

DRAFT – FOR CONSIDERATION AT JUNE 26, 2008  
HIGHLANDS COUNCIL MEETING



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**HIGHLANDS OPEN WATERS – STREAM CORRIDOR BUFFERS AND PLAN**  
**Summary and Recommendation**

At the June 12, 2008 meeting of the Highlands Council, Council staff was asked to revise Objective 1D4i regarding potential modifications to the standard 300 foot buffers so that part 4 of this Objective clearly affects previously disturbed buffer areas only, and so that part 5 of this Objective for designated Redevelopment Area waivers is more clear. The staff recommends that Policy 1D4 also be revised to better support the changes to Objective 1D4i, and proposes the language shown below. The most significant changes are:

1. Add language to Policy 1D4 stating that the protection buffer width for Category 2 streams in the Planning Area may be modified through a Stream Corridor Protection/Restoration Plan, as specified in Objective 1D4i.
2. Removed the provision for “municipality-wide” Stream Corridor Protection/Restoration Plans in Objective 1D4i. Such plans should be developed for stream reaches or subwatersheds. Where a municipality wants to develop such plans for all stream reaches in the municipality, the plans would cover the full municipality, but would be focused on individual stream reaches.
3. Clarified the meaning of “disturbance” in part 1 of Objective 1D4i as “land” disturbance within the buffers where the disturbance has removed or substantially impaired natural vegetation communities and has significantly reduced or impaired functional values. Therefore, the disturbance must actually harm the buffer, or it will not be considered a disturbance for this purpose. For example, an historic disturbance that has since gone back to a vegetated state with good buffer values would not be considered “disturbed.”
4. Substantially edited part 4 of Objective 1D4i to focus the potential for modification of buffers on Category 2 waters in the Planning Area, and only where a disturbed buffer area exists. The buffer modification must occur through a Stream Corridor Protection/Restoration Plan, which must involve a scientific analysis of functional values. The resulting buffer must include the undisturbed area at a minimum, and must have a net functional value at least equivalent to existing conditions and at least as restrictive as any other State or municipal regulations. The buffers would be based on the analysis involved rather than necessarily on fixed distances, and may not be used as the basis for buffer “averaging” because that is a mathematical concept rather than a functional analysis.
5. Substantially edited part 5 of Objective 1D4i on designated Redevelopment Areas, regarding the extent to which a waiver would be allowed to infringe on undisturbed buffers. Staff

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proposes a minimum buffer of 150 feet under a waiver, or any other State or municipal regulations if more restrictive. Restoration of functional values shall be provided on-site or in the stream reach.

Proposed Language

**Policy 1D4.** Highlands Open Waters shall include a protection buffer of 300 feet from the edge of the discernable bank of the Highlands Open Water feature, or from the centerline where no discernable bank exists. With respect to wetlands and other Highlands Open Waters features (e.g., seeps, springs, etc.), the feature shall include a protection buffer of 300 feet from the delineated Letter of Interpretation (LOI) line issued by the NJDEP for wetlands, or from a field-delineated boundary for other features. In areas where existing development or land uses within the protection buffers have reduced or impaired the functional values of the buffers, the Council will seek opportunities to restore the buffer and its functions. Any proposed disturbance shall, through local development review and Highlands Project Review, comply with Highlands Open Waters buffer standards. The protection buffer width for Category 2 streams in the Planning Area may be modified through a Stream Corridor Protection/Restoration Plan, as specified in Objective 1D4i. In approved Redevelopment Areas, the Council may, at its discretion, modify the required buffer, upon a showing of no alternatives, no impact to the functional value of the buffer, and provision of alternative approaches to enhancing or protecting the Highlands Open Water and resources of the buffer area.

**Objective 1D4i.** Develop through Plan Conformance and implement stream corridor or subwatershed-based Stream Corridor Protection/Restoration Plans which shall include Steps 1, 2 and 3, and may include Steps 4 and 5:

1. Identify areas where existing development, land disturbances, or land uses are within the Highlands Open Water buffers have removed or substantially impaired natural vegetation communities, and have significantly reduced or impaired the functional values of Highlands Open Water buffers;
2. Identify opportunities for restoration of areas identified in Step 1 as part of mitigation requirements under a Highlands Act waiver or Objectives 1D4e and 1D4f, and public or non-governmental restoration/stabilization projects;
3. Identify the extent of stream corridor features that are critical to supporting the functions of a healthy Highlands Open Waters buffer and that extend beyond the buffers required by Objectives 1D4b and 1D4c. The 300-foot buffer in these areas may be expanded to be most protective of these features which may include, but are not limited to, critical habitat areas, pollutant source areas identified through scientific techniques, and steep slopes;
4. Where Highlands Open Water buffers include areas identified in Step 1, regarding Category 2 surface waters in the Planning Area only, the Stream Corridor Protection/Restoration Plan may identify where, based on scientific analysis of site-specific conditions (e.g., topography, vegetation cover type, habitat, soil type, upstream land uses and pollution inputs, width of floodplain, rate and volume of run-off), a buffer of less than the full 300 feet (but including the undisturbed buffer area at a minimum) is sufficient to maintain or improve the protection of Highlands Open Waters and Riparian Areas. The Plan must identify alternative buffers that provide functional buffer values at least equivalent to existing conditions and are no less than 150 feet or no less than the extent allowed in State or municipal regulation (including Objectives 1D4b and 1D4c), whichever is greater. Further, the Plan shall include a functional value

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assessment to ensure that there is no net loss in the overall functional value of the subwatershed's stream buffers. Buffers established through this process shall be determined based on site conditions rather than fixed distances, reflecting findings of the scientific analysis, and shall be used in the site design and development review process regarding determinations of restoration, continued use, or increased use of the disturbed buffer area. Buffer averaging for the purpose of accommodating development proposals is deemed *not* to meet the requirements of this provision;

5. Where a proposed Highlands Redevelopment Area would not meet in full Objectives 1D4b through 1D4h but affects an undisturbed buffer area determined to *not* be necessary for the protection of the functional values for a Highlands Open Water buffer for a Category 2 surface water (as determined through scientific analysis of site-specific conditions), modification of the undisturbed buffer may be allowed to no less than the extent allowed in State or municipal regulation. However the Council shall first determine that there is no alternative to the proposed reduction of the buffer, and require a showing of no impact to the functional values of the buffer and provision of alternative approaches to enhancing or protecting the Highlands Open Water and resources of the buffer area. Restoration or enhancement of buffer functional values shall be provided on-site or within the same stream reach to achieve a net improvement of existing buffer functional values.