

**Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan**  
**Prime Ground Water Recharge Area Conformance Standards**  
**New Jersey Highlands Council**

COMPONENT	STATUS <sup>1</sup>	STANDARDS	COMMENTARY
<b>Environmental Resource Inventory</b>		<b>BASIC PLAN CONFORMANCE STANDARDS:</b> 1. <b>General:</b> Incorporate by reference the Highlands Council maps (specify date of the version used) of Land Use Capability Zones, the Preservation and Planning Areas, and Prime Ground Water Recharge Areas (PGWRA), and incorporate by reference the definition of Prime Ground Water Recharge Areas in RMP Policy 2D2. 2. <b>LUC Zones:</b> The delineation of Prime Ground Water Recharge does not vary by Zone. 3. <b>Preservation Area Special Provisions:</b> Not Applicable.	The Highlands Council will be providing Prime Ground Water Recharge Area mapped information in digital form through its Municipal Mapping Tool, which can be used by a municipality to meet these requirements.
		<b>PLAN CONFORMANCE STANDARDS:</b> 1. <b>Mapping:</b> Update Prime Ground Water Recharge Areas as updated Land Use/Land Cover data are available. Incorporate updates to USDA County Soil Surveys, municipal-specific studies, or site-specific soil mapping as available. 2. <b>Narrative:</b> Include a discussion of the distribution of Prime Ground Water Recharge Areas, relative to developed areas and to areas with low recharge potential. Identify large contiguous tracts of Prime Ground Water Recharge Areas that might be suited for preservation efforts (i.e.; also constrained by critical habitat, forested areas, highlands open waters and moderate to severe steep slopes).	This material is the scientific foundation of the regulation and is critical to the establishment of a legal defense. While for Basic Plan Conformance a municipal ERI may rely heavily, or if necessary exclusively, upon the resource maps and data available through the RMP and related technical documents, municipalities are required to develop independent ERI's for full Plan Conformance.
<b>Municipal Master Plan and Conservation Plan Element</b>		<b>BASIC PLAN CONFORMANCE STANDARDS:</b> 1. <b>General (Background Statement):</b> Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas, and Prime Ground Water Recharge Areas; and to the extent applicable, the background statement of the RMP, Chapter 4, Part 2. Water Resources and Water Utilities. Subpart B. Protection of Water Resources Quantity. 2. <b>Policy Statement:</b> Adopt by reference RMP Policies and applicable related Objectives 2B8, 2D1, 2D2, 2D3, 2D4, 1F5, 6H1, 2J4, 2K3 and 6N4 into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. 3. <b>LUC Zones:</b> The delineation of Prime Ground Water Recharge does not vary by Zone.	The purpose is to protect the public health, safety and welfare through the protection of the ground water resources that support both ecological and human water needs, 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.

<sup>1</sup> 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).

		4. <b>Preservation Area Special Provisions:</b> Not Applicable.	
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <p>1. <b>Master Plan Requirements:</b> Establish Prime Ground Water Recharge Areas as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Plan Element.</p> <p>2. <b>Conservation Plan Element Requirements:</b> Establish importance of Prime Ground Water Recharge Areas. Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by Prime Ground Water Recharge Areas. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of Prime Ground Water Recharge Areas as the identification of Prime Ground Water Recharge Areas in the municipality, to be supplemented and amended as needed, by on-site analysis of relative ground water and aquifer recharge potential through the local development review process.</p>	
<b>Institutional Capability</b>		1. <b>Planning:</b> The Council will provide assistance should planning board and zoning board of adjustment staff and members require assistance with this issue to ensure that the development review ordinances are properly implemented, that conformance with the RMP is maintained, and that exceptions and waivers to the Prime Ground Water Recharge Areas ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for Prime Ground Water Recharge Areas.	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.
		2. <b>Board of Health:</b> 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 Prime Ground Water Recharge Areas, in accordance with the RMP Policies.	Recharge protection has two critical aspects: control of new land uses that pose threats to recharge, 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.
		3. <b>Project Review:</b> Municipality must have capacity to interpret digital and surveyed data on Prime Ground Water Recharge Areas, and apply the ordinance requirements to the Prime Ground Water Recharge Areas identified on a property.	
		4. <b>Site Visit Authority:</b> Municipality staff and development review boards must have ability to conduct site visits to visually verify Prime Ground Water Recharge Areas and related resources.	Ensure that the appropriate review bodies and staff have the ability to visit the site in support of project review, planning and other activities
		5. <b>Independent Projects:</b> 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 Prime Ground Water Recharge Area protection and regulation, as related to Plan Conformance or RMP implementation.	
<b>Development Review Checklists</b>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <p>1. <b>General:</b> As a minimum condition of completeness, require for all applications</p>	

		<p>addressed by “Prime Ground Water Recharge Regulations, #4 Applicability” (see below):</p> <ol style="list-style-type: none"> <li>a. Highlands Council consistency determination.</li> <li>b. Information and maps identifying Prime Ground Water Recharge Areas on site using RMP Policies 2D1 and 2D2</li> <li>c. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Policies 2D3 and 2D4 and their Objectives.</li> <li>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.)</li> <li>e. Plans showing the proposed area of disturbance for all aspects of the development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures.</li> <li>f. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan.</li> <li>g. Plans showing conservation easements to be imposed through the development approval on Prime Ground Water Recharge Areas 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, naming a third party such as the municipality with easement enforcement rights.</li> <li>h. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</li> <li>i. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</li> <li>j. Copies of any related surveys, site plans and professional and/or environmental site assessments.</li> </ol> <p>2. <b>Disturbances:</b> Any application proposing to disturb a Prime Ground Water Recharge Area shall provide:</p> <ol style="list-style-type: none"> <li>a. Environmental Impact Statement or Review submitted to the Highlands Council in support of its consistency determination</li> <li>b. Hydrology, drainage and flooding analysis report or reports prepared in support of conformance with municipal stormwater management plan and regulations pursuant to N.J.A.C. 7:8 or a Flood Hazard Area Control Act application pursuant to N.J.A.C. 7:13.</li> <li>c. Site specific Geologic, Hydrogeologic and Pedologic analysis to determine the overall recharge rate and volume and to determine the location with the</li> </ol>	<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 project for its suitability to its environment. A site specific geologic, hydrogeologic and pedologic investigation is necessary to determine actual site conditions and potential constraints. The information collected from this investigation can also be used to select the appropriate mitigation technique appropriate low impact development BMPs.</p>
--	--	---	---

		lowest recharge potential within the PGWRA. The submitted analysis report shall include appropriately scaled geologic, hydrogeologic and pedologic maps and cross sections showing all pertinent geologic, hydrogeologic and pedologic features, etc. As well, the report shall also present all relevant analytical results, calculations and other graphical data.	
<b>Land Use Ordinance</b>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>General:</b> Adopt applicable Highlands Act definitions at N.J.S.A. 13:20-3.</li> <li>2. <b>LUC Zones:</b> The delineation of Prime Ground Water Recharge does not vary by Zone.</li> <li>3. <b>Preservation Area Special Provisions:</b> Not Applicable</li> </ol>	
		<b>PRIME GROUND WATER RECHARGE AREA DEVELOPMENT REGULATIONS:</b>	
		1. <b>Statement of Purpose:</b> Specify at a minimum that the purpose of the ordinance is to implement RMP Policies and related objectives 2B8, 2D1 and 2D2, 2D3, 2D4, 1F5, 6H1, 2J4, 2K3 and 6N4. Make a direct link between the ordinance and municipal policy as stated in the Master Plan.	
		2. <b>Special Definitions:</b> Include definitions of a Prime Ground Water Recharge Area (as set forth in RMP Policy 2D2 and at N.J.A.C. 7:38), best management practices, sedimentation, site disturbance, and stability based on the RMP. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38, and the NJ Erosion Control Standards at N.J.A.C. 2:90-1.	Ordinance purpose, linked to RMP, to justify municipal authority
		3. <b>Special Standards:</b> (reserved)	As needed, such as specific local, NJDEP or Council methods of identifying the regulated resources
		<p>4. <b>Applicability:</b> All land uses and activities located or proposed within the Prime Ground Water Recharge Area 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 Prime Ground Water Recharge Area to determine if all or part of his property lies within the PGWRA. A person's failure to do so does not excuse any violations of this ordinance. 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 PGWRA, other than exemptions as specified below.</p> <p><b>a. Highlands Applicability Determinations:</b></p> <ol style="list-style-type: none"> <li>i. Major Highlands Developments – In the Preservation Area, require compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38 and with RMP Policies and related Objectives 2B8, 2D1 and 2D2, 2D3, 2D4, 1F5, 6H1, 2J4, 2K3 and 6N4.</li> <li>ii. Other Developments: Require compliance with RMP Policies and related Objectives 2B8, 2D1, 2D2, 2D3, 2D4, 1F5, 6H1, 2J4, 2K3 and 6N4.</li> </ol>	

		<p>b. <b>Municipal Requirements:</b> Require compliance with the NJ Erosion Control Standards at N.J.A.C. 2:90-1. Additional requirements as determined by the municipality.</p>	
		<p>3. <b>Exemptions:</b> Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p>a. <b>Highlands Act Exemptions (N.J.A.C. 7:38-2.4(b))</b></p> <p>i. Local Action: A municipality may process an application regarding projects listed in N.J.A.C. 7:38-2.4(b), which generally relate to Exemptions 5, 7, 9, 10 and 15, 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. <b>Other Highlands Act Exemptions</b></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>ii. 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>	<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.</p>
		<p>4. <b>Prime Ground Water Recharge Area Application:</b> Provide for a Prime Ground Water Recharge Area application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review 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 through the procedures at #13, Waivers and</p>	<p>Review by the municipal engineer may entail professional fees. The municipality should consider its fee and escrow ordinances. Review procedures may provide for completeness determination, timeframes for review and decision-making, and options for conditional approvals.</p>

		Exceptions, below.	
		5. <b>Completeness:</b> 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.	
		6. <b>Notification to Highlands Council:</b> 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 Highlands Council at the same time these are provided to the reviewing Board.	This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.
		7. <b>Requirements for Deed Restrictions:</b> Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a deed restriction on the undisturbed Prime Ground Water Recharge Area of the property.	The Highlands Council has developed conservation easement and deed restriction requirements that apply wherever required through any conformance standard.
		8. <b>Disturbance Limitations:</b> The ordinance must include the following minimum requirements regarding disturbance of a Prime Ground Water Recharge Area: <ul style="list-style-type: none"> <li>a. <b>Disturbance</b> of Prime Ground Water Recharge Area by a “major Highlands development” in the Preservation Area as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38 shall not be approved by the municipality unless conditioned upon or subsequent to NJDEP approval of a Highlands Preservation Area Approval (HPAA) for the project.</li> <li>b. <b>Disturbance</b> of Prime Ground Water Recharge Area by any regulated development in the Planning Area or the Preservation Area is prohibited unless it complies with all of the following provisions:                         <ul style="list-style-type: none"> <li>i. <b>Avoidance:</b> Development shall not occur in Prime Ground Water Recharge Areas unless the entire project site is Prime Ground Water Recharge Area or if necessary to avoid Critical Habitat, Highlands Open Water Buffers, Moderately Constrained Steep Slopes, or Severely Constrained Steep Slopes.</li> <li>ii. <b>Minimization:</b> Limit total recharge area disruption (i.e., alteration of natural recharge patterns or volumes) to 15-percent of Prime Ground Water Recharge Areas, placed where feasible on those parts of the PGWRA with the lowest relative recharge rates and the least potential for aquifer recharge based upon site analysis. Use low impact development practices to reduce total recharge disruption as much as feasible within the 15-percent maximum.</li> </ul> </li> </ul>	<p>These are the key standards for site development regarding the resources affected by the ordinance. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make the findings under 10.b and 10.c, not the NJDEP.</p> <p>The ordinance may include provisions in addition to and/or that are more restrictive than those required pertinent to the RMP. While RMP policies must be regulated as zoning requirements (requiring variance relief for any deviation), any additional provisions may, at the option of the municipality, be treated as design standards with allowances for waivers.</p> <p>RMP Goals 2B and 6H and RMP Policy 2D4 restrict 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</p>

		<p>iii. <b>Mitigation:</b> 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 affected Prime Ground Water Recharge Area of the site. The recharge mitigation shall occur 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. This requirement shall apply to all portions of the Prime Ground Water Recharge Area where the recharge is disrupted through impervious surfaces, routing of stormwater runoff and recharge from natural flow paths, and other similar changes</p> <p>c. <b>Pollutant Source Control:</b> Prohibit the development of major pollutant sources. Require Operations and Contingency Plans for the development of minor potential pollution sources.</p> <p>d. <b>Prohibitions</b> and limitations otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose.</p>	<p>result in water quality degradation. Further, the RMP prohibits development in Prime Ground Water Recharge Areas unless the entire site lies within such areas or if necessary to prevent disturbance of Critical Habitat, Highlands Open Water Buffers, Moderately Constrained Steep Slopes or Severely Constrained Steep Slopes. Regulation and management of development within Prime Ground Water Recharge Areas shall seek to limit disruption of natural recharge patterns and volumes within PGWRAs. To do this, the following PGWRA development hierarchy of Avoidance, Minimization and Mitigation as described here shall be used.</p>
		<p>9. <b>Reporting Requirements:</b> 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>10. <b>Municipal Approvals Conditioned On State Approvals:</b></p> <p>a. <b>Applicable to Preliminary Approvals:</b> Preliminary approval shall be conditioned such that land modification affecting Prime Ground Water Recharge Areas 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. <b>Applicable to Final Approvals:</b> Final approval shall be conditioned such that land modification affecting Prime Ground Water Recharge Areas 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</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,</p>

		<p>pertinent to any conservation easement that is part of the approval.</p> <p>c. <b>Applicability of Highlands Council Review.</b> 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 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.</p> <p>d. <b>Applicable to Building Permits:</b> The ordinance must require that no building permit shall be issued and no other land modification affecting Prime Ground Water Recharge Areas 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 Prime Ground Water Recharge Areas, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	<p>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 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>11. <b>Waivers and Exceptions:</b> 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. <b>Highlands Act Waiver Provisions:</b> No development involving a waiver of the provisions of #8 Disturbance Restrictions may be approved by the development review board for disturbance of Prime Ground Water Recharge Area unless conditioned upon or subsequent to approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. <b>Exception Provisions:</b> No exception to the provisions of #8 Disturbance Restrictions may be approved by the development review board for disturbance of a Prime Ground Water Recharge Area, except as may be reasonable and within the general purpose and intent of the provisions for site plan or subdivision review and approval of the steep slope ordinance, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact 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"> <li>i. no alternative exists that will allow for at least a minimum practical use of the property;</li> <li>ii. the exception is for road or utility access to another part of the site</li> </ul>	<p>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 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>where the actual development would occur;</p> <ul style="list-style-type: none"> <li>iii. the exception provides relief only to the minimum extent necessary;</li> <li>iv. other environmental features are not damaged in the process of protecting Prime Ground Water Recharge Area.</li> </ul> <p>c. <b>Additional Provisions:</b> No exception may be approved that violates the NJ Erosion Control Standards at N.J.A.C. 2:90-1. All exceptions granted by the review board must be reported to the Highlands Council upon local approval.</p>	
<b>Development Review Enforcement</b>		<p>1. <b>Site Inspections:</b> 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"> <li>a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</li> <li>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.</li> <li>c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation.</li> </ul>	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. <b>Administrative Compliance:</b> 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. <b>Penalties:</b> Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the MLUL will be sufficient.
<b>Board of Health Regulations</b>		<p>1. <b>Existing Minor and Major Potential Contaminant Sources:</b> Each owner or operator of a Major Potential Contaminant Source (see Appendix) within a Prime Ground Water Recharge Area 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 require 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 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.</p>	These requirements are the same as WHPA requirements. It may be possible to combine PGWRA protection requirements with those of the WHPA ordinance in instances where a municipality has both Prime Ground Water Recharge Areas and a Well Head Protection Area. However, separate PGWRA and WHPA ordinances are necessary otherwise.

		<p>2. <b>Proposed Potential Contaminant Sources:</b> 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 require modifications to the Operations and Contingency Plan to the Board of Health. The Board of Health shall then provide recommendations to the 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.</p> <p>a. <b>Replacement of Existing Potential Contaminant Sources:</b>          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 (e.g., a replacement septic system, sewer line, parking lot or underground storage tank), shall be permitted if the replacement:</p> <ul style="list-style-type: none"> <li>i. Does not decrease or impede existing recharge potential</li> <li>ii. Does not involve an increase in pollution potential;</li> <li>iii. Will implement the relevant best management practices;</li> <li>iv. Will be located in a area that has the lowest recharge potential as is reasonably feasible within the development project area based upon site analysis;</li> <li>v. Will result in a reduction of risk to ground water quality; and</li> <li>vi. For a Major Potential Contaminant Source in a Prime Ground Water Recharge Area, will implement an Operations and Contingency Plan.</li> </ul> <p>b. <b>Best Management Practices:</b> 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 streams and 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.</p> <p>3. <b>Operations and Contingency Plans:</b> Each Major 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:</p> <ul style="list-style-type: none"> <li>a. Documentation of the Major and Minor Potential Contaminant Sources for the site;</li> </ul>	
--	--	---	--

		<ul style="list-style-type: none"> <li>b. Types and quantities of toxic or hazardous substances or wastes that may be used, discharged or stored on site;</li> <li>c. Means used to prevent the spillage, leakage or discharge of such materials;</li> <li>d. 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;</li> <li>e. Operations and Contingency Plans should at a minimum utilize Best Management Practices as specified by the New Jersey 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)]</li> <li>f. 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 groundwater, or surface water streams and bodies or the land surface that provide recharge to the underlying aquifer.</li> <li>g. 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;</li> <li>h. Demonstration that the proposed Potential Contaminant Sources are designed to employ best management practices to the maximum extent feasible.</li> </ul> <p>4. <b>Additional Reporting Requirements:</b> The owner or operator of a Major Potential Contaminant Source within a Prime Ground Water Recharge Area shall submit upon request to the Board of Health copies of or make available for inspection the following information and reports:</p> <ul style="list-style-type: none"> <li>a. Federal, State and county operational applications, approvals, and permits; and reports and monitoring results that are related to environmental, pollution control, hazardous substance, hazardous waste and drinking water rules and regulations at the time of submittal to the federal, state and county authorities.</li> <li>b. Notices, reports and documents that are filed with federal, State and county authorities in the event of any release of a hazardous substance or contamination, at the time of filing.</li> <li>c. Notices, orders, rules, decisions, recommendations, enforcement actions or similar documentation at the time of receipt by or on behalf of the owner/operator from any federal, State of county authorities in connection</li> </ul>	
--	--	--	--

		<p>with enforcement of environmental, pollution control, hazardous substance, hazardous waste and drinking water rules and regulations.</p> <ul style="list-style-type: none"> <li>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 Prime Ground Water Recharge Area.</li> <li>e. The Board of Health shall be provided directly with copies of reports and the public will be given access by providing these reports to the public library, on a real-time basis.</li> <li>f. The Board of Health shall be provided with a forum to participate in the remedial selection process.</li> </ul>	
<b>Board of Health Enforcement</b>		<p>1. <b>Inspections and Enforcement:</b> 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>	Boards of Health may wish to adopt fee schedules to address the costs of routine inspections for Major Potential Contaminant Sources and for construction of all Potential Contaminant Sources.
		<p>4. <b>Administrative Compliance:</b> Provide for issuance of a stop-work order, refusal to approve further work, revocation or denial of certificates of occupancy, or violation notice, plus mandatory remedial and corrective measures including full compliance with the Operations and Contingency Plan.</p>	Standard Board of Health authorities for administrative compliance will apply to enforcement of this ordinance.
		<p>5. <b>Penalties:</b> Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the health codes will be sufficient.
<b>Recommended Model or Example Ordinances</b>		The Highlands Council Guidance for Well Head Protection Conformance Standards includes recommendations regarding ordinances on that topic, which are applicable to the Board of Health regulations for Prime Ground Water Recharge Areas.	

**Appendix: Suggested Ordinance Definitions**

Terms and Definitions	Commentary
<b>Administrative Authority</b> – 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.	
<b>Applicant</b> – 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	
<b>Aquifer</b> – 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.	
<b>Best Management Practices (hereinafter “BMP”)</b> – 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.	
<b>Contaminant</b> – a substance capable of causing contamination of a water supply.	
<b>Contamination</b> – 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.	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><b>Development</b> – 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><b>Discharge</b> – 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><b>Ground Water</b> – 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><b>Hazardous Substance</b> – 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><b>Hazardous Waste</b> – 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>	

<p><b>Major Potential Contaminant Sources (PCS)</b> – include the following, consistent with the New Jersey Safe Drinking Water Act regulations, N.J.A.C. 7:10-11.7 through 12.12:</p> <ol style="list-style-type: none"> <li>1. Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills.</li> <li>2. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials.</li> <li>3. Any use or activity requiring the underground storage of a hazardous substance or waste in excess of an aggregate total of 50 gallons.</li> <li>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.).</li> <li>5. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.</li> <li>6. Any industrial treatment facility lagoon.</li> <li>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.)</li> <li>8. Automotive service center (repair &amp; maintenance).</li> <li>9. Landfill.</li> <li>10. Dry cleaning processing facility.</li> <li>11. Road salt storage facility.</li> <li>12. Cemetery.</li> <li>13. Highway maintenance yard.</li> <li>14. Truck, bus, locomotive maintenance yard.</li> <li>15. Site for storage and maintenance of heavy construction equipment and materials.</li> <li>16. Site for storage and maintenance of equipment and materials for landscaping.</li> <li>17. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at NJAC 2:91.</li> <li>18. Quarrying and/or mining facility.</li> <li>19. Asphalt and/or concrete manufacturing facility.</li> <li>20. Junkyard/auto recycling and scrap metal facility.</li> <li>21. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).</li> </ol>	<p>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.</p> <p>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 Prime Ground Water Recharge Area 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 Prime Ground Water Recharge Area ordinances to NJDEP for certification, just to be sure that the municipality is within its legal authority.</p> <p>NOTE 3: The NJ Department of Agriculture is developing rules regulating livestock manure management (published in the New Jersey Register on 3 March 2008, at 40 N.J.R. 917(a)). This rule will have two thresholds for application. The Prime Ground Water Recharge Area 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><b>Minor Potential Contaminant Sources (PCS)</b> – 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"> <li>1. Underground storage of hazardous substance or waste of less than 50 gallons.</li> <li>2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.</li> <li>3. Sewage treatment facility regulated by a NJPDES permit granted under NJAC 7:14A.</li> <li>4. Sanitary sewer system, including sewer line, manhole, or pump station. (See conditions in Section VI.G.)</li> <li>5. Industrial waste line. (See conditions in Section VI.G.)</li> <li>6. Septic leaching field.</li> <li>7. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C 7:14A et seq.</li> <li>8. Stormwater retention-recharge basin.</li> <li>9. Dry well. (See conditions in Section VI.G.)</li> <li>10. Storm water conveyance line. (See conditions in Section VI.G.)</li> <li>11. Waste oil collection, storage and recycling facility.</li> <li>12. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.</li> <li>13. Above-ground storage of hazardous substance or waste in quantities of less than 2,000 gallons.</li> <li>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.</li> <li>15. Other PCS of similar nature that are not listed in (1) through (13) above or in the definition of Major PCS</li> </ol>	<p>NOTE: The NJ Department of Agriculture is developing rules regulating livestock manure management (published in the New Jersey Register on 3 March 2008, at 40 N.J.R. 917(a)). 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><b>NJDEP</b> – New Jersey Department of Environmental Protection.</p>	
<p><b>Person</b> – 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>	
<p><b>Potential Contaminant Source (PCS)</b> – 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.</p>	
<p><b>SIC</b> – Standard Industrial Classification.</p>	