

**DRAFT – FOR CONSIDERATION AT THE JULY 17, 2008 MEETING
OF THE HIGHLANDS COUNCIL**

AMENDMENTS FOR COUNCIL CONSIDERATION

The following proposed amendments to the Highlands Regional Master Plan were prepared by Council members for consideration by the Highlands Council at the July 17, 2008 meeting of the Council. The following amendments are revised from those introduced at the July 10th Council meeting. While the Chairman of the Highlands Council requested that amendments be prepared in advance of this meeting for Council and public consideration, additional amendments or variations of the following amendments may be introduced by Council Members at the July 17th meeting.

Chapter 4 Part 2: WATER RESOURCES AND WATER UTILITIES

Amendment 1

Page 155

Water Deficit Program

DELETE the following: Policy 2B3, Objectives 2Ba, b, and c and Objective 2B8b.

“To conditionally provide water availability within a Current Deficit Area with appropriate standards regarding its use.”

This Amendment would not allow new and/or expanded water uses within Current Deficit Areas until the Current Deficit Area is brought out of deficit.

Areas that are already in deficit or constrained should not be allowed to commit to additional water withdrawals, regardless of mitigation efforts. The deficits should be eliminated through the required Water Management Plans and the RMP Water Use Efficiency Program and other water conservation and re-allocation efforts in cooperation with other agencies and entities. When a watershed is brought out of deficit, then new water uses can be allowed.

If Amendment #1 is not passed, Alternate Amendments 1 and 2 are offered separately

Alternate Amendment 1

Page 157

Objective 2B8b(1)

“Each project shall achieve mitigation ranging from 125% to 200% based on the severity of the Current Deficit and the amount of consumptive or depletive water use proposed, and for large consumptive and depletive water uses or high Current Deficits will require achievement of the mitigation prior to initiating the water use.” **ADD: Water Use and Conservation Plans as described in Objective 2B8c shall demonstrate through a detailed implementation plan and schedule how and when the current deficit will be resolved in a subwatershed prior to approval for new water uses in the subwatersheds with the most severe deficits (Deficits of 0.251-7.100 mgd according to Highlands Council analysis, Table in Water Deficit Policy Options);**

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If a majority vote of the Council does not approve Amendment 1, Alternate Amendment 1 is offered to address the subwatersheds with the highest (most severe) water deficits in order to avoid further depletion of the water resources of the most overtaxed subwatersheds.

Alternative Amendment 2

Page 155

Policy 2B3, Objectives 2B3a, 2B3b and 2B9b

“To conditionally provide water availability (Conditional Water Availability) within a Current Deficit Area **and Existing Constrained Area** with appropriate standards regarding its use.

If Amendment 1 is not approved, it is assumed that Council supports mitigation as a means of addressing water deficits. According to Objective 2B2e, Existing Constrained Areas are those subwatersheds that drain to areas that are currently in deficit. These areas are not yet constrained but if new consumptive and depletive water uses continue to be approved in the subwatersheds upstream of Current Deficit Areas and if water deficits are not resolved in the Current Deficit Areas (or until water deficits are resolved) the situation could get worse before it gets better for downstream water users. Therefore, the conservative approach is to establish the same requirements for Existing Constrained Areas as for Current Deficit Areas regarding Water Use and Conservation Management Plans and, alternatively mitigation requirements on a project basis, as per Objective 2B8b. This will help prevent new areas going into deficit.

#2

Chapter 4 Part 1 Natural Resources

Amendment 2

Page 135

Highlands Forest Resources

Policy 1B8, Goal 1C, Objective 1C2d. Support incentives and funding opportunities and provide criteria for demonstrating and maintaining intrinsic forest values and societal benefits **through various means including but not limited to the use of stewardship benefit credits in lieu of cash receipts under the Woodland Management Program of the Farmland Assessment program.**

A variety of means of meeting income requirements for the woodland management program, including allowing for credits for forest stewardship instead of cash payments for trees removed and sold, provides benefits to several goals of the RMP, including forest resource protection and critical habitat protection. Cash income requirements push land owners to cut and remove trees, removing their benefits; a credit program for stewardship keeps trees in place and results in enhanced forest values, including water quality benefits of intact forest cover, and habitat.

#3

Chapter 4 Part 1 Natural Resources

Amendment 3, 2 parts

Page 139

PART 1:

Highlands Open Waters and Riparian Areas

Policy 1D4 Objective 1D4i. DELETE (4).

All streams in the Highlands require a 300-foot stream buffer in order to protect the water quality and ecology of the stream. This 300 foot riparian area has been identified as the minimum buffer needed to protect streams through extensive research by this Council for the RMP and by NJDEP. Towns should not be required to develop plans that will reduce buffer areas in disturbed areas, plans should be aimed at restoring lost buffer areas to the full 300 feet in order to restore and enhance and in order to meet Section 10 and Section 11a(1)(a) of the Act. (Also, see “Why Wide Buffers Are Needed”, distributed last week).

PART 2:

Highlands Open Waters and Riparian Areas

Policy 1D4 Objective 1D4i. AMEND (5):

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 (as determined through scientific analysis of site-specific conditions), modification of the undisturbed buffer may be allowed (delete: “to no less than the extent allowed in State or municipal regulation”) for Category 2 surface waters. The reduced buffers shall 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. 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, with no net loss in the overall functional value of the subwatershed’s stream buffers 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. 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.

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(4) addresses areas where redevelopment activities can occur within undisturbed buffer areas (with a functional value analysis). How are we going to provide restoration of Highlands streams if we allow existing intrusions to not only continue but to also expand into undeveloped areas? The areas that the RMP is identifying for growth and redevelopment deserve high quality streams; wide riparian buffer areas provide stream protection, riparian area protection and natural vegetation that brings multiple environmental and health benefits to the urban landscape.

Redevelopment can be carried out with the preservation of undisturbed 300 foot riparian areas, even in towns and developed locations. Providing the protection of the minimum buffer to undisturbed areas will head off further degradation of the adjacent stream and will provide a quality environment for the redevelopment area. Both are necessary in order to meet the goal of Section 10 and 11.

#4

Chapter 4 Part 1 Natural Resources

Amendment 4

Page 139

Highlands Open Waters and Riparian Areas

Policy 1D4 Objective 1Db, d, e, f, and i. ADD: For purposes of this section, historical or current agricultural land uses, excepting permanent buildings for agricultural purposes, shall not be considered “development”, “land disturbances”, or “land uses”.

Agricultural land use does not permanently change the function of a riparian buffer. While these riparian areas may be in need of restoration to a natural riparian condition through restoration plans, they should not be considered as areas that are built upon, qualifying as “existing development” where new development can be located within the 300 foot riparian buffer.

#5

Chapter 4 Part 2 Water Resources and Water Utilities

Amendment 5

Page 170

On Site Wastewater Systems (Nitrates)

Policy 2L2 Objective 2L2d “Use a nitrate target of (DELETE 2mg/L) 1.17 mg/L for the Existing Community Zone within Planning Area, on a project-by-project basis, where new development will rely on septic systems.”

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As per Chapter 3, Part 2, Subpart f, the nitrate targets are based on background median concentrations for the applicable zone. For the Existing Community Zone the nitrate target should be 1.17 mg/L, based on the median concentrations of nitrate in ground water in that zone.

#6

Chapter 4 Part 2 Water Resources and Water Utilities

Amendment 6

Page 170

On Site Wastewater Systems (Nitrates)

Policy 2L2 Objective 2L2e. “New residential development using septic systems where clustering or conservation 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 LUCM Zone, but with the density for the developed portion of the site based on a nitrate dilution target not to exceed **2 mg/L (or 1.17 mg/L if Amendment #5 is accepted)** or any more stringent requirement as required by NJAC 7:15.”

According to the RMP, nitrate levels in groundwater need to be controlled. According to Chapter 3, Part 2, Subpart f (page 86), the background median nitrate concentrations are used to set nitrate targets for the Zones. But this policy allows the developed portion of a cluster to rise to 10 mg/L. Ironically, this is the area that will most need protection from nitrate loading.

The clusters that will be built using septic systems will be built where the background nitrate levels are already highest, according to RMP scientific research (Conservation Zone). Additionally, concentrating septic systems into a cluster exposes a relatively small area to nitrates from septic loading, air deposition, and other pollutant sources such as adjacent runoff and ongoing agricultural activities. These cluster areas should be required to maintain 2 mg/L in order to prevent “hot spots” or pollution plumes. These pollution plumes can contaminate wells in the cluster (both in the short term and over time) and endanger other water sources that are hydrologically connected as well as pollute the base flow of streams (benthic life and other fish and fishlife are affected by excessive nitrates). It is too risky to allow the density for a cluster nitrates to be based on 10 mg/L, which is the safe drinking water limit (not a planning tool).

Please see attached “Further background discussion of Nitrate/Clustering 7.17.08”

#7

Chapter 4 Part 2 Water Resources and Water Utilities

If Amendment 6 fails, then Amendment 7 is offered:

Amendment 7

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On Site Wastewater Systems (Nitrates)

Policy 2L2 Objective 2L2e. “New residential development using septic systems where clustering or conservation 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 LUCM Zone, but with the density for the developed portion of the site based on a nitrate dilution target not to exceed 10 mg/L, without treatment, or any more stringent requirement as required by NJAC 7:15.”

In order to protect the groundwater that is providing drinking water and stream base flow, cluster developments must be required to be designed so that the septic density for the project will not violate the state’s health-based nitrate drinking water standard. To allow a project that will have to rely on nitrate treatment technology to meet 10 mg/L nitrate at the tap and would otherwise not be able to meet that standard, we will be developing “hot spots” of nitrate pollution in the local groundwater that will have no chance of being renovated to a healthy level due to nitrate loading from new development. The areas where clusters will be developed are often the very areas where agricultural use has resulted in elevated nitrate levels; the likelihood of encountering elevated background nitrate levels is high. Concentrated development may also contribute additional sources of nitrates beyond what a model assumes as a safety factor.

In order to protect public health and the water quality of aquifers and streams, nitrate levels cannot be allowed to exceed nitrate targets; allowing density to be based on 10 mg/L with treatment will allow the groundwater and receiving streams to exceed the established nitrate target. Also, how will we track and ensure that people who buy these new homes maintain the required treatment systems on their wells? We as a Council are taking on a lot of responsibility and oversight requirements by allowing new building to occur that must have treatment systems to meet minimum human health standards. Elevated nitrates have serious health impacts; “blue baby syndrome” famously among the tragic consequences of nitrate pollution.

#8

Chapter 4 Part 2 Water Resources and Water Utilities

Amendment 8

Page 170

On Site Wastewater Systems (Nitrates)

Policy 2L2 Objective 2L2f. “Carrying capacity shall be documented through the Land Use Capability Septic System Yield Map as the number of allowable septic systems per Conservation, Protection, and Existing Community Zone and all Environmentally Constrained Subzones for each HUC 14 subwatershed, taking into account the nitrate target, the HUC 14 subwatershed drought ground water recharge, and the acreage that is privately owned, undeveloped or under developed. (delete “preserved land ” reference)

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DELETE 2L2g (counting preserved lands in calculating septic system yields).

In order to ensure that subwatersheds in the Existing Community Zone and the Environmentally Constrained Subzones meet the nitrate target and are sufficiently protected during drought, the capacity for each HUC 14 to develop must be based on the nitrate target. If planning is not done based on meeting the nitrate target for each HUC 14, we are allowing for the degradation of some HUC 14s. These HUC 14s are most likely where local development will go, which exposes the public to nitrate pollution and can lead to “hot spots” or high elevations of nitrates in groundwater. This will result in pollution of the aquifer, water supply, and streams.

Preserved land should not be counted when calculating the septic system yield of a development. Offsets of nitrate loading from preserved agricultural land is not a well developed practice; as a Council we have not been shown any specific instances where the results of management practices that reduce nitrates have been quantified. In addition, we cannot legislate the type of agriculture (such as nitrate-free farming) that will take place and we do not have the resources to oversee activities on preserved land going forward. While it sounds like we are attempting to reduce nitrate loads from preserved land, in fact we cannot assure this outcome; the conservative approach of not allowing preserved lands to be included in the calculation of septic yields for a development project is reliable, less demanding of Council oversight, and more protective of public and environmental health.

#9

**SUBPART D Federal, State and Regional Agency Coordination: Issue Overview
AMENDMENT**

Amendment 9

Page 368

1. Delete 2nd and 3rd paragraphs (those beginning “For a regional planning...” and “This extraordinary degree...”)

REASON: Paragraph #2 is misplaced since it relates to County coordination and Paragraph #3 seems redundant with the first paragraph.

2. Add the three paragraphs underlined below.

REASON: To try to clarify that (1) the RMP is voluntary for municipalities and counties in the Planning Area and (2) the Council has an obligation to provide consistency reviews to other State agencies for projects anywhere in the Highlands including in parts of the Planning Area where the municipality has not opted into the RMP.

PAGE 368: Issue Overview

The Highlands Act requires a coordination and consistency component which details the ways in which local, State, and federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the RMP, and which details how

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land, water, and structures managed by governmental or nongovernmental entities in the public interest within the Highlands Region may be integrated into the RMP.

The Act, in Sections 38 through 82 (See Act provisions in Supporting Information), also amends numerous statutes of sister State agencies to specifically require coordinated action to implement the RMP. In these sections, the Act requires consultation between the Council and State agencies to ensure that the RMP is considered prior to State agency action. For plans and other decisions proposed in the Highlands Region, the Council will deliver consistency determinations based on the RMP to appropriate State agencies which will use the Council's information and recommendations to reach resolution in a manner consistent with their respective enabling legislation or regulatory mandate.

The Highlands Act stipulates that Highlands municipalities ad counties are under no obligation to revise local master plans and development ordinances applicable to any parts of the Planning Area to bring them into conformance with the RMP. The Act is also clear that the Council is required to consult with State agencies and, in certain cases, to issue RMP consistency determinations for actions and plans proposed in any part of the Highlands Region.

These requirements for interaction and coordination between the Highlands Council and other State agencies for actions proposed in the Planning as well as the Preservation Area do not negate Sections 14 and 15 of the Act which specify that conformance with the RMP is voluntary for the Planning Area portions of Highlands municipalities and counties.

RETURN TO Page 368-9 for final four paragraphs of Issue Overview, beginning with “
State level coordination between the Council and the Department of Environmental Protection will be particularly important ...”

The following Objective would have to be changed to be consistent with the above suggested language:

Changed from:

Objective 2K3a. Areawide Water Quality Management Plans, including Wastewater Management Plans and project-specific amendments, shall be consistent with requirements of this Plan. The Highlands Council shall prepare consistency determinations for proposed amendments prior to NJDEP approval in accordance with N.J.A.C. 7:38-1.1 and N.J.A.C. 7:15.

To:

Objective 2K3a. Areawide Water Quality Management Plans, including Wastewater Management Plans and project-specific amendments, **shall be examined for consistency** with requirements of this Plan. **The Highlands Council shall prepare and transmit to NJDEP consistency determinations for proposed amendments prior to NJDEP**

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decision in accordance with N.J.A.C. 7:38-11 and N.J.A.C. 7:38-11 and N.J.A.C. 7:15.

#10

Chapter 4 Part 2 Water Resources and Water Utilities

Amendment 10

Page 171

Refinement and Improvement of Groundwater Resource Management

Policy 2M1: To monitor and assess nitrate-related impacts to water resources within the Highlands Region,

Add Objective 2M1a. To monitor well water and surface water for nitrate concentrations to evaluate background nitrate changes on a HUC 14 basis and to track new sources of nitrates from Highlands development projects on a site specific basis as funding is available.

Add Objective 2M1b. To track other new pollutant inputs from on site septic systems and other sources to Highlands waters that result from development projects through a defined water quality sampling program on a site specific and watershed basis as funding is available.

Monitoring of nitrates is necessary as development projects are approved to ensure that the nitrate dilution targets set are being achieved and are reasonable based on actual nitrate sampling data retrieved. This will protect well water users and streams.

#11

Chapter 4 Part 6 Subpart B

Amendment 11

Page 185

MAP ADJUSTMENTS

ADD to Objective 6G2b:

8. are prohibited in the Preservation Area, Core Forest Areas, Agricultural Resource Areas, Prime Groundwater Recharge Areas, High Integrity Riparian Areas, Critical Habitat Areas and Significant Natural Areas.

9. are allowed only during the plan conformance process and Highlands Council initiated plan updates.

10. are limited to 1% of the total acreage within the municipality when the land is being converted from a more protective zone from a less protective zone (such as Protection Zone to Conservation or Existing Community Zone).

ADD to #3. ...and demonstrates that it will utilize Highlands Development Credits to a degree which ensures a level of protection equivalent to (2) and reduces the net impact on Highlands natural and agricultural resources (as determined by whether

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the proposed change effects the Protection or Conservation Zone respectively) by demonstrating that it will extinguish currently valid exemptions within similarly situated parts of the municipality.