



State of New Jersey
Highlands Water Protection and Planning Council
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FINAL

HIGHLANDS RMP CONSISTENCY DETERMINATION REVIEW

PROJECT INFORMATION	
Project Name: Butler Water Department	Date: January 6, 2022
Name of Applicant: Butler Water Department	
Municipality: Kinnelon Borough	County: Morris
Lot and Block, if applicable: Block 45301 Lot 110 and Block 46001 Lot 101	
Project Review Type: Exemption # 11 – Public Health and Safety Waiver	
Project Summary: The Butler Water Department is proposing treatment plant upgrades at the Butler reservoir located in Kinnelon Borough. The purpose is to improve the existing filtration vessels, which are no longer considered acceptable technology under current regulations. Although the existing filtration vessels are permitted under a legacy clause, this equipment is aging and will require replacement soon. It is anticipated that the pressure filters will be replaced with gravity filters and the capacity of the filters will be upsized to be capable of handling the full water allocation of 5 million gallons per day (MGD), including an allowance for redundancy in filter service. Under this arrangement, one of the existing sludge lagoons would likely be re-purposed for filter backwash clarification. No increase in water allocation is proposed. The project appears eligible for a Highlands Act Exemption #11 that would be issued by NJDEP. Exemption 11 requires that the project be consistent with the Highlands Act, a finding of which is issued by the Highlands Council. The proposed improvements create impacts to Highlands Open Water Buffers that cannot be avoided or mitigated; therefore, a public health and safety waiver is required before the project can be deemed consistent with the Act. Due to the nature of the improvements to improve and update the water filtration system for a public water system, a public health and safety waiver is recommended for approval.	
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES	
Project Area located in which Highlands Act Area? (Check all that apply.):	
Preservation Area <input checked="" type="checkbox"/>	Planning Area <input type="checkbox"/>
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):	
Protection Zone <input checked="" type="checkbox"/> Conservation Zone <input type="checkbox"/> Existing Community Zone <input type="checkbox"/>	
Conservation – Environmentally Constrained Sub-Zone <input type="checkbox"/> Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
Lake Community Sub-Zone <input type="checkbox"/> Wildlife Management Sub-Zone <input type="checkbox"/>	
The review below is organized by Regional Master Plan Goals, Policies and Objectives for each resource and smart growth category; C stands for Consistent, I for Inconsistent, and N/A means the goal, policy, or objective is not applicable. Project specific reviews are based on the application of these Policies and Objectives to the project site, and do not require the adoption of municipal ordinances. Documents reviewed for this analysis include all appropriate documents submitted to the NJDEP, Highlands Council GIS data and technical reports, and documents related to the State Planning Commission Plan Endorsement process where applicable.	
*Please note that the asterisked GPOs have been modified from the original RMP text to facilitate ease of review and clarification.	
PART 1 NATURAL RESOURCES	
SUBPART A FOREST RESOURCES	
Project Area within Forest Resource Area? Yes	
If yes to above, is there Encroachment into a Forest within Forest Resource Area? Yes	
According to the HAD 11 Application, impacts to the Total Forest Area and Forest Resources Area will be a total proposed disturbance area of 89,225 ft ² , 2.05 acres, or 0.48% of the parcel disturbed. This is comprised of be approximately 47,975 ft ² disturbed by the proposed road and 41,250 ft ² disturbed by the proposed building. Tree clearing will be necessary to accommodate temporarily disturbed areas as well as permanently disturbed areas. Clearing of trees and vegetation will be performed only where necessary. Regeneration of vegetation will be encouraged within the temporarily disturbed areas upon completion of the work. Because this parcel is already heavily wooded, general tree	

replacement on the property is not a practical option. Instead, the objective is to be able to demonstrate an effort to address forestry integrity. In its plan to address forestry integrity, the Borough will consider the following: revegetation efforts, including evaluating optimal areas for tree planting across the property, restoring native plant species in existing pre-disturbed areas (for example, along Bubbling Brook road), and restoring native plant species in areas where invasive species have been removed; Invasive species management, including removal of existing invasive plants and washing down equipment before it enters the site to prevent the spread and migration of invasive plant species; and the development of a site-specific forest management plan.

SUBPART B HIGHLANDS OPEN WATERS AND RIPARIAN AREAS

Project Area includes Highlands Open Water Protection Area? Yes

Highlands Open Waters Affected: Streams ☐ Lakes & Ponds ☐ Wetlands ☒

Highlands Open Waters in Preservation Area: Yes

Comments: The HAD 11 Application indicates that the total proposed disturbance area to HOW Protection Area is approximately 87,521 ft², 2.05 acres, or 0.47% of the parcel. This total disturbance area is comprised of 36,632 ft² impacts from the proposed road and 40,280 ft² impacts from the proposed building.

RMP Objective 1D4b prohibits disturbance of Highlands Open Waters and associated 300-foot buffers. This objective contains an exception for linear development. In this case, however, although the linear development of the access road may be permitted, the disturbance needed for the proposed building requires a waiver from the RMP standards.

SUBPART C STEEP SLOPES

Comments: According to the HAD 11 Application submitted, the total proposed disturbance area to mapped Steep Slope Protection Area is 23,728 ft², 0.54 acres, or 0.13% of the parcel. This total disturbance is comprised of 16,688 ft² disturbance area from the proposed road, and 7,040 ft² disturbance area from the proposed building. Although this site does have areas with steep slopes, in general, no permanent work is proposed that will adversely affect significant areas of steep slope. Regarding site access, it should be noted that the current proposed road presents the least overlap with designated steep slope protection areas as compared to the other options as presented in the roadway alternative analysis discussed in the HAD 11 application documentation. It is understood that areas of steep slopes play a functional role within the ecosystem as well as for recreational use and scenic value. Care will be taken to address all necessary soil erosion and sedimentation measures to prevent soil loss, silting of nearby wetlands and water bodies, and altering of drainage patterns surrounding the proposed construction.

SUBPART D CRITICAL HABITAT

Project Area includes:

Critical Wildlife Habitat? yes

Significant Natural Area(s)? No

Vernal Pool(s) +1,000 ft? No

Comments: According to the HAD 11 application, the total proposed disturbance area to Critical Wildlife Habitat will be approximately 89,225 ft², 2.05 acres, or 0.48% of the parcel. This total disturbance area is comprised of 47,975 ft² from the proposed road and 41,250 ft² from the proposed building. The wildlife species listed as present according to Highlands Council mapping include Northern Copperhead (species of special concern), Barred Owl (state threatened), Northern Goshawk (state endangered), Veery (special concern), Worm-eating Warbler (special concern), and Wood Thrush (special concern).

Construction activities, including clearing and grubbing, will likely cause a disturbance to some species habitats. However, it is anticipated that this disruption will be temporary in nature, as the ratio of the proposed disturbance compared to the entirety of the parcel is small. The proposed disturbance includes a narrow corridor for the access road and a rectangular area for the new plant building. Despite the new structures and accessway, it is probable the wildlife population will not be discouraged from occupying the surrounding wooded areas. The Borough will submit a Natural Heritage Program data request and correspond with the New Jersey Division of and Wildlife, as required, to confirm species on site prior to beginning any work. Any unique or irreplaceable land types that are identified by the Natural Heritage Database will be given special consideration. Wildlife displacement is anticipated to be temporary and

expected to mainly occur specifically during construction due to noise pollution and extended periods of human activity. Upon completion of construction, it is anticipated that there will be a repopulating of wildlife inhabitation.

SUBPART E LAND PRESERVATION AND STEWARDSHIP

Project Area within Conservation Priority Area? No If yes, percentage? 0%

Project Area within Special Environmental Zone? No If yes, identify properties (B/L):

Project Area includes preserved land? No If yes, identify properties (B/L):

Comments: The proposed development does not lie within a Conservation Priority Area or Special Environmental Zone, nor does it include preserved land.

SUBPART F CARBONATE ROCK (KARST) TOPOGRAPHY

Project Area within or contributing to Carbonate Rock Area? No

Comments: No Carbonate Rock Area is in the vicinity of the proposed Highlands Redevelopment Area.

SUBPART G LAKE MANAGEMENT

Project Area within Lake Management Area? No If No, disregard remainder of Lake Management checklist.

Comments: The proposed Highlands Redevelopment Area does not lie within a Lake Management Area.

PART 2 WATER RESOURCES AND WATER UTILITIES

SUBPART A WATER RESOURCES AVAILABILITY

Proposed Water Use (GPD): No new water use is proposed.

SUBPART B PROTECTION OF WATER RESOURCES QUANTITY

Project Area includes Prime Ground Water Recharge Area? Yes

Comments: According to the HAD 11 Application, the total proposed disturbance to Prime Groundwater Recharge Area will be approximately 89,225 ft², 2.05 acres, or 0.48% of the parcel. This total disturbance area is comprised of 47,975 ft² disturbance area from the proposed road, and 41,250 ft² disturbance from the proposed building. As the proposed road will add impervious surface, best management practices for stormwater pollution and runoff control will be implemented, adhering to the Stormwater Rules at NJAC 7:8, to handle runoff in a manner that minimizes environmental impact.

SUBPART C WATER QUALITY

Is the Project Area a designated Brownfield or listed on the NJDEP Known Contaminated Sites List? No

Project Area within Wellhead Protection Area (WHPA)? No

If yes to above, check all that apply: Tier 1 ☐ Tier 2 ☐ Tier 3 ☐

SUBPART D SUSTAINABLE DEVELOPMENT AND WATER RESOURCES

WATER UTILITY

Comments: N/A

WASTEWATER UTILITY

Comments: N/A

PART 3 HISTORIC, CULTURAL, ARCHAEOLOGICAL, AND SCENIC RESOURCES

Presence of Resources: No

Highlands Historic District Polygons Absence

Highlands Historic Properties Polygons Absence

Highlands Historic Property Points Absence

Archaeological Grids Absence

Highlands Scenic Resource Inventory Absence

Comments: Review of the Highlands GIS data indicates that the proposed project does not feature any historic, cultural, archaeological, or scenic resources.

PART 5 TRANSPORTATION			
Project supports local transportation/transit infrastructure? NA			
Comments: The proposed project does not include or require any road improvements.			
PART 6 FUTURE LAND USE			
SUBPART A LAND USE CAPABILITY ZONES			
Comments: The proposed project is located in the Protection Zone of the Preservation Area. Unavoidable impacts to Highlands Open Water Buffers in the Preservation Area require a waiver from RMP standards.			
SUBPART C REGIONAL GUIDANCE FOR DEVELOPMENT AND REDEVELOPMENT			
Regional Master Plan Goals, Policies, and Objectives:	C	I	N/A
Policy 6H9: To incorporate smart growth principles and green building design and technology in development and redevelopment initiatives.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: The project has been designed to incorporate low-impact development techniques wherever possible, including stormwater management techniques. Any disturbance and construction activities within the proposed project area will be managed to minimize impacts to the surrounding environment.			
SUBPART D REDEVELOPMENT			
Locally Designated Redevelopment Area? No If yes, name of site(s):			
Highlands Contaminated Site Inventory Tier 1 or Tier 2 Site(s)? No If yes, name of site(s):			
Comments: The project has been designed to incorporate low-impact development techniques wherever possible, including stormwater management techniques. Any disturbance and construction activities within the proposed project area will be managed to minimize impacts to the surrounding environment.			
SUBPART E SMART GROWTH			
Is the municipality involved in the State Planning Commission Plan Endorsement (PE) process? No			
Does the project area include a State Planning Commission designated or expired center? No			
SUBPART F HOUSING AND COMMUNITY FACILITIES			
Does the project area include an affordable housing site? NA			
CONCLUSION			
<p>The entirety of the parcel falls within the Highlands Preservation Area and impacts to Highlands resources are unavoidable. This project cannot be designed to entirely avoid or mitigate all impacts to Highlands resources, particularly to the HOW Protection Area buffers. RMP Objective 1D4b requires that "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 Highlands Open Waters 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 Highlands Open Waters or its buffer." Therefore, in accordance with RMP Policy 7G2 (noted below), the Borough of Butler is requesting a health and safety waiver, to be issued by the Highlands Council.</p> <p>Policy 7G2: For both the Preservation Area and the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible.</p>			

The main purpose of this project is to upgrade the water treatment facility equipment to be more modern and compliant with currently acceptable technology under NJDEP regulations, and therefore, it is demonstrably in the interest of public health and safety.

Highlands Council staff recommends that the Highlands Council approve the public health and safety waiver and find the project consistent with the Highlands Act. In addition, it is recommended as a condition of approval, that the Borough shall prepare and submit a plan detailing the proposed forest mitigation strategies, including specific details for implementation and maintenance, including plans for restoration of any areas of existing development to be abandoned as part of this project.