with those Plans.</p> <p>The purpose of distributing the O&C Plan to the Fire and Police Departments and to the local Office of Emergency Management is to have these departments act as reporting agencies to the BOH. These departments have the expertise in handling spills, accidents, etc and their input is valuable. The BOH will have overarching authority to approve, disapprove or request modifications to the O&C Plan based upon the recommendations of the Fire and Police departments and the OEM as well as its own review. Additionally, the BOH should have the ability to require testimony from the applicant regarding the O&C plan.</p>

		<p><u>Sources for the site:</u></p> <ul style="list-style-type: none"> b. <u>Types and quantities of toxic or hazardous substances or wastes that may be used, discharged or stored on site;</u> c. <u>Means used to prevent the spillage, leakage or discharge of such materials;</u> d. <u>Means to be used to contain or remedy accidental spillage, leakage, discharge or migration of such materials from the site directly or indirectly into ground water;</u> e. Operations and Contingency Plans should at a minimum utilize Best Management Practices as specified by the NJ Department of Environmental Protection and the United States Environmental Protection Agency, including but not limited to the regulations and guidance in the following areas: Discharge Prevention Containment and Countermeasures [N.J.A.C. 7:1E-4.2 (or most current)] Spill Prevention Control and Countermeasures [40 CFR 112.3 et seq.(or most current)] Storm water and Non-point Source Pollution Control Best Management Practices Manual [NJDEP, Fifth Draft May 3, 2000 (or most current)] f. <u>Specific training of facility personnel to contain or remedy accidental spillage, leakage, discharge or migration of such materials from the site directly or indirectly into ground water, or surface water bodies or the land surface that provide recharge to the underlying aquifer.</u> g. <u>Procedures for notifying the appropriate administrative authorities, including but not limited to the NJ Department of Environmental Protection, the local fire and police, local office of emergency management and the board of health, regarding any accidental spillage or discharge of such materials; and</u> <p>5. <u>Demonstration that the proposed Potential Contaminant Sources are designed to employ best management practices to the maximum extent feasible. Additional Reporting Requirements: The owner or operator of a Potential Contaminant Source within a WHPA shall submit to the Board of Health the following information and reports:</u></p> <ul style="list-style-type: none"> a. Copies of all notices, reports and documents that are filed with federal, state and county authorities in the event of any non-permitted release of a hazardous substance or contamination, at the time of filing. b. Copies of all notices, orders, rulings, decisions, recommendations, enforcement actions or similar documentation at the time of receipt by or on behalf of the owner/operator from any federal, State or county authorities in connection with of any non- 	
--	--	--	--

		<p>permitted release of a hazardous substance or contamination, at the time of filing.</p> <ul style="list-style-type: none"> c. The Board of Health shall be provided directly with copies of these reports and the public will be given access by providing these reports to the public library, on a real-time basis. d. The Board of Health shall be deemed to have requested participation in any on-going environmental investigations of USEPA or NJDEP-listed contaminated sites that are taking place in the WHPA. e. The owner/operator shall provide the Board of Health with a forum to participate in the remedial selection process. f. The Board of Health shall be granted upon request the right to review, inspect and/or be provided copies of <u>entire or specific portions thereof of all appropriate and necessary federal, state and county operational applications, approvals, permits, reports</u> and monitoring results that are relevant for Well Head Protection. <p>6. Inspections and Enforcement: The Board of Health shall have the authority to inspect any Potential Contaminant Sources, regardless of the status of approval for the Operations and Contingency Plan, and to commence a civil action in the Superior Court of New Jersey regarding any violation of this ordinance. The Board of Health shall inspect new Potential Contaminant Sources to determine compliance with the local development approval, shall inspect Major Potential Contaminant Sources within one year of the effective date of this ordinance, shall inspect each Major Potential Contaminant Sources annually thereafter, and may inspect any Potential Contaminant Source as necessary to determine conformance with this ordinance.</p> <p>7. <u>Fees: An Operations and Contingency Plan approved by the Board of Health is required for the operation of any Potential Contaminant Source. The Board of Health may establish a permit process to regulate Potential Contaminant Sources with an annual fee schedule for each Major Potential Contaminant Source to cover reasonable expenses regarding the administrative process and inspections.</u></p>	
<p>Recommended Model or Example Ordinances</p>		<ul style="list-style-type: none"> 1. "Model Municipal Well Head Protection Ordinance" 2005. Prepared by the Hunterdon County Environmental Toolbox Committee. Available from: http://www.co.hunterdon.nj.us/planning/toolbox.htm#ordinances 2. "Model Municipal Well Head Protection Ordinance." Prepared by the Passaic Valley Ground Water Protection Committee. Available from: http://www.passaicriver.org/PVGWPC.html 	<p>Model and draft ordinances are listed for informational purposes only. Specific language from each ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.</p>

Appendix A

Well Head Protection Ordinance Definitions

Ordinance Text	Commentary
<p>Administrative Authority – The Planning Board or Board of Adjustment and the Board of Health, acting jointly and/or in consultation, with all of the powers delegated to, assigned to, or assumed by them according to statute or ordinance.</p>	
<p>Applicant – Person applying to the Board of Health, Planning Board, Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this ordinance, or that owns or operates an existing Potential Contaminant Source.</p>	
<p>Aquifer – A formation, group of formations, or part of a formation that contains sufficient saturated permeable rock, sand, or gravel that is capable of storing and transmitting usable quantities of water to wells and springs.</p>	
<p>Best Management Practices (hereinafter “BMP”) – Performance or design standards established to minimize the risk of contaminating ground water or surface waters while managing the use, manufacture, handling or storage of hazardous substances or hazardous wastes.</p>	
<p>Cluster of Domestic Wells – a grouping of wells providing potable water supplies to individual homes, with either: (1) 5 homes on lots that cumulatively are less than or equal to 2.5 acres; or (2) 25 homes on lots that cumulatively are less than or equal to 25 acres. Groups of domestic wells that otherwise meet the thresholds but have a linear configuration (e.g., stretched along a road, not in a cluster) shall not constitute a Cluster of Domestic Wells.</p>	<p>Definition is based on having a dense enough grouping of wells that they create a potential to affect ground water flow and contaminant migration in aquifers typical of Hunterdon County. Different geology and soils may be of interest in other counties, leading to different thresholds for a cluster of domestic wells.</p>
<p>Contaminant – a substance capable of causing contamination of a water supply.</p>	
<p>Contamination – The presence of any harmful or deleterious substances in the water supply, including but not limited to hazardous substances, hazardous wastes, and substances listed in the NJ Administrative Code at NJAC 7:9C (Ground Water Quality Standards), NJAC 7:9B (Surface Water Quality Standards) and NJAC 7:10 (NJ Safe Drinking Water Act Regulations), and as these regulations may be, from time to time, amended.</p>	<p>These lists contain many of the same substances, but are not mutually inclusive. Having the definition contain the references provides the greatest level of coverage and allows for changes over time.</p>

<p>Development – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation of landfill, and any use or changing use of any building or other structure, or land or extension of use of land, or for which permission may be required pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1, et. seq. (hereinafter “MLUL”)).</p>	<p>This definition is direct from the MLUL. It is worth noting that, according to the MLUL: "Subdivision means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: (1) divisions of land found by the planning board or subdivision committee thereof appointed by the chairman to be for agricultural purposes where all resulting parcels are 5 acres or larger in size, (2) divisions of property by testamentary or intestate provisions, (3) divisions of property upon court order, including but not limited to judgments of foreclosure, (4) consolidation of existing lots by deed or other recorded instrument and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, Owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term ‘subdivision’ shall also include the term ‘resubdivision.’”</p>
<p>Discharge – Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective Federal or State Permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or lands of the State or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.</p>	

<p>Ground Water – Water contained in interconnected voids of a saturated zone in the ground. A saturated zone is a volume of ground in which the voids in the rock or soil are filled with water greater than or equal to atmospheric pressure.</p>	
<p>Hazardous Substance – Any substance designated under 40 CFR 116 pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 [Clean Water Act] (Public Law 92-500; 33 U.S.C. 1251 et seq.), the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or Section 4 of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and as these regulations may, from time to time, be amended. Substances listed include petroleum, petroleum products, pesticides, solvents and other substances.</p>	<p>The intent of this definition is to provide an inclusive list of substances that have been found to be hazardous under at least one major statute, federal or state.</p>
<p>Hazardous Waste – Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., J.A.C. 7:26-8, or 40 CFR Part 261.</p>	

Major Potential Contaminant Sources (PCS) – include the following, consistent with the New Jersey Safe Drinking Water Act regulations, N.J.A.C. 7:10-11.7 through 12.12:

1. Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills.
2. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials.
3. Any use or activity requiring the underground storage of a hazardous substance or waste in excess of an aggregate total of 50 gallons.
4. 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.).
5. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
6. Any industrial treatment facility lagoon.
7. Any facility with a SIC Code number included under the New Jersey Safe Drinking Water Act Regulations at N.J.A.C 7:10A-1.14, Table II(N), with a toxicity number of II or greater. (See Appendix A.)
8. Automotive service center (repair & maintenance).
9. Landfill.
10. Dry cleaning processing facility.
11. Road salt storage facility.
12. Cemetery.
13. Highway maintenance yard.
14. Truck, bus, locomotive maintenance yard.
15. Site for storage and maintenance of heavy construction equipment and materials.
16. Site for storage and maintenance of equipment and materials for landscaping.
17. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the New Jersey Department of Agriculture pursuant to its proposed regulations, Criteria and Standards for Animal Waste Management, at NJAC 2:91 (published in the New Jersey Register on 3 March 2008, at 40 N.J.R. 917(a)).
18. Quarrying and/or mining facility.
19. Asphalt and/or concrete manufacturing facility.
20. Junkyard/auto recycling and scrap metal facility.
21. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

NOTE: Some dry cleaning facilities (#10) are just drop off/pick up sites, where no actual dry cleaning is performed and therefore no chemicals are stored or used. Such drop off/pick up sites are not to be regulated as a Major PCS. NOTE 2: NJDEP’s current regulations under the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.) may require that a municipality proposing to exclude the type of underground storage tanks regulated under the Act from a WHPA must receive NJDEP authorization to be more stringent than the NJDEP regulations. This provision definitely applies if an underground storage tank is to be allowed, but with design or monitoring requirements that exceed those in NJDEP’s regulations. Until NJDEP modifies its regulations to address this issue, municipalities should submit their WHPA ordinances to NJDEP for certification, just to be sure that the municipality is within its legal authority. NOTE 3: The NJ Department of Agriculture is developing rules regulating livestock manure management. This rule will have two thresholds for application. The WHP Model Ordinance will use the lower of the two NJDAg thresholds as the threshold for a “Minor PCS” and the higher of the two NJDAg thresholds as the threshold for a “Major PCS.”

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL AT THE JULY 10, 2008 COUNCIL MEETING

<p>Minor Potential Contaminant Sources (PCS) – include the following, consistent with the New Jersey Safe Drinking Water Act, N.J.A.C. 7:10-11.7 through 12.12:</p> <ol style="list-style-type: none"> 1. Underground storage of hazardous substance 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. Sanitary sewer system, including sewer line, manhole, or pump station. (See conditions in Section VI.G.) 5. Industrial waste line. (See conditions in Section VI.G.) 6. Septic leaching field. 7. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C 7:14A et seq. 8. Stormwater retention-recharge basin. 9. Dry well. (See conditions in Section VI.G.) 10. Storm water conveyance line. (See conditions in Section VI.G.) 11. Waste oil collection, storage and recycling facility. 12. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities. 13. Above-ground storage of hazardous substance or waste in quantities of less than 2,000 gallons. 14. 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 New Jersey Department of Agriculture pursuant to its proposed regulations, Criteria and Standards for Animal Waste Management, at NJAC 2:91 (published in the New Jersey Register on 3 March 2008, at 40 N.J.R. 917(a)). 15. Other PCS of similar nature that are not listed in (1) through (13) above or in the definition of Major PCS 	<p>NOTE: The NJ Department of Agriculture is developing rules regulating livestock manure management. This rule will have two thresholds for application. The WHP Model Ordinance will use the lower of the two NJDAg thresholds as the threshold for a “Minor PCS” and the higher of the two NJDAg thresholds as the threshold for a “Major PCS.”</p>
<p>NJDEP – New Jersey Department of Environmental Protection.</p>	
<p>Nonpublic well – any water supply well used for potable purposes other than a public community or noncommunity water supply well.</p>	
<p>Person – Any individual, public or private corporation, company, partnership, firm, association, owner or operator, political subdivision of this State, and any state, Federal or interstate agency or an agent or employee thereof.</p>	

Potential Contaminant Source (PCS) – Activity or land use that may be a source of a contaminant that has the potential to move into ground water withdrawn from a well.	
Public Community Well – A public water supply well that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.	Definition same as in NJAC 7:10-1.3.
Public Noncommunity Well – a public water supply well that is not a public community well and that regularly serves at least 25 individuals for at least 60 days in any given calendar year.	This definition includes wells for both public noncommunity transient and nontransient water supply systems as defined by NJAC 7:10-1.3.
SIC – Standard Industrial Classification.	
Time of Travel (TOT) – The average time that a volume of water will take to travel in the saturated zone from a given point to a pumping well.	
Tier 1 Well Head Protection Area – That area of land within a WHPA from which ground water may enter the well within 2 years.	
Tier 2 Well Head Protection Area – That area of land within a WHPA from which ground water may enter the well within 5 years.	
Tier 3 Well Head Protection Area – That area of land within a WHPA from which ground water may enter the well within 12 years.	
Well Head – The well borehole and appurtenant equipment for a public community well, public noncommunity well, or nonpublic well within a cluster of nonpublic wells.	
Well Head Protection Area (WHPA) – An area described in plan view around a well, from which ground water flows to the well and ground water contamination, if it occurs, may pose a significant threat to the quality of water withdrawn from the well.	
WHPA – Well Head Protection Area.	