

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

Part 2. Highlands Project Review

Subpart a. Project Review Process

Issue Overview

The Highlands Council is legislatively charged with reviewing proposed projects throughout the Highlands Region, including both the Preservation Area and the Planning Area, for consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan. The Project Review responsibilities identified in the Highlands Act and specified through State agency coordination include the following:

1. Development applications submitted to Local Government Units
2. Call-up of Local Government Unit approvals
3. Capital, State and Local Government Unit projects
4. Highlands Preservation Area Approvals (HPAA)
5. Approvals, authorizations or permits issued by NJDEP

Development Applications. Section 6.r of the Highlands Act identifies the specific responsibility to “comment upon any application for development before a local government unit, on the adoption of any master plan, development regulation, or other regulation by a local government unit, or on the enforcement by a local government unit of any development regulation or other regulation, which power shall be in addition to any other review, oversight, or intervention powers of the council prescribed by this act.”

Call-up of Local Government Unit approvals. Section 17.a.(1) of the Act states that “[s]ubsequent to adoption of the regional master plan, the council may review, within 15 days after any final local government unit approval, rejection, or approval with conditions thereof, any application for development in the preservation area” with the ability to override the local decision of certain projects meeting the statutory criteria if inconsistent with the RMP. Within the Planning Area, the Council shall include as a condition of Plan Conformance, procedures for the Highland Council call-up of Local Government Unit approvals.

Capital, State and Local Unit Projects. Section 16 of the Act states that, for certain types and sizes of projects, “the council may provide comments and recommendations on any capital or other project proposed to be undertaken by any State entity or local government unit in the Highlands Region.”

Highlands Preservation Area Approvals (HPAA). The Highlands Act, in Sections 9 and 11, authorize the Highlands Council to “identify areas in which redevelopment shall be encouraged” in the Preservation Area and “any areas identified for possible redevelopment pursuant to this subsection shall be either a brownfield site designated by the Department of Environmental Protection or a site at which at least 70% of the area thereof is covered with impervious surface.” These Redevelopment Site Approvals would be reviewed and approved by the Highlands Council and then reviewed for consistency with NJDEP’s waiver provisions in accordance with N.J.A.C. 7:38-6.

Approvals, authorizations or permits issued by NJDEP. The NJDEP’s Highlands rules (N.J.A.C. 7:38) also empower the Council to review and

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comment on proposed projects in the Region. The rules state that “for the planning area, when consistent with its statutory and regulatory authority, the Department shall not issue any approval, authorization or permit that the Department determines, in consultation with the Highlands Council, to be incompatible with the resource protection goals in the RMP...”(N.J.A.C. 7:38-1.1(h)). N.J.A.C. 7:38-1.1(i) states “In its review of permits or approvals under this chapter in the preservation area, the Department shall apply the standards of this chapter and those in the RMP, to be incorporated by reference in (l) below, when adopted by the Highlands Council. Where the Department, in consultation with the Highlands Council, determines there is an inconsistency in the standards, the Department shall apply the Regional Master Plan.” As per N.J.A.C. 7:38-1.1(j), the NJDEP shall give great consideration and weight to the RMP, to be incorporated by reference in making permit decisions that: 1) provide relief from strict compliance with the standards of the applicable permit programs, such as making a determination of public benefit or hardship waiver from certain NJDEP permits; or 2) provide relief through the issuance of a HPAA with waiver.

Specifically, the rules at N.J.A.C. 7:38-1.1(k) require that NJDEP only approve a Water Quality Management Plan (WQMP) amendment after receiving from the Highlands Council a determination of consistency with the RMP, for both the Preservation and Planning Areas.

It is imperative to develop a comprehensive, coordinated system of project reviews to ensure that there is consistency and sufficient detail in review approach among different types of projects. Implementation of a detailed and comprehensive process will result in maximum efficiency, cost-effectiveness, and transparency and will serve as a mechanism to coordinate state agency reviews on projects requiring multiple permits.

Program Summary

The purpose of this program is to establish administrative and procedural standards to facilitate accurate, comprehensive and timely reviews of applications submitted to the Highlands Council. The procedures will be designed to provide accurate and complete information as a basis for Council determinations. The program will establish a process that is clear, transparent, and understandable to applicants, the Council, State agencies and the public. The program has three principal components:

- Administrative Review procedures to ensure that applications are processed and tracked and that the review process is efficient and transparent
- Technical Review procedures to ensure that technical reviews are accurate and consistent
- Council Review procedures leading to a reasoned and transparent Council determination

RMP Policies and Objectives Addressed

This program relates to most components of the RMP and their associated policies and objectives regarding technical standards and criteria for development and redevelopment project reviews in support of Highlands Act requirements.

Administrative Procedures

The Highlands Council will establish standard operating procedures regarding all project applications received:

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The Council will implement its filing system by project category (e.g., WQMP, Redevelopment, etc.), county and municipality. Following are the general elements that will comprise the administrative procedures process:

- a system regarding the logging, tracking and filing of all applications
- a process of notifying the public regarding all pending reviews
- procedures regarding pre-application meetings
- a process for determining if an application is administratively complete
- appropriate permit fee schedules
- review timeframes/schedules
- procedures for public access to, and review of, applications
- procedures for establishing a service list for each application

**Technical Review
Procedures**

The Highlands Council will establish detailed technical review procedures for all project categories. Following are the general elements that will comprise the technical review procedures:

- all applications must be submitted with sufficient information to allow a complete project review, including a GIS or AutoCAD site layout. Submittal of written and graphical information in electronic format will be required where the application was prepared in an electronic format
- all project reviews will utilize the standard RMP resource GIS layers
- all project reviews will utilize the standardized project review checklist; the checklist for a particular project category will be tailored as necessary to accommodate specific requirements (e.g., the 70% impervious surface determination for proposed redevelopment areas)
- all WQMP reviews will be based upon information provided by the NJDEP or applicant on behalf of NJDEP, in addition to the Council's RMP resource GIS layers
- based upon the GIS-layer review and the completion of the project review checklist, staff reviews will be summarized in a draft staff recommendation report
- applicants will be provided with the draft staff recommendation report and given an opportunity to provide comments

**Council Review
Determinations**

Highlands Council staff will present a final staff report with recommendations to the Highlands Council to approve, deny, or approve with conditions. Approval of a proposed project is dependant on the demonstration that it is substantially consistent with the goals, requirements, and provisions of the Highlands Act and the RMP. The Highlands Council shall provide an opportunity for public comment and then approve, approve with conditions, or deny the application. Where a project is approved with conditions, the conditions shall be specified. Where a project is denied, the specific justification for denial shall be specified. The Highlands Council's final determination shall include written findings of fact and conclusions based thereon.

Subpart b. Project Review Standards

Issue Overview

The purpose of this Project Review Standards Program is to summarize the technical standards for project reviews of applications submitted to or reviewed by the Council to ensure consistency with the goals, policies, objectives,

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Program Summary

program requirements, and other provisions of the RMP.

This program establishes the substantive standards for Highlands Council reviews of all applications submitted to or reviewed by the Council to ensure consistency with the RMP. The Highlands Council shall review projects against the RMP goals, policies, objectives and standards. All project reviews will use the standardized Highlands Council project review checklist and the Highlands RMP resource GIS layers as follows:

- Agricultural Resources
- Carbonate Rock
- Critical Habitat
- Forests
- Highlands Open Waters and Riparian Areas
- Historic, Cultural, Archaeological and Scenic Resources
- Prime Ground Water Recharge Areas
- Steep Slopes
- Wellhead Protection Areas

In addition to the resource-based standards, this program also includes smart growth standards for requiring or encouraging development patterns in the Region that are consistent with existing infrastructure and land uses that discourage scattered piecemeal development patterns.

The smart growth standards for project review will use a series of GIS data layers to support the evaluation. The data will be complemented by local and regional planning documents and land use policies to further inform the review. Where appropriate, standards for review have been developed to clarify the review process. The RMP smart growth data layers that support this analysis will be project specific based on the nature of the project and may include but are not limited to the following:

- Land Use Capability Map Series, including:
 - Zone Map
 - Water Availability by HUC14 Subwatershed
 - Public Water Supply System Capacity and Existing Area Served
 - Public Wastewater System Capacity and Existing Area Served
 - Septic System Yield by HUC14 Subwatershed, Zone and Municipality
- Contaminated Sites data layer
- Developed Lands data layer
- Highlands Composite and Municipal Zoning
- Impervious Surface data layer
- Local Conditions Indicator data layers
- State Development and Redevelopment Plan Designated Centers
- Transportation and Transit data layer

**Project Review:
Standard for Approval**

The RMP and the Highlands Act include a number of project review policies and objectives that are mandatory for all or for certain classes of projects. They also encourage consideration of other concepts for improved land development. Each project reviewed by the Highlands Council will be judged against all

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**Forest Review
Standards**

mandatory requirements of the RMP and the Highlands Act. Each project reviewed by the Highlands Council will also be evaluated regarding non-mandatory components of the RMP and the Highlands Act to determine if the proposed project could be designed in a manner that better fulfills RMP goals and policies. The Council may approve a project that does not fully reflect the non-mandatory components if it meets the mandatory requirements, but may include with its approval any recommendations for consideration by local government units, the State or other decision-making bodies for their consideration.

The Highlands Act exempts forestry activities conducted in accordance with a Forest Management Plan (also known as a woodland management plan) approved by the State Forester. For non-exempt land uses, the RMP protects forests through standards applicable to the Region's most important forested areas (i.e., within the Forest Resource Area) and highest quality forests, and NJDEP standards that apply to forests in the Preservation Area.

NJDEP review standards for proposed major Highlands developments in upland forested areas in the Preservation Area are in the Highlands Preservation Act Rules at N.J.A.C. 7:38-3.9. Applicants are required to identify all forest areas in existence on a lot as of August 10, 2004 as well as those forest areas that have been subsequently developed. Activities are prohibited that would result in disturbance to an upland forest located on a slope greater than 10 percent, except for certain linear development. An applicant must demonstrate that there is no alternative that would have less adverse impact on the upland forest or could be located outside the upland forest. Specific limits are applied to the protection of forest quality and extent, and also tree health where they may be affected by development activities.

Through the RMP, human development in the Forest Resource Area in the Preservation Area is limited in order to protect and enhance forest resources, forest ecosystem integrity, critical habitat and the quantity and quality of water resources. Permissible uses within the Forest Resource Area are limited to maintenance of pre-existing uses and restoration of impaired forest areas, where relief from strict adherence to these standards shall be permitted only upon approval of a forest mitigation plan. The deforestation of lands within the Forest Resource Area of the Preservation Area for human development is prohibited except where exempted by the Highlands Act. The expansion or creation of public infrastructure into forested areas of the Forest Resource Area is prohibited except as shown to be necessary for, and is approved by, the Highlands Council to serve a designated Highlands Redevelopment Area, to address a documented threat to public health and safety where no alternative is feasible, or to provide for minimum practical use in the absence of any alternative, all through issuance of a waiver by NJDEP, and will maximize the protection of forest resources. Forest clear-cutting within the Forest Resource Area is prohibited except in accordance with a Forest Management Plan approved by the State Forester.

Within the Protection and Conservation Zones in the Planning Area, human development of forests is limited to low impact residential development. Permissible uses within forested lands in High and Moderate Integrity Forest Subwatersheds is limited to: 1) maintenance of pre-existing uses; 2) removal of

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woody vegetation from forested lands, subject to an approved Forest Management Plan; or 3) development that utilizes low impact development best management practices and an approved forest mitigation plan. Redevelopment of previously developed areas (and other compatible uses) is permitted in forest lands within Low Integrity Forest Subwatersheds that minimize losses to forested lands and that are conducted in accordance with an approved forest mitigation plan or low impact development best management practices. Deforestation in the Forest Resource Area and forested lands within High Integrity Forest Subwatersheds within the Existing Community Zone is limited to the maximum extent practicable. The clearing of trees in conjunction with human development is limited to circumstances where the clearing will not diminish the integrity of forest resources.

Applications for local development review and Highlands Project Review require identification of any forest area on and adjacent to a site in accordance with the Highlands Council's *Alternate Method for Identifying Upland Forest Areas in the Highlands Region*. Forestry activities within a Forest Resource Area or forested lands within a High Integrity Forest Subwatershed are allowed only when in compliance with an approved Forest Management Plan. Clear-cutting of forest lands is prohibited (except pursuant to an approved Forest Management Plan) to the extent necessary to promote native forest regeneration, early successional wildlife habitat, or to remove invasive species.

Refer to the *Forest Resource Management and Sustainability Program* for additional project standards and criteria.

All applications for approval through local development review and Highlands Project Review are required to include the identification and mapping of Highlands Open Waters. Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38, which provide that all major Highlands developments are prohibited within a Highlands Open Water and its adjacent 300-foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside the Highlands Open Waters or its buffer. 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).

With respect to the Planning Area, the RMP provides 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. In the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Water buffers shall only occur in disturbed areas, unless a waiver is granted by the Highlands Council. Such 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 Water buffers: 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 the functional value of the buffer, in compliance with Objective 1D4h. Minimization and mitigation opportunities shall be considered

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only upon a clear and convincing demonstration by the applicant that the protection buffer cannot be avoided and in no case shall the remaining buffer be reduced to less than 150 feet from the edge of the Highlands Open Waters, unless a waiver is granted by the Highlands Council and the proposed disturbance complies with Objective 1D4c.

In the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Water buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council and the proposed disturbance complies with Objective 1D4c. Such disturbances shall employ performance standards such that all proposed disturbances of Highlands Open Water buffers shall employ low impact development best management practices to mitigate all adverse modification to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h.

The Highlands Council may determine to require, on a case-by-case basis, an expansion of the 300-foot buffer to protect the habitat of a water or wetlands-dependant rare, threatened or endangered species, to the minimum expansion necessary to achieve protection of that species.

All applications for approval through local development review and Highlands Project Review are required include the identification and mapping of Highlands Riparian Areas, including those identified by the Highlands Council and by site-specific analysis. Within High and Moderate Integrity Riparian Areas in any LUC Zone, beyond the Highlands Open Water buffer, disturbance of existing natural vegetation or increases in impervious area will be limited to the minimum alteration feasible. In such cases, low impact development best management practices will be required.

**Steep Slopes Review
Standards**

The RMP includes protection of steep slopes in each LUC Zone in both the Preservation and Planning Areas. Both local development review and Highlands Project Review will examine any Steep Slope Protection Areas located on the parcel proposed for development, forested lands, areas which are highly susceptible to erosion, depth to bedrock, and Soil Capability Classes. Disturbance of Severely Constrained Slopes (undeveloped areas with slope exceeding 20%, or slopes >10% within a Riparian Area) and Moderately Severe Constrained Slopes (forested slopes 15%-20% that is not within a Riparian Area) is prohibited. For other Steep Slopes, the use of low impact development best development practices are required for any land disturbance or human development.

For major Highlands development within the Preservation Area, the Preservation Area rules at N.J.A.C. 7:38-3.8 mandate that “a prohibition on development, except linear development for infrastructure, utilities, and the right-of-way thereof, provided that no other feasible alternative, as determined by the department, exists for the linear development, on steep slopes in the preservation area with a grade of 20% or greater, and standards for development on slopes in the preservation area exhibiting a grade between 10 and 20%” (N.J.S.A. 13:20-32j). NJDEP standards at N.J.A.C. 7:38-3.8 address development on slopes with a grade greater than 10 percent but less than 20 percent in the Preservation Area as follows:

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1. If the steep slope is a forest, linear development shall be permitted if there is no feasible alternative for the linear development outside the steep slope;
2. If the steep slope is not a forest and the appropriate Soil Survey for the on-site soil series and percent slope states that the soil capability class of the soil is III or higher, or IIe or IIs, linear development shall be permitted provided that there is no feasible alternative for the linear development outside the steep slope; or
3. If the steep slope is not address by (1) or (2), major Highlands development shall be permitted provided the proposed development meets all other standards, and the applicant demonstrates that there is no other location, design and/or configuration for the proposed development that would reduce or eliminate the disturbance to steep slopes and still fulfill the basic purpose of the proposed development.

**Critical Habitat
Review Standards**

In both the Preservation and Planning Areas, the RMP prohibits the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat. The indirect impact from any activity that that is off-site, adjacent to, or within Critical Habitat that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat is prohibited except as permitted through the issuance of a waiver.

Proposed disturbances shall employ low impact development best management practices to, in this order, 1) avoid the disturbance of Critical Habitat, 2) minimize impacts to Critical Habitat, and 3) mitigate all adverse modification to Critical Habitat so that there is no net loss of habitat value. Proposed disturbances must demonstrate compliance with performance standards that include a requirement and criteria for mitigation of disturbed Critical Habitat. Mitigation shall be required for all adverse modification to Critical Habitat so that there is no net loss of habitat value.

For major Highlands development within the Preservation Area, the Highlands Preservation Act Rules at N.J.A.C. 7:38-3.11 state that the NJDEP shall not issue an approval unless it determines that the proposed activity will not jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of habitat for, any rare, threatened or endangered species of animal or plant. Further the NJDEP shall not issue an approval unless the proposed activity would result in the minimum practicable degradation to a unique or irreplaceable land type (which includes vernal pools) on the site or within the immediate area of the proposed project.

Refer to the *Critical Habitat Conservation and Management Program* for additional project standards and criteria.

**Carbonate Rock
Review Standards**

The RMP implements a *Carbonate Rock (Karst) Topography Program* in the Preservation and Planning Area to address the potential problems that are common to karst areas, such as sinkholes. Projects will be reviewed to determine if the sites are in, or drain to the Carbonate Rock Area. Project sites located within the Carbonate Rock Area must ensure that public health and safety is protected through site design and layout controls to avoid or mitigate hazards from karst topography, and ground water quality is protected from

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contamination that may penetrate the ground surface through karst features.

Refer to the *Carbonate Rock (Karst) Topography Program* for additional project standards and criteria.

**Prime Ground Water
Recharge Review
Standards**

The RMP restricts development and uses of land within a Prime Ground Water Recharge Area that reduce natural ground water recharge volumes or may directly or indirectly contribute to or result in water quality degradation. Any development activity approved to occur in a Prime Ground Water Recharge Area shall provide an equivalent of 125% of pre-construction recharge volumes for the disturbed Prime Ground Water Recharge Area of the site within the following areas, in order of priority: (1) the same development site where feasible; (2) the same HUC14 subwatershed, or (3) an interrelated HUC14 subwatershed as approved by the Highlands Council where no feasible option exists in the same HUC14 subwatershed. Further, the RMP restricts the creation of impervious surfaces and other surfaces that significantly impede recharge within a Prime Ground Water Recharge Area in the Protection Zone. In the Conservation Zone, land uses will be discouraged and restricted that may reduce recharge volumes or that may degrade water quality in areas within or draining to a Prime Ground Water Recharge Area. In both the Protection and Conservation Zones, modifications will be allowed to Prime Ground Water Recharge Area protection requirements only upon demonstration that any relief from protection requirements will not impair or reduce ground water recharge quality or volumes.

**Agricultural Review
Standards**

The RMP requires that agricultural or horticultural development in the Preservation Area and the Planning Area which involves new agricultural impervious cover, since enactment of the Highlands Act, to the total land area of a Farm Management Unit (either individually or cumulatively) of greater than 3% but less than 9%, to develop and implement a Farm Conservation Plan. Further, the RMP requires that any agricultural or horticultural development in the Preservation Area and the Planning Area which involves new agricultural impervious cover (since enactment of the Highlands Act), to the total land area of a Farm Management Unit (either individually or cumulatively) of 9% or greater to develop and implement a Resource Management System Plan. Both the Farm Conservation Plan and the Resource Management System Plan shall be prepared by the USDA NRCS, TSP, appropriate agent, or NJDA staff, and approved by the local SCD.

The RMP limits non-agricultural uses within the Agricultural Resource Area to those uses that support the preservation of farmland, avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry, protect important farmland soils, and meet resource management and protection requirements of the RMP. The RMP requires that cluster or conservation design development proposed within an Agricultural Resource Area support the preservation of farmland, avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry, protect Important Farmland Soils, and meet resource management and protection requirements of the RMP.

The RMP permits limited development, including family and farm labor

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housing, in Agricultural Resource Areas which are necessary to support the viability of the agricultural operation, in coordination with the NJDA and the SADC, and subject to compliance with the resource management and protection requirements of the RMP.

The RMP requires that agricultural or horticultural development and agricultural or horticultural use be addressed, through Plan Conformance, in accordance with the Right to Farm Act, N.J.S.A. 4:1C-1, and in coordination with the New Jersey Department of Agriculture, the State Agriculture Development Committee, and the County Agriculture Development Boards. The RMP also requires the provision of municipal and county development regulations through Plan Conformance that are consistent with the Right to Farm Act and necessary to address agricultural practices that pose a direct threat to public health and safety. Refer to the *Sustainable Agriculture* and *Cluster Development Programs* for additional project standards and criteria.

**Historic,
Archaeological and
Scenic Resources
Review Standards**

Projects will be reviewed for a presence or absence determination regarding historic, archaeological and scenic resources. The project shall include the identification of any historic, archaeological or scenic resources in the Highlands Region which are listed on the Highlands Historic and Cultural Resource Inventory or the Highlands Scenic Resource Inventory that may be affected by the proposed development. The project shall address the requirements of N.J.A.C. 7:38-3.10 for Historic or Archeological areas and N.J.A.C. 7:38-3.12 for Existing Public Scenic Attributes.

If these identified scenic, historic or archaeological resources are affected the project shall comply with minimum standards for the preservation of the affected resources including but not limited to the following:

- To use the Secretary of the Interior's Standards for the Treatment of Historic Properties as the standard for municipal historic and cultural preservation review and include, at a minimum, the preservation and re-use of historic structures;
- To ensure that human development does not adversely affect the character or value of resources which are listed on the Highlands Scenic Resources Inventory; and
- Require that development proposals identify measures considered and used to protect the integrity of historic, archaeological and scenic resources and the integrity of their surroundings, and where appropriate, to address potential reuse and rehabilitation of historic structures.

Refer to the *Historic Preservation Program* and *Scenic Resource Program* for additional project standards and criteria.

**Smart Growth Review
Standards**

Smart Growth is a strategic approach that utilizes comprehensive planning to guide design, development and revitalization of communities. Smart growth principles support sound land use decisions and serve as an advocate for informing future land management decisions that consider environmental protection needs in the context of efficient land development.

In order to accommodate local and regional economic development of the Highlands Region, the RMP encourages growth to occur in locations that have limited environmental constraints, represent existing developed areas that have

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access to infrastructure, apply compact development concepts, and are in accordance with community character. The Highlands Act refers to the prohibition and limitation of construction and development within the Preservation Area and the revocation of water and sewer service areas that are not constructed, in support of this preservation goal. The Highlands Act recognizes the State Development and Redevelopment Plan goal to encourage development patterns that are consistent with existing infrastructure and compatible with historic and efficient land use development patterns, and discourages scattered piecemeal development patterns. Therefore infrastructure investments in the Highlands serve to support public health and safety, environmental resource protection and efficient land development in the context of local and regional conditions.

The Highlands Council will review proposed projects regarding the extent to which each addresses the following Smart Growth principles drawn from the Goals, Policies and Objectives, some of which are further detailed in this document or additional RMP program documents.

- Project is designed in compliance with Land Use Capability Zone Map and other LUCM Series components regarding development yield, water availability, public water supply and wastewater system capacity and general Zone standards (see *Land Use Capability Analysis Program*).
- Project is designed such that it would not increase pollutant loadings to waters for which TMDLs have been adopted by the NJDEP or for waters designated as impaired but lacking a TMDL. Project is in compliance with Lake Community Area standards for shoreline management, scenic features and water quality (see *Lake Management Area Program*).
- Project reflects developed land features, and the design and layout of the project complements surrounding land uses and community character and includes consideration of energy efficient features in site layouts and all structures.
- Project maximizes land use efficiency while protecting environmental resources and community character.
- Project has evaluated the non-developable portions of a parcel proposed for development for the purpose of satisfying on-site passive open space requirements and stewardship needs.
- Project complements local socio-economic needs and conditions for employment, quality of life and housing.
- Project supports the use of the Highlands Development Credits (see *Transfer of Development Rights Program*).
- Project complies with existing municipal zoning where more stringent than the LUC Zone standards and RMP policies and objectives.
- Project demonstrates that public water and wastewater capacity is available where proposed for use, and that all required water use efficiency measures are included in the development design (see *Water Use Efficiency Program*).
- Project reflects septic system yield limitations at the subwatershed, Zone and municipal level where septic systems are to be used.
- Project demonstrates that sufficient water availability exists for project needs, including HUC14 subwatershed, municipal and other limitations (see

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Highlands Restoration: Water Deficits Program).

- Project complies with wellhead protection standards for all Tiers (see discussion below).
- Project meets required impervious surface standards as applicable for the Preservation Area in accordance with N.J.A.C. 7:38-3.5 Impervious Surfaces, Agricultural Resource Area, Conservation Zone, storm water rules and low impact development standards.
- Project has addressed the minimum requirements for water conservation measures in site layout and structures, including but not limited to water efficient landscaping (including use of native and drought-tolerant plant species), rain collection systems, use of grey water, and water-efficient landscape irrigation (see *Water Use Efficiency Program*).
- Project has addressed the minimum requirements for site-specific hydrologic studies including the identification of the velocity, volume and pattern of water flow into, through, and off of the parcel proposed for development.
- Project supports transportation system preservation and promotes transit, multi-modal connections and pedestrian safety, and where appropriate reduces vehicle miles traveled (see *Air Quality Program* and *Transportation Safety and Mobility Program*).
- The project has addressed the resource protection standards to provide for the protection of mobile and stationary air quality concerns as appropriate (see *Air Quality Program*).
- Project supports local land use initiatives such as designated redevelopment area, urban enterprise zone or foreign trade zone or is within a Main Street Program, Special or Business Improvement District or Transit Village (see *Redevelopment Program*).
- Project supports RMP policies for redevelopment and incorporates Highlands resource protection, utilities, transportation and local community character into redevelopment planning (see *Redevelopment Program*).
- Project supports local land use conditions such as developed areas of a Designated Center that is anticipated for growth due to local planning and infrastructure investments.

Refer to the *Smart Growth Manual, Transportation Program, Housing and Community Facilities Program, Redevelopment Program, Transfer of Development Rights Program, Sustainable Regional Economy Program, Air Quality Program* and the *Land Use Capability Analysis Program* for additional information regarding the smart growth project review standards and criteria.

**Lake Management
Areas**

This program component seeks to protect, restore and enhance the water quality of Highlands lakes and to protect the unique character of Highlands lake communities. It facilitates land use and water resource planning on the basis of lake management tiers:

- A Shoreland Protection Tier consisting of an area measured 300-foot or the first property line perpendicular from the shoreline of the lake
- A Water Quality Management Tier consisting of an area measured 1,000-foot perpendicular from the shoreline of the lake, including the Shoreland Protection Tier

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- A Scenic Resources Tier consisting of an area measured 300 to 1,000-foot perpendicular from the shoreline of the lake, scaled based upon the view distance from the opposite shoreline, and determined through the size and layout of the lake, with wider portions of lakes having longer view distances; and
- A Lake Watershed Tier consisting of the entire land area draining to the lake, through the evaluation of drainage areas using LiDAR topographic analyses or other topographic data where LiDAR data are not available

Projects must comply with all mandatory provisions of the Lake Management Area for each tier in which the project would be located. Project review standards for each lake tier are listed in the *Lake Management Area Program*.

Wellhead Protection

The purpose of this program component is to establish resource protection measures to protect and enhance ground water and water supply resources within Wellhead Protection Areas consistent with the source water assessments for each water supply source and the RMP policies. New land uses are prohibited that have a significant potential to result in the discharge of pathogens (including but not limited to septic systems and engineered stormwater infiltration from surfaces with significant potential for contact with pathogenic contaminants) to ground water or to the land surface within a designated Tier 1 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality. New land uses are prohibited that have a significant potential to result in the discharge of persistent organic chemicals (including but not limited to discharges of industrial or other non-sanitary wastewater effluent) to ground water or to the land surface within a designated Tier 2 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality. New land uses in a Tier 3 Wellhead Protection Area must ensure that pollutant discharges to ground water are either regulated pursuant to a NJPDES permit or meet the LUC Zone requirement for septic system yields without clustering. Where a new land use in Tier 3 includes the storage or use of persistent organic chemicals and other toxic substances but does not propose a discharge of such substances, the land use must include measures to minimize the potential for discharge, and to respond to any discharge that does occur.

Public Water Supply Systems

The purpose of this program component is to ensure that the service areas of Highlands Public Community Water Systems shall be limited such that the maximum monthly demand shall not exceed or contribute to an exceedance of the water availability of its source waters (see *Land Use Capability Analysis Program* and *Highlands Restoration: Water Deficits Program*). New, expanded or extended public water systems in the Preservation Area are prohibited unless approved through a Highlands Applicability Determination or a Highlands Preservation Area Approval with waiver pursuant to N.J.A.C. 7:38.

For the Planning Area, new, expanded or extended public water systems in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones are prohibited unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the following purposes: 1) to address a documented existing or imminent threat to public health and safety; 2) to serve a designated Highlands Redevelopment Area; 3) to serve a

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cluster development that meets all requirements of Objective 2J4b; or 4) to avoid the taking of property without just compensation. In the Existing Community Zone of the Planning Area (other than the Environmentally-Constrained Sub-zone), the expansion or creation of public water systems is allowed, to serve lands which are appropriate for designated TDR Receiving Zones, infill or redevelopment, to meet needs and protection requirements equivalent to Objective 2J4a within the Existing Community Zone, or to serve new areas for development that meet all other requirements of the RMP.

New residential development served by new extensions of public community water systems shall have a minimum density of 1/2 acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, recreational or other preserved open space), and be at a minimum intensity of a floor area ratio (FAR) of 0.84 for the developed part of the site (i.e., not including wetlands, open water buffers, recreational or other preserved space) to ensure cost-effective utility service.

Refer to the *Water and Wastewater Utilities Program* for additional project standards and criteria.

New, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area are prohibited unless approved through a Highlands Applicability Determination or a Highlands Preservation Area Approval with waiver pursuant to N.J.A.C. 7:38.

For the Planning Area, new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones are prohibited unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the following purposes: 1) to address a documented existing or imminent threat to public health and safety; 2) to serve a designated Highlands Redevelopment Area; 3) to serve a cluster development that meets all requirements of Objective 2J4b; or 4) to avoid the taking of property without just compensation. In the Existing Community Zone of the Planning Area (other than the Environmentally-Constrained Sub-zone), the expansion or creation of public water systems is allowed, to serve lands which are appropriate for designated TDR Receiving Zones, infill or redevelopment, to meet needs and protection requirements equivalent to Objective 2J4a within the Existing Community Zone, or to serve new areas for development that meet all other requirements of the RMP.

The RMP requires that new residential development served by new extensions of public wastewater collection and treatment systems be at a minimum density of 1/2 acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, and recreational or other preserved space). Further, it is required that that new non-residential development served by public wastewater collection and treatment systems be at a minimum intensity of a floor area ratio (FAR) of 0.84 for the developed part of the site (i.e., not including wetlands, open water buffers, recreational or other preserved space) to ensure cost-effective utility service.

Refer to the *Water and Wastewater Utilities Program* for additional project standards

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and criteria.

Development proposals in conforming municipalities shall comply with municipal requirements for septic system yield where septic systems are proposed (see *Land Use Capability Analysis Program*). For development proposals in non-conforming municipalities, the project shall demonstrate compliance with the appropriate nitrate target for the LUC Zone in which the project occurs, using the project site area as the land basis, and drought ground water recharge for the HUC14 subwatershed as dilution:

1. Preservation Area: NJDEP requirements at N.J.A.C. 7:38
2. Planning Area, Existing Community Zone: 2 mg/L
3. Planning Area, Conservation Zone: 1.87 mg/L
4. Planning Area, Protection Zone: 0.72 mg/L

New residential development using septic systems where lot-size averaging, clustering or open space subdivision design techniques are employed shall have a gross density (for all parcels involved in the development proposal) based on the nitrate dilution target appropriate for the LUC Zone, provided that the density for the developed portion of the site is based on a nitrate dilution target not to exceed 10 mg/L. All new residential development using septic systems, and especially clustered development with septic systems, shall be designed in a manner that minimizes the risk of well contamination due to the flow of septic system plumes within or between developed lots, addressing general ground water flow patterns, major fracture systems and other appropriate geological, geophysical and hydrogeological issues, and well construction.

**Highlands
Redevelopment Area
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The Highlands Council may designate one or more properties or portions of properties as a Highlands Redevelopment Area providing that the site satisfies the requirements of the Highlands Act and RMP. Proposed Highlands Redevelopment Areas will be reviewed to ensure that for the Preservation Area the site is either a Redevelopment Site with at least 70% percent of the area covered with impervious surface as that term is defined in N.J.A.C. 7:38-1.4 or is a Designated Highlands Brownfield Sites pursuant to N.J.A.C. 7:38-6.6.

For the Planning Area in the Protection and Conservation Zones, the Council will review proposed Highlands Redevelopment Areas to ensure that the site is a Redevelopment, Brownfield or Grayfield site. For the Existing Community Zone in the Planning Area, the Council will similarly review proposed Highlands Redevelopment Areas if the proposed development will require a waiver to proceed. For all proposed Highlands Redevelopment Areas (all zones in both Preservation and Planning Areas), the project must be substantially consistent with the resource protection and smart growth standards of the RMP and there must be sufficient water supply and wastewater capacity to serve the proposed Highlands Redevelopment Area. Infill development may be included within Highlands Redevelopment Areas to the extent that the full area meets the applicable designation requirements.

In general the Highlands Redevelopment Area must comply with the following:

1. Will not impair any Highlands Resource Area located on or adjacent to the Highlands Redevelopment Area.
2. Is consistent with the standards of the RMP and will advance the intent and

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Management Plan
Reviews**

purpose of the Highlands Act.

3. Has sufficient water supply and wastewater treatment capacity to serve the proposed Highlands Redevelopment Area.

There are two documents that may be referred to for further detail regarding redevelopment area reviews – *Procedures for Highlands Redevelopment Site Approval* and the *Redevelopment Program* – both of which provide further details regarding the specifics of redevelopment review protocols and will be used by the Highlands Council when conducting redevelopment area project reviews.

The NJDEP’s Highlands rules at N.J.A.C. 7:38-1.1(k) require that NJDEP only approve a Water Quality Management Plan (WQMP) amendment after receiving from the Highlands Council a determination of consistency with the RMP, for both the Preservation and Planning Areas.

Delineation of Wastewater Service Areas represents a critical component of WQMPs. Designation of appropriate wastewater service areas promotes sound development and redevelopment and protection of important Highlands Region resources. The RMP designates areas currently served by “in the ground” public wastewater collection or treatment systems as Existing Areas Served. Any area proposed for sewer service that is not an Existing Area Served would be a Future Sewer Service Area. Other areas are designated for service by septic systems at densities prescribed by the RMP.

The Highlands Council shall consider an area appropriate for inclusion in a Proposed Sewer Service Area if the area is previously developed, not connected to public wastewater collection or treatment systems, and represents an area with a documented threat to public health and safety that cannot reasonably be addressed through on-site alternatives. The Highlands Council shall also consider Highlands Redevelopment Areas and the Existing Community Zone as appropriate for inclusion in a Future Sewer Service Area, subject to the environmental constraints above in this program. Finally, the Highlands Council shall also consider areas identified as appropriate for clustered development as Future Sewer Service Areas when the cluster development will have densities that prohibit the use of septic systems. In each case the proposed Future Sewer Service Area must be consistent with the Resource Protection and Smart Growth standards and policies of the RMP. The Highlands Council review will include the following specific elements:

Water Availability. A WQMP amendment must include demonstration of sufficient water supply to accommodate current and future development. Wherever a new or expanded sewer service area is proposed that meets resource protection standards, the applicant must identify water sources with sufficient capacity to supply current and expanded demands for the proposed sewer service areas. However, this requirement does not mean that sewer service areas must be served by public community water systems.

The RMP establishes sustainable thresholds for development based on Net Water Availability which limit future consumptive and depletive water uses. Consumptive water use reduces water returned to the system by evaporation and other losses. Depletive uses can include, but are not limited to, an export of water out of the subwatershed, such as through a transfer of water via a wastewater collection system. The Net Water Availability Analysis provides

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information to determine if sufficient water supply is available to serve water supply needs associated with current and future demand (see *Land Use Capability Analysis Program*).

To determine if adequate water supply exists for a proposed sewer service area, the WQMP amendment must provide information about water supply needs within public water supply service areas and areas served by domestic wells.

The appropriate demand assignments should be compared with the net water availability calculated to each HUC14 subwatershed. Where the source HUC14 subwatershed is in, or anticipated to be in, a deficit of net water availability, then the applicant must address the following conservation or management practices:

1. Identify appropriate conservation methods or other means to reduce water demand or use.
2. Reduce the sewer service area creating the excess demand;
3. Reduce the future demand for consumptive and depletive water use; or
4. Submit a Water Management Plan that addresses the water deficit (see the Highlands Restoration: Water Deficits Program for more information).

Wastewater Capacity. Where proposed sewer service areas are identified that meet the water availability criterion, an applicant must demonstrate that wastewater treatment facilities have or will have sufficient capacity to accommodate projected flows of existing and proposed development. Where proposed sewer service areas encompass more than one municipality and a municipal contract or allocation exists, the potential wastewater generated in each municipality must not exceed capacity allocated to that municipality. Otherwise capacity shall be assessed for the full service area of the facility.

The LUCM Series and RMP standards should be referenced to determine total existing and projected wastewater flows. The RMP prohibits new, expanded or extended sewer service areas beyond Existing Areas Served in the Protection Zone and Conservation Zone except for limited circumstances as discussed in Wastewater Management Infrastructure above. The RMP allows proposed sewer service areas in the Existing Community Zone provided resource protection standards are met.

The Highlands Council requires that wastewater generation potential of sewer service areas match or be less than the allowable capacity of the associated treatment facility. Additionally, new or expanded wastewater infrastructure can be approved only if the proposed discharge will not impair water quality. The RMP specifically requires demonstration that the proposed discharge will not directly or indirectly be in violation of an adopted TMDL.

Water Quality. The patterns and types of land use within the existing areas served and proposed sewer service areas have the potential to affect water quality from the discharges of point source and nonpoint sources. To ensure the protection, restoration and enhancement of water quality within the Highlands, proposed sewer service areas shall demonstrate that they will not directly or indirectly degrade the water quality of Highlands waters.

Water quality requirements are addressed by four types of NJDEP documents: 1) Surface Water Quality Standards at N.J.A.C 7:9B; 2) Ground Water Quality Standards at N.J.A.C. 7:9C; 3) TMDLs and associated implementation plans

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adopted under N.J.A.C. 7:15; and 4) identified water body impairments from the NJDEP Integrated List adopted under N.J.A.C. 7:15. Each WQMP amendment must include information on a receiving water body's designated use(s) or classification and how they will be protected; and provide associated water quality criteria and demonstration of how those criteria will be met, including information on all wasteload allocations that are relevant.

1. Nonpoint Source and Stormwater Pollution. The WMP must demonstrate that, utilizing best management practices and low impact development approaches, potential degradation of uses or water quality will be eliminated or otherwise meet NJDEP requirements.
2. Point Sources and Antidegradation. Where the projected wastewater generated from a proposed sewer service area requires an increase in the permitted capacity of the wastewater treatment facility or a new wastewater facility, the WQMP amendment must demonstrate that any new or expanded treatment facility will meet all relevant nondegradation or antidegradation requirements for the water quality in the receiving surface water or ground water resource.

Wellhead Protection Areas. The WQMP amendment must demonstrate compliance with the RMP requirements for wellhead protection.

Nitrate Dilution. The RMP establishes nitrate concentrations that must be met to ensure that development densities served by on-site septic systems will not impair water quality. Developments based on septic systems that do not comply with the septic system density requirements of the RMP are prohibited.

See *Procedures for Highlands Review of Water Quality Management Plan Amendments* for further details on the process used by the Highlands Council when conducting these project reviews.