

Highlands Initial Assessment Report

*Borough of Hopatcong
Sussex County, New Jersey*

DRAFT

July 2009

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A signed and sealed original is on file with the Borough Clerk's office

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I. EXECUTIVE SUMMARY

This report presents a general overview of the Highlands Regional Master Plan to determine the degree of changes that will be necessary to the Borough of Hopatcong's Master Plan and land use regulations to achieve the first step in the Plan Conformance process, known as "basic plan conformance". The Regional Master Plan (RMP) describes this process as follows:

In order to meet the requirements of Plan Conformance for immediate mandatory items (i.e., "Basic" Plan Conformance), the municipality must adopt the elements of the Highlands Regional Master Plan related to critical natural resources. Where a municipality can demonstrate to the satisfaction of the Highlands Council that existing provisions of its master plan and land development regulations cover these areas in an equivalent or more restrictive manner than the RMP, the existing provisions shall be sufficient to satisfy the conformance requirement. The Plan Conformance Guidelines will include a table specifying the policies and objectives which are immediate mandatory items and must be adopted (or demonstrated to already exist) by the municipality in order to be eligible to receive Plan Conformance approval.¹ (Emphasis added.)

The RMP is not an easy plan to summarize. It outlines 10 major policy areas structured around 66 **Goals** – "*broad statements of intent*". These goals, in turn are further defined with 312 **Policies** – "*a more detailed statement of direction*" and 328 **Objectives** – "*the specific, substantive requirements that will be used to measure implementation progress and plan conformance*"² as integral parts that must be understood in order to gauge the RMP's full impact.

Some of the goals, objectives and policies will have a more significant impact upon the Borough than others. At minimum Hopatcong will need to update and substantially revise the Land Use Plan Element and will need a new Housing Element and Fair Share Plan for COAH'S Third Round. New plan components will also be required. For example, a new municipal-level WATER USE AND CONSERVATION MANAGEMENT PLAN will be necessary along with a host of regulatory changes to implement its aims. In addition, conformance with the RMP will require the preparation and adoption of other such plans including, but not limited to, a HABITAT CONSERVATION AND MANAGEMENT PLAN, a STREAM CORRIDOR PROTECTION AND RESTORATION PLAN, and a FOREST CONSERVATION AND MITIGATION PLAN. An initial analysis of the RMP's Natural Resources section which consists of seven distinct categories including forest resources, critical habitat and lake management, will require significant adjustments to the

1. Highlands Regional Master Plan 2008, page 370.

2. Ibid. Page 137.

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Borough's development regulations, at least for the 33 percent of the municipality situate in the Highlands Preservation Area.

This report offers an introduction in Section II followed by a description of Hopatcong within the Highlands Region in Sections III and IV. Plan conformance requirements and procedures are examined in Sections V through VII. The ten major policy areas along with selected goals, policies and objectives with a focus on Hopatcong are presented in Section VIII. Section IX presents Executive Order 114 and concluding remarks are offered in Section X.

II. INTRODUCTION

The New Jersey Legislature enacted the **Highlands Water Protection and Planning Act** (N.J.S.A.13:20-1 et seq.) on August 10, 2004 placing 88 municipalities – including Hopatcong Borough – within the Highlands Region. The Region consists of some 859,358 acres in northwest New Jersey and is divided between the Planning Area (444,399 acres) and the Preservation Area (414,959 acres). In August 2008 the Highlands Water and Planning Protection Council (Highlands Council) approved the **2008 Highlands Regional Master Plan** leading to its formal adoption on September 8, 2008.

Municipalities located within the Preservation Area of the Highlands Region are required by the Highlands Act to “...submit to the council such revisions of the municipal master plan and development regulations, as applicable to the development and use of land in the preservation area, as may be necessary in order to conform them with the goals, requirements, and provisions of the regional master plan.” (N.J.S.A. 13:20-14) As such municipalities have until December 8, 2009 (15 months following formal adoption of the RMP) to satisfy the requirements of “*basic plan conformance*” which applies to the Preservation Area portion of Highlands Region municipalities.

This Initial Assessment Report is intended to compare the Borough's current Master Plan and development regulations to the RMP standards for basic plan conformance. The RMP describes this first stage as follows:

The purpose of the Initial Assessment Grant is to enable municipalities and counties to conduct an initial review of the policies and requirements of the RMP to determine the level of effort anticipated for the municipality or county to conform to the RMP. The Initial Municipal Assessment Grants will support an early and preliminary assessment on the part of the municipality and county and will not obligate them in any way to commit to Plan Conformance for the Planning Area in the future³

3. Ibid. Page 374.

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III. HOPATCONG'S PLACE IN THE HIGHLANDS REGION

Of the total 7,953 acres that comprise the Borough of Hopatcong, 5,346 acres or 67 percent are located within the Planning Area. The remaining 2,607 acres (33 percent) fall within the more restrictive Preservation Area.⁴ The Preservation Area portion of Hopatcong encompasses the relatively underdeveloped lands along the Borough's western edge and the forested areas to the north (Figure 1). The Planning Area includes the developed portion of the Borough including the area that was part of the "town center". (Figure 1) A comparison between Borough planning documents (listed below) and the RMP reveals that a number of changes will be required to bring the Preservation Area into conformance with the Highlands regional plan.

- Code of the Borough of Hopatcong:
 - Chapter 28 Land Use Procedures
 - Chapter 57 Affordable Housing
 - Chapter 191 Site Plan Review
 - Chapter 209 Subdivision of Land
 - Chapter 228 Trees
 - Chapter 242 Zoning
- 2008 Amendment to the Future Land Use Recommendations (1997 Master Plan); Master Plan Reexamination Reports: October 7, 2008
- Amended Master Plan Reexamination Report: October 5, 2006
- Natural Resources Inventory: June 2006
- Master Plan Reexamination Report: July 6, 2004
- Master Plan Borough of Hopatcong: June 17, 1997

IV. LAND USE CAPABILITY ZONE MAP

The *Land Use Capability Zone Map* established in the RMP is designed to "...address the requirements of the Highlands Act and provide regional guidance for the implementation of the policies contained in the Regional Master Plan."⁵ This Map creates what are known as "overlay zones" each having a number of policy objectives that will affect how the Borough addresses the issue of consistency.⁶

The largest overlay zone in Hopatcong is the **Protection Zone** comprising 4,601.65 acres or 58.9 percent of the Borough. This zone covers all of the Preservation Area and approximately half of the lands within the Planning Area as depicted on Land Use Capability Map (Figure 1). The RMP describes this zone as follows:

4. Ibid. Page 22.

5. Ibid. Page 110.

6. Ibid. Pages 111-112.

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The Protection Zone consists of high natural resource value lands that are important to maintaining water quality, water quantity and sensitive ecological resources and processes. Land acquisition is a high priority in the Protection Zone and development activities will be extremely limited; any development will be subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands.

The next largest overlay zone is the **Existing Community Zone** consisting of 2,107.63 acres or 26.99 percent of the Borough. This zone includes virtually all of the developed residential and commercial sections of the Borough. The ECZ is defined as follows:

The Existing Community Zone consists of areas with regionally significant concentrated development signifying existing communities. These areas tend to have limited environmental constraints due to previous development patterns, and may have existing infrastructure that can support development and redevelopment provided that such development is compatible with the protection and character of the Highlands environment, at levels that are appropriate to maintain the character of established communities.

A subset of the Existing Community Zone is the **Lake Community Sub-Zone** which, as the name suggests, covers the area in proximity to the waters of Lake Hopatcong. It affects 1,030.71 acres or 13.2 percent of the Borough and is defined as follows:

The Lake Community Sub-Zone consists of patterns of community development that are within the Existing Community Zone within 1,000 feet of lakes. The Highlands Council focused on lakes that are 10 acres or greater and delineated lake management areas consisting of an area of up to 1,000 feet (depending on the protection focus) from the lake shoreline in order to protect water quality, resource features, shoreline development recreation, scenic quality and community character. A future management area is planned, encompassing the full lake watershed, for protection of the lake water quality. This zone has unique policies to prevent degradation of water quality, and watershed pollution, harm to lake ecosystems, and promote natural aesthetic values within the Existing Community Zone.

Another subset of the Existing Community Zone is the **Existing Community Zone – Environmentally Constrained Sub-Zone** which covers a number of isolated pockets of land within the ECZ totaling 68.35 acres or less than one percent of the Borough. The RMP describes this sub-zone as follows:

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The Existing Community Zone – Environmentally Constrained Sub–Zone consists of significant contiguous Critical Habitat, steep slopes and forested lands within the Existing Community Zone that should be protected from further fragmentation. They serve as regional habitat ‘stepping stones’ to larger contiguous Critical habitat and forested areas. As such, they are not appropriate for significant development, and are best served by land preservation and protection. Development is subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands.

V. PLAN CONFORMANCE

The Highlands Act mandates that the Preservation Area of every Highlands municipality be brought into conformance with the “*goals, requirements, and provisions*” of the RMP (N.J.S.A. 13:20-14). The Highlands Act does not require conformance with respect to the Planning Area portion of a municipality; instead the option to do so remains with the municipality. And while there is the December 8, 2009 deadline for conformance regarding the Preservation Area, no timetable is imposed upon a municipality to make a decision regarding conformance for the Planning Area, commonly referred to as “opting in” but, for all practical purposes, such a decision will need to be considered this year as the Borough moves to meet the December 8, 2009 deadline to submit its third round Housing Element and Fair Share Plan to COAH, as described in Section VI under the Module 3 heading.

VI. BASIC PLAN CONFORMANCE

Basic plan conformance will be conferred by the Highlands Council once the Borough “...*has satisfactorily completed all immediate mandatory conformance requirements.*”⁷ To do so the Borough will utilize the Highlands module program to “...*accomplish immediate mandatory conformance requirements at the outset of the process...*” with “...*more complex, long-term conformance tasks to be completed under a Council-approved Implementation Plan.*”⁸ The Council has now provided this program with assigned target dates attached to each of the seven modules structured to complete this initial phase by December 8, 2009. Hopatcong has secured an initial \$50,000 grant to complete this process and if necessary, will seek additional funding not to exceed \$100,000 to complete this task. The modules that are the focus of our attention this year are as follows:

1. Current Municipal Conditions and Build-out Analysis
2. Land Use and Resource Capacity Analysis

7. Ibid. Page 368.

8. Ibid. Page 368.

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3. Housing Element and Fair Share Plan
4. Environmental Resource Inventory
5. Highlands Master Plan Element
6. Highlands Regulations
7. Municipal Self Assessment, Implementation Plan and Petition

Modules 1 and 2

Modules 1 and 2 are designed to estimate the remaining development (and redevelopment) capacity within the Borough based on existing zoning but adjusted to reflect the impact of the RMP policies. As of this report Modules 1 and 2 have been completed and submitted to the Highlands Council for review.

Module 3

Upon completion of the capacity analysis in Modules 1 and 2, a new HOUSING ELEMENT AND FAIR SHARE PLAN [HE/FSP] (Module 3) will be prepared to meet a December 8, 2009 deadline for submission to COAH in accordance with the Resolution of Intent adopted by the Borough. (A draft HE/FSP is due no later than October 1st to the Highlands Council for a preliminary review for consistency with the RMP.) The new HE/FSP will offer modified third round affordable housing strategies in recognition of the adjusted growth projections resulting from the Highlands build-out analysis. Should Hopatcong elect to have the Planning Area as well as the Preservation Area conform to the RMP the lower growth projections shall be used. If the Borough decides otherwise, COAH's (presumably higher) growth projections must be the basis for calculating the third round affordable housing obligation.

Module 4

Module 4 will supplement the Borough's Natural Resource Inventory with a Highlands Environmental Resource Inventory which is designed to include data for the entire Region together with municipal-specific information and maps. The draft HIGHLANDS ENVIRONMENTAL RESOURCE INVENTORY was completed and submitted to the Highlands Council in accordance with the June 30th deadline.

Module 5

The fifth module constitutes a Model Highlands Element for Municipal Master Plans. This "Element" actually comprises a series of elements intended to bring the Borough's Master Plan into conformance with the RMP. The elements are as follows:

1. Policies, Goals & Objectives
2. Land Use Plan

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3. Housing Plan
4. Conservation Plan
5. Utilities Services Plan
6. Circulation Plan
7. Land Preservation and Land Stewardship Plan
8. Community Facilities Plan
9. Sustainable Economic Development Plan
10. Historic Preservation Plan
11. Development Transfer Plan (Optional)
12. Relationship of Master Plan to State/Regional/Local Plans

Module 6

Module 6 will provide assistance in updating and revising, where necessary, the Borough's land use regulations to be consistent with the RMP.

Module 7

The last of the modules for basic plan conformance, Module 7, will provide the basis for Hopatcong to prepare a Municipal Self Assessment Report to evaluate the status of basic plan conformance while also establishing an implementation schedule for the remaining tasks for full conformance.

VII. MUNICIPAL CONFORMANCE REQUIREMENTS

Conformance with the RMP is mandatory for the Preservation Area and applicable to the Planning Area should the Borough decide to "opt in" as stated in the following excerpt:

Municipal and county conformance with the RMP (Plan Conformance) is the overall goal for implementation of the various elements of the RMP. The Highlands Act establishes the requirements that all municipalities and counties for land in the Preservation Area bring their local plans and development regulations into conformance with the "goals, requirements, and provisions of the regional master plan." For land in the Planning Area, voluntary conformance for municipalities and counties is also provided for in the Act, which outlines the benefits that shall accrue to those municipalities and counties that conform.⁹ (Emphasis added.)

The RMP is structured around ten major policy areas each having goals, objectives and polices which in turn are linked to implementation strategies that will require Hopatcong to adjust its Master Plan and development regulations to varying degrees. Some of these

9. Ibid. Page 366.

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have a greater priority for the basic plan conformance stage; others will come with full conformance next year. The ten major policy areas of the RMP are as follows:

- A. Natural Resources
- B. Water Resources and Utilities
- C. Agricultural Resources
- D. Historic, Cultural, Agricultural, and Scenic Resource Protection
- E. Transportation
- F. Future Land Use
- G. Landowner Equity
- H. Sustainable Regional Economy
- I. Air Quality
- J. Local Participation

Hopatcong can expand upon its existing Master Plan and established regulations to address some of the above. Where new Master Plan Elements and site plan/subdivision regulations are needed, it is expected that the Highland Council will provide models to assist in meeting this obligation. Until that level of assistance is clarified, cost estimates to achieve full plan conformance are difficult to provide. With that in mind we know the following list of subjects will require attention pursuant to the Programs and Implementation sections of the RMP:

Master Plan

- Utility Services Element
- Housing Element / Fair Share Plan
- Historic Preservation Plan Element
- Historic, Cultural, and Scenic Resource Protection Element
- Circulation Plan Element (with emphasis on an assessment of local transportation improvement needs and safety concerns)
- Land Use Plan Element to identify development, redevelopment and brownfield opportunities
- Economic Plan Element
- Programs for community and neighborhood design that support a variety of housing options, mixed uses, redevelopment, adaptive re-use of historic sites and structures, and infill development

Additional Studies/Plans

- Forest Conservation and Mitigation Plan
- Stream Corridor Protection/Restoration Plan
- Critical Habitat Conservation and Management Program
- Water Use and Conservation Management Plan
- Land and Water Resource Planning and Management Programs

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- Build-out Analysis (satisfied by Modules 1 & 2)

Development Regulations

- Carbonate Rock Area development ordinance and standards
- Septic System Maintenance programs and ordinances
- New or modified regulations for community and neighborhood design that support a variety of housing options, mixed uses, redevelopment, adaptive re-use of historic sites and structures, and infill development
- Shoreland Protection and Water Quality Management Tiers standards

VIII. HOPATCONG AND THE RMP: A COMPARISON

The following information examines each of the ten major policy areas cited in Section VII and how they relate to Hopatcong Borough with regard to plan conformance. As noted in Section I of this report the RMP lays out **Goals** – “*broad statements of intent*”; **Policies** – “*a more detailed statement of direction*”; and **Objectives** – “*the specific, substantive requirements that will be used to measure implementation progress and plan conformance*”.¹⁰ Some policies have multiple objectives whereas others may have only one or in some cases, none. This section is not intended to analyze all of the 66 goals, 312 policies and 328 objectives set forth in Chapter 4 of the RMP; instead it highlights selections from each of the three categories to assist in understanding the RMP’s applicability to Hopatcong and the extent of work that will be necessary to bring the Borough into conformance. As a point of information the number of goals, policies and objectives for each category is provided with the topic heading.

A. Natural Resources

The natural resources analysis in the Highlands RMP is exhaustive and covers a wide variety of environmental constraints and ecological systems. The key resource categories set forth in the RMP are as follows:

1. Forest Resources
2. Open Waters and Riparian Areas
3. Steep Slopes
4. Critical Habitat
5. Land Preservation and Stewardship
6. Carbonate Rock (Karst) Topography
7. Lake Management

10. Ibid. Page 137.

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To varying degrees the Borough's Master Plan, Natural Resources Inventory and development regulations recognize a number of the natural resources contained in the RMP e.g. steep slopes, riparian buffers, tree restoration which will facilitate the modifications required to achieve Plan conformance. Others are entirely new concepts resulting from the RMP i.e. Prime Groundwater Recharge and Lake Management. The seven categories comprising Natural Resources are as follows:

(1) Forest Resources
3 goals / 16 policies / 23 objectives

The Highlands RMP goals for forest resources are to protect and enhance current forest areas and align forest regulations throughout the Region. As seen on the Forest Resource Areas Maps (Figure 2), the entire Preservation Area portion of the Borough falls within this classification as does the westerly portion of the Planning Area.

RMP Policy 1A2 states:

To limit development in the Forest Resource Area in the Preservation Area in order to protect and enhance forest resources, forest ecosystem integrity, Critical Habitat, and the quantity and quality of water resources.

All of the Preservation Area is classified as a Forest Resource Area, most of which is further classified as a High Integrity Forest Resource Area. The various objectives set forth in Part 1, Chapter 4 of the RMP will significantly impact future development or redevelopment opportunities within the Forest Resource Area. Some of the key RMP concerns are as follows:

Policy 1A2: To limit human development in the Forest Resource Area in the Preservation Area in order to protect and enhance forest resources, forest ecosystem integrity, Critical Habitat, and the quantity and quality of water resources.

Objective 1A2a: Density mapping of the Region's contiguous forested lands as the Forest Resource Area.

Objective 1A2b: Implementation of regulations through Plan Conformance which limit permissible uses within the Forest Resource Area to maintenance of pre-existing uses and restoration of impaired forest areas; relief from strict adherence to these standards shall be permitted only upon approval of a forest mitigation plan and, for a major Highlands Development, approval of a Highlands Preservation Area Approval (HPAA) by the NJDEP. (Emphasis added.)

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Objective 1A2c: To prohibit through local development review and Highlands Project Review the deforestation of lands within the Forest Resource Area of the Preservation Area for human development except where authorized as an exemption by the Highlands Act, or is an agricultural or horticultural development as defined at N.J.S.A. 13:20-31 and meets the requirement of that provision of the Highlands Act, or if qualifying as a major Highlands Development, the project must, at a minimum, be in conformance with the New Jersey Department of Environmental Protection (NJDEP) Preservation Area Rules at N.J.A.C. 7:38-3.9.

Objective 1A2d: To prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b. (Emphasis added.)

Note Objective 1A2b would “...*limit the permissible uses within the Forest Resource Area to maintenance of pre-existing uses and restoration of impaired forest areas...*” Any relief from such strict standards will require, at minimum, a FOREST MITIGATION PLAN. The Highlands Council is expected to provide a model municipal tree ordinance and assistance in preparing a FOREST CONSERVATION AND MITIGATION PLAN which Hopatcong will utilize in updating its Master Plan and zoning regulations.

The Borough will also note that Objective 1A2d speaks of prohibiting the “...*expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area...*” except where consistent with other policies and objectives which, broadly speaking, involve an existing or imminent threat to public health and safety; development pursuant to a Highlands Redevelopment Area or takings waiver; or where such facilities would serve a cluster development in accordance with the stated objectives of the RMP.

If Hopatcong does decide to bring the Planning Area portion of the municipality into conformance it will need to make the necessary adjustments to implement the RMP policies and objectives specific to the Planning Area such as Policy 1B1 wherein it states:

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To provide resource management guidance to encourage sustainable forest management, restoration, improved ecological health, carbon sequestration, and stewardship practices on public and private lands in the Forest Resource Areas within the Protection Zone and the Conservation Zone in the Planning Area.

The Borough will look to the Highlands Council for model ordinances to implement the aims for forest resources as described in the following RMP Objectives and Policies:

Objective 1C2c: Provide a model municipal tree ordinance for municipalities that allows active forest management with a Forest Management Plan approved by the State Forester.

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.

Objective 1C2e: Provide technical guidelines establishing forest clearing thresholds and mitigation requirements for inclusion in municipal development regulations.

Policy 1C3: To require that conforming municipalities adopt a tree clearing ordinance consistent with an approved community forestry plan under the New Jersey Forest Service Community Forestry Program as part of the municipal master plan and local development regulations.

Objective 1C3a: Standardize municipal tree protection ordinances throughout the Highlands Region to the extent feasible.

(2) Open Waters and Riparian Areas

1 goal / 6 policies / 22 objectives

The goals and policies for open water and riparian areas in the RMP relate to the protection, restoration and enhancement of water resource areas. Highlands open waters include “...springs, streams including intermittent streams, wetlands, and bodies of surface water, whether natural or artificial (excluding swimming pools), located wholly or partially within the boundaries of the Highlands Region.”¹¹ The RMP places a “high priority” on municipal action to develop and implement a STREAM CORRIDOR PROTECTION/RESTORATION PLAN to provide the desired level of protection, although it

11. Ibid. Page 141.

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would appear that NJDEP will exercise the primary control in such matters through the Stormwater Management Rules, Flood Hazard Area Rules, and Freshwater Wetlands Rules as noted in the RMP.

Riparian areas are dispersed throughout Hopatcong (Figure 3). The Borough's 2006 NRI provides substantial documentation of surface waters within the municipality and even provides a model riparian buffer conservation zone ordinance – although not incorporated within the Borough's land use regulatory program – thereby addressing to a certain degree some objectives of the RMP.¹²

Clarification should be sought from the Highlands Council to determine how the implementation Objectives 1D4b (pertaining to the Preservation Area), and 1D4d (pertaining to the Planning Area) will affect existing property owners, both residential and nonresidential, who may be interested in expansion of a home or business. The two Objectives in question are as follows:

Objective 1D4b: 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. Structures or other land improvements existing within Highlands Open Waters buffer in the Preservation Area on August 10, 2004 may remain, provided that the area of disturbance is not increased other than through a HPAA. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered “land improvements,” “development,” “land disturbances,” or “land uses.”

Objective 1D4d: Structures or other land improvements existing within a Highlands Open Waters buffer of the Planning Area on August 10, 2004 may remain, provided that the area of disturbance shall not be increased unless approved through local development review or Highlands Project Review in compliance with RMP policies and objectives. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses

12. Natural Resources Inventory, June 2006, Section V, “Water Resources”.

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shall not be considered “land improvements,” “development,”
“land disturbances,” or “land uses.” (Emphasis added.)

(3) Steep Slopes

1 goal / 11 policies / 3 objectives

Hopatcong’s does regulate disturbance to steep (15-25%) and critical slopes (25% or greater) in Chapter 242, §§242-10; 11; 12. In accordance with the more restrictive classifications regarding slopes in the RMP, the Borough will need to update its ordinance. Conformance with the RMP will require a mapped inventory of the Steep Slope Protection Area which can be achieved with minor modifications to the Slope Analysis mapping in the Borough’s NRI. If the regulations established in N.J.A.C. 7:38-3.8 will apply, it should be a relatively straightforward process to incorporate same into the Borough land use code (Figure 4).

It appears that the standards set forth in Policies 1E1 through 1E11 will apply to the Planning Area if the Borough elects to opt-in (see below). These standards are more stringent than those currently in place in Hopatcong therefore the impact on future development within the Planning Area will need to be evaluated.

Policy 1E1: To develop, maintain, and improve a mapped inventory of steep slope areas in the Highlands Region.

Objective 1E1a: A mapped inventory of the Steep Slope Protection Area in the Highlands Region showing areas that are a minimum of 5,000 square feet for any combination of the following categories of steep slopes: a) 10% to less than 15%, b) 15% to less than 20%, and c) 20% and greater.

Objective 1E1b: Periodic updates and refinements to the Steep Slope Protection Area.

Objective 1E1c: Apply Light Detection and Ranging (LiDAR) technology to develop a two-foot interval contour topographic map as a basis for refining the identification of the Steep Slope Protection Area.

Policy 1E2: All lands with slopes of 20% or greater and lands within Riparian Areas with slopes of 10% and greater shall be considered as Severely Constrained Slopes.

Policy 1E3: All non-Riparian Area lands having a slope of 15% to less than 20% which are forested shall be considered Moderately Constrained Slopes.

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- Policy 1E4: All non-Riparian Area lands having a slope of 15% to less than 20% which are non-forested with one or more of the following characteristics shall be considered Constrained Slopes: a) highly susceptible to erosion; b) shallow depth to bedrock; or c) a Soil Capability Class indicative of wet or stony soils.
- Policy 1E5: All non-Riparian Area lands having a slope of 15% to less than 20%, which are non-forested, are not highly susceptible to erosion, and do not have a shallow depth to bedrock or a Soil Capability Class indicative of wet or stony soils, shall be considered Limited Constrained Slopes.
- Policy 1E6: To require through local development review and Highlands Project Review that applications for development include topographic information identifying the location of any Steep Slope Protection Areas located on the parcel proposed for development.
- Policy 1E7: To require through local development review and Highlands Project Review that applications for development involving parcels of land with slopes of 10% or greater include identification of forested lands, areas which are highly susceptible to erosion, depth to bedrock, and Soil Capability Classes.
- Policy 1E8: To prohibit through local development review and Highlands Project Review land disturbance within areas which are Severely Constrained Slopes and Moderately Constrained Slopes, except for linear development in both the Preservation and Planning Areas that meets the requirements of N.J.A.C. 7:38-3.8(c)1-4.
- Policy 1E9: To require through local development review and Highlands Project Review the use of Low Impact Best Development Practices for any land disturbance or human development within areas which are Constrained or Limited Constrained Slopes, or that involves an approved disturbance of a Severely Constrained or Moderately Constrained Slope.
- Policy 1E10: To require that conforming municipalities and counties implement the steep slope protection provisions of Policies 1E2 through 1E9 through master plans and development regulations.
- Policy 1E11: To provide technical guidelines and assistance in support of Plan Conformance activities.

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(4) Critical Habitat

2 goals / 11 policies / 12 objectives

The entire Preservation Area portion of the Borough and the westerly portion of the Planning Area are identified as a Critical Wildlife Habitat for rare, threatened and endangered plant and animal species of the Highlands Region (Figure 5). The goals and policies in the critical habitat section of the RMP relate to the protection and enhancement of habitat areas and regulatory measures to protect such resources. Specifically, the RMP will require that human encroachment into critical habitat areas be prohibited or not further expanded. Policy 1F2 states:

To prohibit through Plan Conformance, local development review and Highlands Project Review the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.

The RMP requires an inventory and mapping of critical area, regulatory measures for the protection of habitat and the preparation of a HABITAT CONSERVATION AND MANAGEMENT PLAN as indicated in the following:

Policy 1F5: To establish a Habitat Conservation and Management Program, including minimum performance standards and criteria for the protection, enhancement, and restoration of lands within Critical Habitat.

Objective 1F5a: Implement the Habitat Conservation and Management Program through a Critical Habitat Conservation and Management Plan to include performance standards to be required through local development review and Highlands Project Review.

Objective 1F5b: Establish performance standards such that all development shall employ Low Impact Development Best Management Practices to, in this order: 1) avoid the disturbance of Critical Habitat, 2) minimize impacts to Critical Habitat, and 3) mitigate all adverse modification to Critical Habitat so that there is no net loss of habitat value. Habitat value is determined by quantity (e.g., acreage), quality (e.g., core forest vs. edge forest), type (e.g., scrub-shrub), and function (e.g., winter hibernacula for timber rattlesnakes). The mitigation requirement of no net loss of habitat value shall ensure that all four elements are accounted for and included in the mitigation design. Mitigation must meet the habitat and life-cycle requirements of the specific impacted species.

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Objective 1F5c: Establish performance standards that include a requirement and criteria for mitigation of disturbed Critical Habitat. Mitigation shall be required for all adverse modification to Critical Habitat so that there is no net loss of habitat value based on the criteria in Objectives 1F5a and 1F5b.

Objective 1F5d: Establish performance standards for the enhancement or restoration of historically disturbed Critical Habitat.

Objective 1F5e sets forth the parameters for this Plan as follows:

The Critical Habitat Conservation and Management Plan shall include a GIS or map-series Critical Habitat Overlay District for inclusion in municipal master plans to identify Critical Habitat that highlights:

- Habitat in need of protection from fragmentation and other anthropogenic impacts;
- Habitat critical to maintaining wildlife and plant populations; and
- Habitat that serves other essential ecosystem functions, including, but not limited to, carbon sequestration and ground water recharge.

Hopatcong's NRI provides a good foundation to meet this requirement, however; actual performance standards will need to be established in the site plan, subdivision and zoning regulations.

(5) Land Preservation and Stewardship
3 goals / 12 policies / 13 objectives

The Borough is engaged in a preliminary study to determine if the Highlands Transfer of Development Rights (TDR) program is appropriate and consistent with its future land use policies. Hopatcong's 1997 Master Plan contained several objectives in this regard although nothing as comprehensive as the RMP requires, including a Recreation and Open Space Inventory (ROSI), as indicated in the following Objectives and Policies:

Objective 1H2b: Create a landowner assistance program to provide technical assistance and guidance with regard to land preservation options and the Highlands TDR Program to owners of land which should not be developed in order to protect water resources and environmentally sensitive resources.

Policy 1I1: To require conforming municipalities and counties to include an open space preservation and land stewardship element in their master plans.

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Policy 1I2: To require conforming municipalities and counties to: identify and delineate existing preserved open space, including fee simple and easements; maintain a current Recreation and Open Space Inventory (ROSI) where required by the NJDEP Green Acres Program; and identify lands subject to stewardship programs in their master plans and provide that information to the Highlands Council.

Policy 1I3: To require conforming municipalities and counties to require conservation or land stewardship easements, enforceable by the Highlands Council and at least one of the following: the appropriate municipality, the County Agriculture Development Board, the SADC, Green Acres, or a non-profit land trust organized pursuant to § 501 (c)(3) of the federal tax code and engaged in the protection of land for the purpose of providing long-term stewardship of important resources as a condition of development approval for lands within parcels proposed for development that are identified for preservation on a proposed site plan or subdivision plat.

Policy 1I4: To require conforming municipalities and counties to establish stewardship and monitoring programs for preserved lands owned by the municipality or county by fee acquisition or easement acquisition. Such programs can be administered by the municipality or county, or a non-profit land trust organized pursuant to § 501 (c)(3) of the federal tax code and engaged in the protection of land for the purpose of providing long-term stewardship of important resources.

(6) Carbonate Rock (Karst) Topography
1 goal / 4 policies / 6 objectives

Hopatcong is not affected by carbonate rock geology as evidenced on Figure 3.13 *Carbonate Rock Area* in the RMP. Accordingly the Goal, Policies and Objectives set forth in Subpart F of the RMP are not pertinent to the Borough's conformance requirements.

(7) Lake Management
2 goals/14 policies/9 objectives

This part of the RMP is among the most important to Hopatcong. As depicted on Figure 6, the Lake Management area extends into established residential and commercial areas in proximity to the shoreline of Lake Hopatcong, all within the Planning Area. Should the Borough decide to opt in, this portion of the Borough will be subject to the standards established in the RMP which are presented in full, below.

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A thorough analysis as to how such standards will affect existing properties, potential redevelopment sites and any remaining vacant parcels is beyond the scope of this report but it is a significant subject that the Borough needs to investigate. Additional funding for such should be requested from the Highlands Council.

Goal 1L: Protection of Highlands Region Lakes From the Impacts of Present and Future Development.

Policy 1L1: To establish a Lake Management Area around all Highlands Region lakes of greater than ten acres in size.

Policy 1L2: To establish tiers of lake management appropriate to management strategies that help protect lake water quality and community value from the impacts of present and future development.

Objective 1L2a: Lake management programs shall use the following management tiers around all Highlands Region lakes of greater than ten acres in size:

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

Policy 1L3: To establish unique standards (as compared to lakes within the Protection and Conservation Zones) for the Lake Community Sub-Zone within the ECZ within 1,000 feet of lakes, particularly with respect to the Shoreline Protection Tier, to prevent degradation of

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water quality, harm to lake ecosystems, and promote aesthetic values within the ECZ.

Policy 1L4: To establish and implement management strategies to help protect lake water quality and ecosystem values from the impacts of present and future development for all lakes.

Objective 1L4a: Implementation of standards through Plan Conformance regarding lake ecosystem and water quality in the Shoreland Protection Tier to address direct and proximate impacts upon the lake, including but not limited to shoreline modification and development (including limits to the hardscaping of shorelines using bulkheads, rip-rap, and walls), docks, piers, boathouses, dredging, vegetation removal, and increased impervious cover. Pollutant discharges shall also be addressed, including the potential for contamination from septic systems, cesspools and other wastewater management systems within the tier that are failing or are inadequately designed and constructed. As such systems fail, landowners should be required to provide upgraded treatment (whether on-site or through public or community systems) to minimize pollutant movement to the lake. Standards for the Lake Community Sub-Zone and for the Protection and Conservation Zones may be distinct to the extent necessary to recognize the existence of significant development within the Lake Community Sub-Zone.

Objective 1L4b: Implementation of standards through Plan Conformance regarding land use compatibility and water quality in the Water Quality Management Tier, to prevent or minimize continuous pollutant sources that can contribute pollutants overland or through ground water to the lake from greater distances than the Shoreland Protection Tier.

Objective 1L4c: Implementation of standards through Plan Conformance regarding the protection of visual and scenic resources in the Scenic Resources Tier, including but not limited to requirements for vegetative screening of buildings, building height limitations, and limits on tree and understory removal for reasons other than public health and safety or as the minimum necessary to make reasonable use of the designated building envelope for the parcel proposed for development. Standards for the Lake Community Sub-Zone and for the

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Protection and Conservation Zones may be distinct to the extent necessary to recognize the existence of significant development within the Lake Community Sub-Zone.

Objective 1L4d: Implementation of lake restoration plans to restore, protect and, where possible, enhance lake water quality through management of pollutant sources in the Lake Watershed Tier, including but not limited to the development, adoption and implementation of TMDLs by the NJDEP pursuant to the Water Quality Management Planning Rules, N.J.A.C. 7:15. Ongoing coordination will be undertaken with the Greenwood Lake and Lake Hopatcong Commissions as well as individual lake associations, as appropriate, regarding lake management issues.

Policy 1L5: To require that conforming municipalities adopt and implement for all lakes the standards applicable to the Shoreland Protection and Water Quality Management Tiers; the standards applicable to the scenic resources tier shall be adopted and implemented for all public lakes (e.g., with shorelines that are not entirely privately-held and managed through a lake association), and for privately-held lakes to the extent feasible under law, recognizing the existence of previously approved lake community development plans.

Objective 1L5a: Shoreland Protection and Water Quality Management Tier requirements shall apply to all new development, regardless of lake ownership.

Objective 1L5b: Scenic Resource Tier requirements shall apply to all lakes with public access and to lakes with no public access that are not entirely managed by a single homeowner or lake community association. For lakes that are privately-held and managed by a single homeowner or lake community association, the scenic resource tier requirements shall be voluntary.

Policy 1L6: To require that conforming municipalities develop and adopt lake restoration plans, with sufficient input from lake community residents and landowners, for each of the municipality's developed lakes that has been identified as water quality impaired, to include watershed delineation, description of point and nonpoint sources of pollution in the watershed, lake monitoring schedules, existing and proposed in-lake management techniques, and recommended watershed best management practices. TMDLs adopted by the

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NJDEP to address known pollution problems may be used as lake restoration plans. For lakes that are privately-held and managed by a single homeowners or lake community association, the municipality may require that the association share in or assume the costs of developing such plans.

Objective 1L6a: Provide Lake Management Plan guidance to municipalities that includes watershed delineation mapping methodology, point and nonpoint source pollution references, example lake monitoring schedule with monitoring goals and methods, existing successful in-lake management techniques, and best management practices.

Objective 1L6b: Septic systems and cesspools on small lots in close proximity to lakes shall be replaced with upgraded individual treatment systems, communal septic systems or community-based wastewater systems wherever feasible and cost-effective, with the selection of replacement technology to ensure minimal secondary impacts, including potential reductions in net water availability, maximum environmental benefit, and financial viability. Community-based systems should not provide for additional land development capacity except for exempt lots within that existing lake community that are not environmentally constrained, or for areas that are otherwise permitted to have wastewater service under the Goals, Policies, and Objectives in Part 2, Subpart D, Sustainable Development, and Water Resources.

Goal 1M: Protect the Unique Character of Highlands Lake Communities

Policy 1M1: To provide guidance regarding evaluation of and standards for lake character and aesthetics that shall be adopted by municipal ordinance for application to public lakes, or that may be voluntarily adopted by privately-owned lake communities within their by-laws and regulations.

Policy 1M2: To encourage increased public access to publicly-owned lakes, within the lake's carrying capacity and while maintaining the lake character.

Policy 1M3: To discourage or control teardowns that result in altered lake community character, and the potential loss of historic and cultural values, and to encourage community-supported limitations in lot coverage and building height for new construction.

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Policy 1M4: To establish and implement performance and development standards through local development review and Highlands Project Review for shoreline uses which achieve compatibility among shoreline activities and nearby neighborhoods.

Policy 1M5: To encourage municipalities to utilize recreational sites as opportunities to educate the public regarding the ecological value of lake environs.

Policy 1M6: To encourage municipalities to explore appropriate means to provide public recreation at the shoreline and on the water while ensuring retention of opportunities for passive recreation (e.g., natural areas, open space).

Goal 1N: Maintain Public and Private Lakes, Or Restore Lake Beds and Downstream Areas When Lakes Are Drained.

Policy 1N1: To develop innovative financing and administrative mechanisms for the maintenance and operation of public and private dams and lakes, where those dams and lakes provide a continuing public or private purpose.

Policy 1N2: To restore appropriate habitats in the lake beds and to prevent, mitigate, or restore downstream habitats from damages due to lake drainage, when dams are allowed to fail or are deliberately breached or removed.

B. Water Resources and Water Utilities

The various subsets under the general category of Water Resources and Water Utilities seek to establish “...a method for determining available water for human use by each subwatershed (HUC14).”¹³ This requires the preparation, adoption and implementation of a WATER USE AND CONSERVATION PLAN which, for Hopatcong, will constitute a new type of planning effort and one that will greatly influence how new development will occur in the Borough in light of the water deficit condition affecting most of the municipality as discussed below.

Four primary areas of concern to be addressed are water availability, replenishment of water sources, water quality, and the linkage of new potable water and sanitary sewerage facilities to “sustainable” development.

13. Highlands Regional Master Plan 2008, page 159

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(1) Water Resource Availability
2 goals / 10 policies / 22 objectives

The first set of goals and policies relating to water resources call for “...a method for determining available water for human use by each subwatershed (HUC14)...” (hydrologic unit code). There are four HUC14 areas in Hopatcong.¹⁴ A HUC14 is defined as follows:

HUC14 subwatershed means a delineated areas within which water drains to a particular receiving surface water body (e.g., a watershed), which is identified by a 14 digit number, or Hydrologic Unit Code (HUC). The HUCs were developed by the USGS. In the Regional Master Plan (RMP), the term HUC14 correlates to a subwatershed. A subwatershed is a subdrainage area within a watershed. The only difference between watershed and subwatershed is scale.¹⁵

The majority of Hopatcong is located in a water deficient area (Figure 6) with only a relatively small area to the west shown to be in a positive condition. The majority of the Borough falls within the deficient range of negative 0.99 to 0.10 million gallons per day.

Policy 2B3: To conditionally provide water availability (Conditional Water Availability) within a Current Deficit Area with appropriate standards regarding its use.

Objective 2B3a: A Current Deficit Area subwatershed that is primarily within the Protection Zone or Conservation Zone shall be assigned Conditional Water Availability not to exceed an aggregate of 1% of Ground Water Capacity, and will be applied to consumptive and depletive water uses that comply with the mitigation requirement in Objective 2B8b.

Objective 2B3b: A Current Deficit Area subwatershed that is primarily within the Existing Community Zone shall be assigned Conditional Water Availability not to exceed an aggregate of 2% of Ground Water Capacity, and will be applied to consumptive and depletive water uses that comply with the mitigation requirement in Objective 2B8b.

14. Lubbers Run / above & including Dallis Pond / (02040105150040); Lake Hopatcong (02040105150020); Musconetcong River / Wills Brook to Lake Hopatcong / (02040105150030); Lubbers Run / below Dallis Pond / (02040105150050)

15. Highlands Regional Master Plan 2008, page 435.

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Objective 2B3c: The Highlands Council will track the use of Conditional Water Availability within each Current Deficit Area allocated during local development review and Highlands Project Review and adjust remaining Conditional Water Availability accordingly.

Policy 2B4: To strictly limit consumptive and depletive water uses to the water availability in each HUC14 subwatershed and to establish priorities for water uses that implement the policies and objectives of the RMP.

Objective 2B4a: Give highest priority for the use of non-agricultural Net Water Availability or Conditional Water Availability within Protection Zone and Conservation Zone subwatersheds, through a Water Use and Conservation Plan developed under Objective 2B8c, local development review and Highlands Project review:

1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for Net Water Availability;
2. To serve development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2;
3. To serve a cluster development that complies with Objective 2J4b; and
4. To serve affordable housing projects where at least 10% of the units are affordable.

Objective 2B4b: The highest priority for use of Net Water Availability or Conditional Water Availability within ECZ subwatersheds, through a Water Use and Conservation Plan developed under Objective 2B8c, local development review and Highlands Project review to serve documented threats to public health and safety from contaminated water supplies, designated TDR Receiving Zones, infill development, designated Highlands Redevelopment Area, affordable housing projects where at

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least 10% of the units are affordable, or new areas for development that meet all other requirements of the RMP.

Objective 2B4c: Establish and implement mandatory stormwater reuse for recreational and other non-agricultural irrigation, as well as other non-potable water purposes to minimize both the volume of stormwater discharges and water withdrawals for these purposes.

Objective 2B4d: The highest priority for agricultural water uses in the Conservation Zone shall be those Preservation Area uses that promote agricultural and horticultural uses and opportunities that are compatible with protection of the Highlands environment, and those Planning Area uses that promote the continuation and expansion of agricultural, horticultural, recreational, and cultural uses and opportunities. Compatible agricultural and horticultural uses shall minimize consumptive water uses through efficiency measures.

Objective 2B8c: Water Use and Conservation Management Plans shall be required through municipal Plan Conformance for all subwatersheds to meet the policies and objectives of Goal 2B, to ensure efficient use of water through water conservation and Low Impact Development Best Management Practices, and to avoid the creation of new deficits in Net Water Availability. Where developed for Current Deficit Areas, the plans shall include provisions to reduce or manage consumptive and depletive uses of ground and surface waters as necessary to reduce or eliminate deficits in Net Water Availability, or to ensure continued stream flows to downstream Current Deficit Areas from Existing Constrained Areas, to the maximum extent practicable within each HUC14 subwatershed. Water Use and Conservation Management Plans 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 (e.g., in excess of 0.25 million gallons per day or mgd), and the plan shall be implemented prior to initiation of new water uses. (Emphasis added.)

The RMP attempts to address this situation in part with the requirement that municipal plan conformance include the adoption by each municipality of a Water Use and

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Conservation Management Plan. Among its aims, this Plan, in accordance with Objective 2B8c will be designed to:

- ensure efficient use of water through water conservation and Low Impact Development Best Management Practices;
- avoid the creation of new deficits in Net Water Availability;
- reduce or manage consumptive and depletive uses of ground and surface waters
- ensure continued stream flows to downstream Current Deficit Areas from Existing Constrained Areas within each HUC14 subwatershed; and
- provide 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

As of this report the Highlands Council has just begun a number of pilot projects to determine how the WATER USE AND CONSERVATION MANAGEMENT PLAN will be structured and implemented. This is obviously a major undertaking. Clarification will be required with regard to how the WATER USE AND CONSERVATION MANAGEMENT PLAN will be applied to lands in the Planning Area where HUC14's cross over from the Preservation Area although Executive Order 114 appears to ignore such a distinction. It states, in part:

The DEP shall take appropriate action to ensure that no water allocation permit is issued for any development project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, until such time that a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, has been approved by the Highlands Council and has been fully implemented.

(2) Protection of Water Resources Quantity
3 goals / 10 policies / 16 objectives

The RMP promotes the monitoring and assessment of ground water recharge and net water availability in the Borough and by HUC14 watershed. As indicated above, the RMP calls for Low Impact Development, Best Management Practices, and technical guidelines to maximize the protection of Prime Groundwater Recharge Areas. As part of Plan Conformance Objective 2D3 requires controls in master plans and development regulations for this purpose and Policy 2D4 states:

To apply standards through Plan Conformance, local development review and Highlands Project Review to protect, restore and enhance the

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functionality and the water resource value of Prime Ground Water Recharge Areas by restricting development and uses of land within a Prime Ground Water Recharge Area that reduce natural ground water recharge volumes or may directly or indirectly contribute to or result in water quality degradation.

The Borough contains a patchwork of Prime Groundwater Recharge Areas (PGWRA) with the greatest concentration in the Preservation Area although a number of sites including parks and undeveloped land in the Planning Area are likewise designated. It is noted that Objective 2D4d would limit development of a site located in a PGWRA to no more than 15 percent, consequently the Borough should evaluate the impact on such areas. It is likely that a 15 percent cap will seriously limit development opportunities, certainly within affected properties in the nonresidential zone districts.

(3) Water Quality

3 goals / 19 policies / 23 objectives

The goals and policies in this section relate to providing protection to surface and groundwater sources through land use controls and to provide restoration and enhancement of water supply areas. In addition, the RMP calls for enhanced protection around water supply wells as indicated in Policy 2H2 which states:

To develop and implement, through Plan Conformance, local development review and Highlands Project Review, resource protection measures to protect and enhance ground water and water supply resources within Wellhead Protection Areas consistent with the source water assessments for each water supply source.

Objective 2H5a calls for inclusion of wellhead protection measures in both the Master Plan and development regulations. The Borough does not currently have provisions for the protection wellhead areas although the 2006 NRI provided a detailed analysis on this issue along with a model ordinance that should be considered for adoption.

(4) Sustainable Development and Water Resources

5 goals / 21 policies / 45 objectives

The goals and policies in this section of the RMP will limit new or expanded potable water and sanitary sewer systems in the Preservation Area (Policy 2I1) but does allow for these utilities to serve areas designated as a Highlands Redevelopment Area (Policy 2I2).

With regard to the Planning Area, the various policies and objectives in this section of the RMP call for severe restrictions for new water and sanitary sewer facilities in the Protection, Conservation and Environmentally-Constrained Sub-Zones. It is not clear if

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such restrictions are intended to apply if the Borough does not opt-in but it is clear that NJDEP will apply the policies of the Land Use Capability Map in its decision-making process for new permits in accordance with the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38-1.1 [g]) which states in part:

“...for all decisions in or affecting the planning area or the preservation area, the Department shall give great consideration and weight to the RMP, to be incorporated by reference..., when adopted by the Highlands Council.” (Emphasis added.)

Hopatcong will need to be attentive to current efforts by Sussex County planning officials to establish a county-wide WASTEWATER MANAGEMENT PLAN to ensure consistency with the RMP in accordance with Policy 2K3 and the related objectives, including those identified in the Forest Resource section of this report. Policy 2K3 reads as follows:

To provide adequate, appropriate, efficient and cost-effective wastewater management to all development in the Highlands Region, through Plan Conformance, local development review, and Highlands Project Review.

And it is noted that NJDEP will rely upon the RMP in evaluating its permitting process in both the Planning and Preservation areas, as indicated in N.J.A.C. 7-38, 1.1(k) as follows;

For both the planning area and preservation areas, the Department shall review the Highlands Council regional master plan and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the regional master plan. The Department shall approve a Water Quality Management Plan amendment only after receiving from the Highlands Council a determination of consistency with the Regional Master Plan to be incorporated by reference in (l) below, when adopted by the Highlands Council. Pending completion of the Regional Master Plan, the Department shall not approve a Water Quality Management Plan amendment for a project proposed in the planning area or preservation area without first obtaining a recommendation from the Highlands Council. (Emphasis added.)

C. Agricultural Resources

5 goals / 24 policies / 12 objectives

The goals and policies of the RMP for agricultural resources seek to preserve agricultural land and retain the viability of the agricultural industry. Hopatcong is not an agricultural community and given the absence of any Conservation Zone designation on the RMP's Land Use Capability Map, the goals, policies and objectives have no bearing on the conformance process. Accordingly, Hopatcong should seek a waiver from the

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requirement to prepare and adopt an AGRICULTURE RETENTION/FARMLAND PRESERVATION PLAN.

D. Historic Cultural, Archaeological and Scenic Resources
3 goals / 18 policies / 11 objectives

The Highlands RMP identifies the value of historic sites, cultural resources and scenic vistas. The RMP encourages the preservation and conservation of such resources. The 2003 Master Plan included the following in its Goals and Objectives:

Create an historic preservation advisory group to inventory architecturally and historically significant properties within the Borough, and to explore the potential for establishing preservation guidelines.¹⁶

We note that the MODEL HIGHLANDS ELEMENT FOR MUNICIPAL MASTER PLANS (March 2009) includes a Historic Preservation Plan which Hopatcong will utilize to satisfy this requirement.

E. Transportation
5 goals / 25 policies / 13 objectives

The goals and objectives of the RMP for transportation networks encourage multi-model systems that provide for safe and adequate travel that will not result in a detriment to the Highlands region, its environment or the communities within. Any redevelopment or revitalization efforts should include new and/or upgraded sidewalks as part of the site plan approval process in concert with Policy 5A4 which calls for “...*safe and efficient pedestrian connections including features such as sidewalks...*”.

The Borough can utilize the Circulation Plan provided in the MODEL HIGHLANDS ELEMENT FOR MUNICIPAL MASTER PLANS for this purpose.

F. Future Land Use

The RMP divides the category of Future Land Use into the following subsets:

- Land Use Capability Zones
6 goals / 22 policies / 13 objectives
- RMP Updates, Map Adjustments and local build out analyses
1 goal / 4 policies / 6 objectives
- Regional guidance for development and redevelopment

16. Ibid. Page 47.

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2 goals / 12 policies / 14 objectives

- Redevelopment
4 goals / 8 policies / 8 objectives
- Smart growth
1 goal / 6 policies / 24 objectives
- Housing and community facilities
1 goal / 8 policies / 4 objectives

The various zone districts situate in the Preservation Area of the Borough will require study and most likely, substantial modifications to achieve basic plan conformance. These are the Multiple Purpose Development Zone (MPD) [§242-43]; the Light Manufacturing Zone (M-1) [§242-48]; the Light Manufacturing and Extraction Zone (M-2) [§242-49]; and the R-3 Single Family Residence Zone [§242-41]. The Borough's 2006 Master Plan Reexamination Report recognized the potential conflict with the Highlands in the following passage:

Part of the corridor is in the Highlands Preservation Areas and the remainder is in the Highlands Planning Area. Development will be severely restricted in the Preservation Area. At this point it is unknown what the recommendations will be for those portions of the Borough in the Planning Area.¹⁷

Hopatcong's interest in renewing the "Town Center" designation which expired on January 7, 2008 is entirely consistent with the RMP, as evidenced in the excerpt, below. While this matter does not need to be addressed for basic plan conformance, it is an important influence upon the review and analysis of the Borough's land use policies. Please see the map from the RMP (Appendix B) which includes the Hopatcong center boundaries.

Municipalities may seek the designation of centers, cores, and nodes through Plan Conformance by proposing such a designation in a Petition for Plan Conformance that is both consistent with the State Development and Redevelopment Plan's (State Plan) criteria for center, core, and node designation and is in conformance with the Regional Master Plan. Designated centers, cores, and nodes in the Highlands Region may include the full range of types afforded by the State Plan.

17. Amended Master Plan Reexamination Report, October 5, 2006, page 4

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The Highlands Region includes 20 previously designated centers (see Figure 6.1 State Planning Commission Designated Centers). The figure includes the expiration dates of these designated centers in order to identify the timeframe within which the Highlands Council and the State Planning Commission may examine the potential reestablishment of any expiring center designations through the Plan Conformance or Plan Endorsement process. The figure additionally provides an overview of the intersection of the boundaries of the existing designated centers and the Highlands Land Use Capability Zone Map. This information and the additional information in the RMP will allow municipalities, the Highlands Council and the State Planning Commission to reassess the designated center boundaries to ensure protection of Highlands resources and identification of appropriate areas for potential growth.¹⁸ (Emphasis added.)

Should the Borough consider opting-in, the Borough will want to consider potential growth opportunities through the redevelopment components of the RMP in the Existing Community Zone and Lake Management Area. For example, Goal 6F calls for:

Support of compact development, mixed use development and redevelopment and maximization of water, wastewater and transit infrastructure investments for future use of land and development with the Existing Community Zone.

With respect to redevelopment Goals 6J and 6L are, respectively:

Accommodation of regional growth and development needs through the reuse and redevelopment of previously developed areas, including brownfields, grayfields, and underutilized sites.
Conforming municipalities and counties consider development, redevelopment and brownfield opportunities in their master plans.

Hopatcong should also review its land use regulations to determine the extent of modifications necessary to implement the Smart Growth polices and objectives such as the following:

Goal 6F: Support of Compact Development, Mixed Use Development and Redevelopment and Maximization of Water, Wastewater and Transit Infrastructure Investments For Future Use of Land and Development Within the Existing Community Zone.

18. Highlands Regional Master Plan 2008, page 370.

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Policy 6F1: To promote compatible development and redevelopment within the ECZ.

Policy 6F2: To promote the restoration and redevelopment of brownfields, particularly those located in or adjacent to transportation corridors or transit stations. In cases where redevelopment is not appropriate, encourage “brownfield to greenfield” approaches.

Policy 6F3: To ensure that development activities within the ECZ are subject to standards and criteria which ensure that development and redevelopment incorporate smart growth principles and do not adversely affect natural resources.

Policy 6F4: To ensure that development and redevelopment within the ECZ are served by adequate public facilities including water supply, wastewater treatment, transportation, educational and community facilities.

Policy 6F5: To ensure that development and redevelopment in the ECZ are compatible with existing community character.

Policy 6F6: To encourage new population growth, where desired by the municipality, and development in the ECZ is in the form of center based and mixed use development.

Objective 6F6a: Center based development initiatives shall be planned within the Existing Community Zone at densities appropriate to the Zone, the community character, the State Development and Redevelopment Plan. Densities of five dwelling units and above are encouraged, and are required in areas designated as voluntary TDR Receiving Zones where TDR benefits are sought under the Highlands Act.

Policy 6F7: To encourage redevelopment in the Existing Community Zone as a means to relieve development pressure from more environmentally sensitive areas.

Objective 6N1b: Implement flexible site development review programs that allow for adjustments such as reduction of minimum setbacks, modification of uniform road frontage requirements, increase in maximum permitted height or allowing non-contiguous clustering of development entitlements where necessary to mitigate

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or eliminate adverse impacts on Highlands natural resources.

Policy 6N5: To require through Plan Conformance that municipalities and counties incorporate programs for community and neighborhood design that support a variety of housing options, mixed uses, redevelopment, adaptive re-use of historic sites and structures, and infill development in their master plans and development regulations.

Objective 6N5a: Minimum requirements for the use of Low Impact Development and sustainable design practices to support affordable maintenance of housing, particularly affordable housing.

Objective 6N5b: Local development regulations and guidelines that advocate mixed use development and redevelopment where appropriate.

Objective 6N5c: Local development regulations and guidelines that incorporate form-based zoning, where appropriate, to support compact, walkable communities.

Objective 6N5d: Increased opportunities for pedestrian and bicycle networks, including sidewalks, bike lanes, trails, and supportive facilities such as bike racks.

Objective 6N5e: Local development regulations and guidelines that advocate shared parking, driveways, and other infrastructure in order to limit paved surfaces.

Policy 6N6: To require through Plan Conformance that municipalities and counties include community outreach, collaboration, and meaningful involvement from the local population in the development of planning and design regulations and programs.

Finally, with regard to housing, the Borough is prepared to submit its third round HOUSING ELEMENT AND FAIR SHARE PLAN to COAH for substantive certification pursuant to the December 8, 2009 deadline.

Policy 6O2: To promote, where appropriate and permitted by the Land Use Capability Zone, center-based development approaches that address a mix of housing types, support mixed uses, and implement compact development approaches.

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Policy 6O3: To promote, where appropriate and permitted by the Land Use Capability Zone, affordable housing within new residential and mixed use development, redevelopment, or adaptive reuse projects.

Policy 6O4: To encourage the targeting of new housing to areas with compatible existing densities and within walking distance of schools, employment, transit, and community facilities and services.

Policy 6O5: To locate and maintain community facilities and services that support compact development patterns, shared services, and provide a high level of service.

Policy 6O6: To require that conforming municipalities identify existing and planned community facilities and encourage shared service opportunities as part of the local Community Facility Plan element.

Policy 6O7: To require that conforming municipalities implement both the resource protection requirements of the RMP along with the New Jersey Supreme Court's doctrine, in its Mount Laurel decisions, that every municipality in a "growth area" has a constitutional obligation to provide through its land use regulations, sound land use, and long range planning, a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families.

Policy 6O8: To require that conforming municipalities update and adopt a housing element, fair share plan, and implementing ordinance(s) to reflect current conditions and resource protection requirements of the RMP.

Objective 6O8a: Conforming municipalities, through housing plans, will evaluate and provide for alternate mechanisms to address affordable housing obligations where RMP resource protection standards restrict the ability of planned but not built sites to be developed for affordable housing.

G. Landowner Equity

8 goals / 40 policies / 22 objectives

The Highlands RMP highlights several goals and policies to address land owner equity issues for areas where land development potential has been reduced. The RMP seeks to offset these effects through Transfer of Development Rights, Highlands Development Credit opportunities and introducing innovative design guidelines to allow for

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development with minimal impacts to the environment. At this time it is not entirely clear how the Highlands TDR program will be structured and, more importantly, how it will operate therefore the Borough cannot ascertain how conformance on this aspect of the RMP will be implemented. Hopatcong has secured a \$25,000 grant from the Highlands Council to explore the option of creating one or more “receiving” zones for the TDR program and utilize Highlands grant funding to conduct such a study. Such areas would be restricted to the two sections of the municipality situate within the Planning Area.

Policy 7D1: Lands located within the Existing Community Zone or Highlands Redevelopment Areas may be designated as Receiving Zones by a Highlands municipality upon approval by the Highlands Council, provided that such Receiving Zones are consistent with the RMP.

Policy 7D2: Lands located within the Conservation Zone may be designated as Receiving Zones by a Highlands municipality upon approval of the Highlands Council, provided that such Receiving Zones are consistent with the RMP and the development does not conflict with the maintenance of viable agriculture.

Policy 7D3: A municipality located within a Highlands County, but not within the Highlands Region, may also designate Receiving Zones to participate in the Highlands TDR Program upon approval of the Highlands Council, provided that the municipality seeks endorsement by the State Planning Commission as required by subsection 1 of section 13 of the Highlands Act.

Policy 7D4: A Highlands municipality in the Planning Area may seek designation of Receiving Zones and participate in the Highlands TDR Program without regard to whether such municipality is in conformance with the Highlands RMP upon approval of the Highlands Council, provided that the municipality seeks endorsement by the State Planning Commission as required by the State Transfer of Development Rights Act.

Some of the policies concerning TDR do raise concerns particularly in the Borough’s deliberations regarding opting in. For example, Policy 7E6 will very likely add to the cost of new development by requiring the purchase of Highlands Development Credits (HDC) where a zoning change provides greater density or “*more intense development*”. This could present serious complications with efforts to create “inclusionary zoning” in accordance with COAH’s third round rules (N.J.A.C. 5:97-6.4). On a related note, the RMP should provide greater clarity with respect to what constitutes “*more intense development*”. Policy 7E6 reads as follows:

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After the date of Highlands Council determination of conformance, any municipal action that results in a density increase or change of use with more intense development will require a project applicant to secure HDC's prior to municipal approval.

Another policy deserves clarification as well. It is Policy 7E5 which states:

The Highlands Council shall seek legislation that requires the payment of a fee to the Highlands Development Credit Bank for any increases in density or intensity of development beyond the allowable development yield as of the effective date of the act, where that development relies on a potable water source located in the Highlands Region and the development is situated in any municipality other than a conforming municipality. (Emphasis added.)

The question here is whether Hopatcong would be considered a "conforming municipality" if it chose not to conform with respect to the Planning Area.

H. Sustainable Economic Development

5 goals / 15 policies / 13 objectives

The RMP requires the preparation and adoption of an Economic Plan Element that will provide strategies for achieving sustainable economic development consistent with the Highlands Plan. One policy, 8A6, calls for conforming municipalities to adopt an economic plan element "*...that provides strategies for achieving sustainable and appropriate economic development consistent with local desire and identifies any development, redevelopment, and brownfield opportunities.*" Done properly, this type of Plan needs a rather sophisticated fiscal analysis particularly with regard to the TDR policies cited above and the requirements set forth in the **Municipal Land Use Law** (N.J.S.A. 40:55D-173 through 163). This will be difficult to do so at the municipal level without financial and perhaps technical assistance from the Highlands Council.

I. Air Quality

1 goal / 6 policies / 1 objective

Policy 9A3 encourages "*...land use development and redevelopment practices that promote center-based growth and mixed-use development and offer alternative modes of transportation as a means to reduce automobile dependency...*" Hopatcong's desire to restore its prior "Town Center" designation is perfectly suited to this purpose.

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J. Local Participation

1 goal / 5 policies / 6 objectives

The Highlands RMP relies on local participation and continual updates for the overall long term viability of the Plan. The Borough encourages an open and transparent process and will coordinate with the Highlands Council to ensure broad public participation and the participation of local government.

IX. EXECUTIVE ORDER 114

As Hopatcong proceeds with an assessment of its land use policies and regulations as part of basic plan conformance for the Preservation Area, it should also take account of the conditions imposed by Governor Corzine's Executive Order 114 issued on September 5, 2008. The complete document is provided in Appendix B; key points are as follows:

In approving any plan or permit application or in issuing any other approval for a project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, the DEP shall, to the maximum extent feasible, require that development proposals designed to meet the clustering provisions of the Highlands Plan, as necessary, be (i) part of a center-based, transit-oriented, or mixed-use development or a development that is consistent with the State's smart growth policies, and (ii) municipally or regionally planned through Plan Conformance with the Highlands Plan and not isolated clusters. Furthermore, the DEP shall ensure that any such approval is conditioned upon the establishment of, and availability of funding for, the Highlands Development Credit Bank.

The DEP shall adopt and enforce strict standards for water deficit mitigation projects, consistent with the water deficit mitigation policies of the Highlands Plan, as part of the forthcoming update to the Statewide Water Supply Master Plan.

The DEP shall take appropriate action to ensure that no water allocation permit is issued for any development project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, until such time that a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, has been approved by the Highlands Council and has been fully implemented.

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The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, unless the approval is conditioned on a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented.

X. CONCLUSION

Hopatcong will follow the seven modules established by the Highlands Council to satisfy basic plan conformance. This Initial Assessment Report is intended to assist the Borough in its efforts to address the other issues identified in this report including the very important question regarding future growth projections that will form the basis for the revised Housing Element and Fair Share Plan to be submitted to COAH no later than December 8, 2009. To that end it is advisable for the Borough to undertake a concentrated study of the opting-in question. Timelines, scope of work outlines and budgets should be established with regard to the many Master Plan and ordinance modifications called for by the RMP.

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APPENDIX A

FIGURE 1.....Land Use Capability Map

FIGURE 2.....Forest Resource Area

FIGURE 3.....Riparian Area

FIGURE 4.....Steep Slopes Protection Area

FIGURE 5..... Critical Wildlife Habitat

FIGURE 6.....Lake Management Area

FIGURE 7.....Net Water Availability by HUC 14

FIGURE 8.....Prime Ground Water Recharge Areas

FIGURE 9.....Wellhead Protection Area

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APPENDIX B: EXECUTIVE ORDER 114

WHEREAS, safeguarding the clean drinking water supply for New Jersey's residents and preserving the quality of our environment are among the most important responsibilities of State government; and,

WHEREAS, the legislative and executive branches of State government have demonstrated a strong commitment to protecting New Jersey's natural resources, water supply, and quality of life from the negative effects of unrestrained and haphazard sprawl, while at the same time providing reasonable opportunities for growth and development in the State; and

WHEREAS, the New Jersey Highlands is an essential source of clean drinking water for one-half of the State's population, including communities beyond the Highlands, and contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, as well as many sites of historic significance, while also providing abundant recreational opportunities; and

WHEREAS, in 2004, the Highlands Water Protection and Planning Act, P.L.2004, c.120 ("Highlands Act"), was enacted to provide for the protection and enhancement of the Highlands Region through the creation of the Highlands Water Protection and Planning Council ("Highlands Council") and the enhancement of the statutory authority of numerous State agencies; and

WHEREAS, the Highlands Act required the Highlands Council to adopt a Regional Master Plan with a goal to protect and enhance the significant value of the resources of the Highlands Region, and on July 17, 2008, the Highlands Council, after careful analysis of the best available scientific and planning materials, and after completing a thorough public review process, adopted the Highlands Regional Master Plan ("Highlands Plan"); and

WHEREAS, the Highlands Plan is an important planning tool to establish broad goals and criteria for each of the municipalities and counties within the Highlands Region; and

WHEREAS, in accordance with the Highlands Act, for lands in the Highlands Preservation Area, local governments are required, and for lands in the Highlands Planning Area, local governments are authorized, to update their local master plans and development regulations to conform to the Highlands Plan, and to adopt ordinances to effectuate those plans; and

WHEREAS, in further accordance with the Highlands Act, the master plans and development regulations of conforming municipalities must be submitted to the Highlands Council for approval, and the Governor retains veto authority over the actions taken at each Highlands Council meeting; and

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WHEREAS, the Highlands Act encourages appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth in or adjacent to areas already utilized for such purposes, and discourages piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof; and

WHEREAS, the Highlands Act also states that the maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible wherever appropriate in the Highlands; and

WHEREAS, regionally planned, compact, mixed-use communities can be consistent with agricultural, environmental, water, and historic resource protections, while sprawling development, whether under conventional zoning or in unplanned isolated clusters, may contribute to the degradation of the natural environment as well as regional and local quality of life; and

WHEREAS, in enacting the Highlands Act, the Legislature found and declared that, as a matter of wise public policy and fairness to property owners, a strong and significant commitment by the State is necessary to fund the acquisition of exceptional natural resource value lands; and

WHEREAS, it is vital that the Garden State Preservation Trust be reauthorized and that a statewide transfer of development rights program be considered to meet the open space and agricultural preservation needs of the Highlands Region and the State, and, in part, to address landowner equity issues in the Highlands Region; and

WHEREAS, landowner equity issues also should be addressed through enactment of a reasonable extension, of at least five years, beyond the June 30, 2009, expiration of the period set forth in the Highlands Act during which dual appraisals are required for open space and agricultural preservation acquisitions; and

WHEREAS, the Supreme Court of New Jersey, in *South Burlington County v. Mount Laurel*, 67 N.J. 151 (1975), and *South Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983), determined that every municipality in a growth area has a constitutional obligation to provide a realistic opportunity for a fair share of its region's needs for housing for low and moderate income families, which constitutional obligation must always be balanced with the protection of natural resources, and particularly, the quality and quantity of drinking water originating in the Highlands Region; and

WHEREAS, the Highlands Act directs that the Council on Affordable Housing shall take into consideration the Highlands Plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the

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Highlands Region under the Fair Housing Act, P.L.1985, c.222 (C.52:27D-301 et al.) (“Fair Housing Act”), for the fair share period subsequent to 1999; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L.2008, c.46 to create a responsibility for the Highlands Council to plan for and create opportunities for affordable housing on a regional basis with consideration for infrastructure and transportation and to require a 20 percent affordable housing set-aside in residential developments;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

The Highlands Council shall work in cooperation with the Council on Affordable Housing (“COAH”), the Department of Environmental Protection (“DEP”), and the Department of Community Affairs to:

- review COAH’s third round growth projections for consistency with the Highlands Plan and assist COAH in developing adjusted growth projections within the Highlands Region, consistent with the Highlands Plan, to be utilized by municipalities that conform to the Highlands Plan;
- create realistic opportunities for municipalities to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018, in the Highlands Region based on a growth share methodology under which affordable housing must be built when growth occurs, including the actual obligation accrued to date of approximately 3,000 affordable units, with consideration for innovative affordable housing mechanisms that further the resource protection standards of the Highlands Plan;
- ensure that municipalities that voluntarily conform to the Highlands Plan support redevelopment and development pursuant to the Highlands Plan to maximize affordable housing opportunities while preserving critical environmental resources;
- identify sites and opportunities for affordable housing within the Highlands Region, including, in accordance with P.L.2008, c.46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of regional affordable housing opportunities in areas with convenient access to infrastructure, employment opportunities, and public transportation;

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- identify additional sites, opportunities, and funding sources for 100 percent affordable housing developments that could aid in addressing the Highlands Region's affordable housing needs while preserving its critical resources;
- coordinate the deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including reasonable extensions of deadlines;
- preserve scarce land, water, and sewer resources and dedicate these resources on a priority basis for the production of affordable housing consistent with the Highlands Plan, and provide priority review for proposed affordable housing projects; and
- provide that conforming municipalities adopt Housing Elements and Fair Share Plans consistent with the Fair Housing Act.

The Highlands Council and COAH shall enter into a joint Memorandum of Understanding (MOU) as soon as practicable but no later than 60 days from the effective date of this Order to implement the provisions of Paragraph One of this Order.

In accordance with the Court's recognition in the Mt. Laurel cases of the clear obligation to preserve open space and natural resources, in implementing Paragraph One of this Order the relevant State agencies shall give priority to the protection of the critical water resources in the Highlands Region that provide drinking water to over five million people in New Jersey.

The Highlands Council and COAH, with appropriate input from DEP and the Department of Community Affairs, shall provide to the Governor quarterly written reports on the status of the coordinated efforts required pursuant to Paragraph One of this Order.

The State Transfer of Development Rights Bank shall reserve and make available to the Highlands Development Credit Bank, upon its establishment as authorized by N.J.S.A. 4:1C-52, an amount not less than \$10 million.

The Highlands Council, in implementing its Land Use Capability Map Adjustment program, making any modifications to Highlands Open Water buffer standards, and designating Highlands Redevelopment Areas, shall ensure that a public process is in place allowing the public to review and comment on any map adjustments, modifications to Highlands Open Water buffer standards, or designation of redevelopment areas proposed to the Council, prior to adoption; and ensure that there is no net natural resource loss or degradation of surface or ground water quality resulting from any map adjustments or modification to Highlands Open Water buffer standards.

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In approving any plan or permit application or in issuing any other approval for a project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, the DEP shall, to the maximum extent feasible, require that development proposals designed to meet the clustering provisions of the Highlands Plan, as necessary, be (i) part of a center-based, transit-oriented, or mixed-use development or a development that is consistent with the State's smart growth policies, and (ii) municipally or regionally planned through Plan Conformance with the Highlands Plan and not isolated clusters. Furthermore, the DEP shall ensure that any such approval is conditioned upon the establishment of, and availability of funding for, the Highlands Development Credit Bank.

The DEP shall adopt and enforce strict standards for water deficit mitigation projects, consistent with the water deficit mitigation policies of the Highlands Plan, as part of the forthcoming update to the Statewide Water Supply Master Plan.

The DEP shall take appropriate action to ensure that no water allocation permit is issued for any development project located in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, until such time that a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, has been approved by the Highlands Council and has been fully implemented.

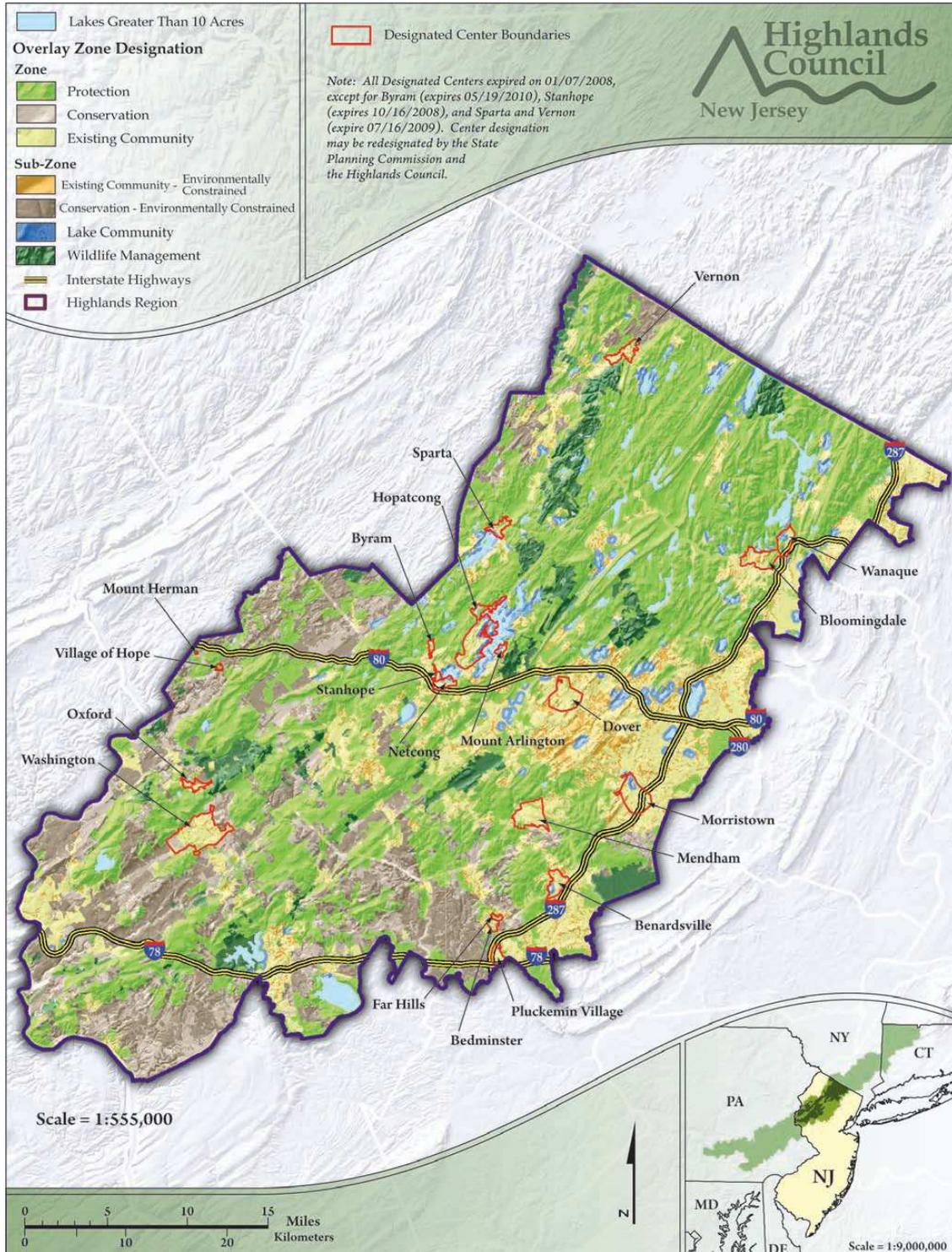
The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sub-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, unless the approval is conditioned on a Municipal Water Use and Conservation Management Plan, consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented.

Nothing in this Order shall prohibit the issuance or granting of an approval if the denial or conditioning of such approval would adversely affect public health or safety or cause a taking of property without just compensation.

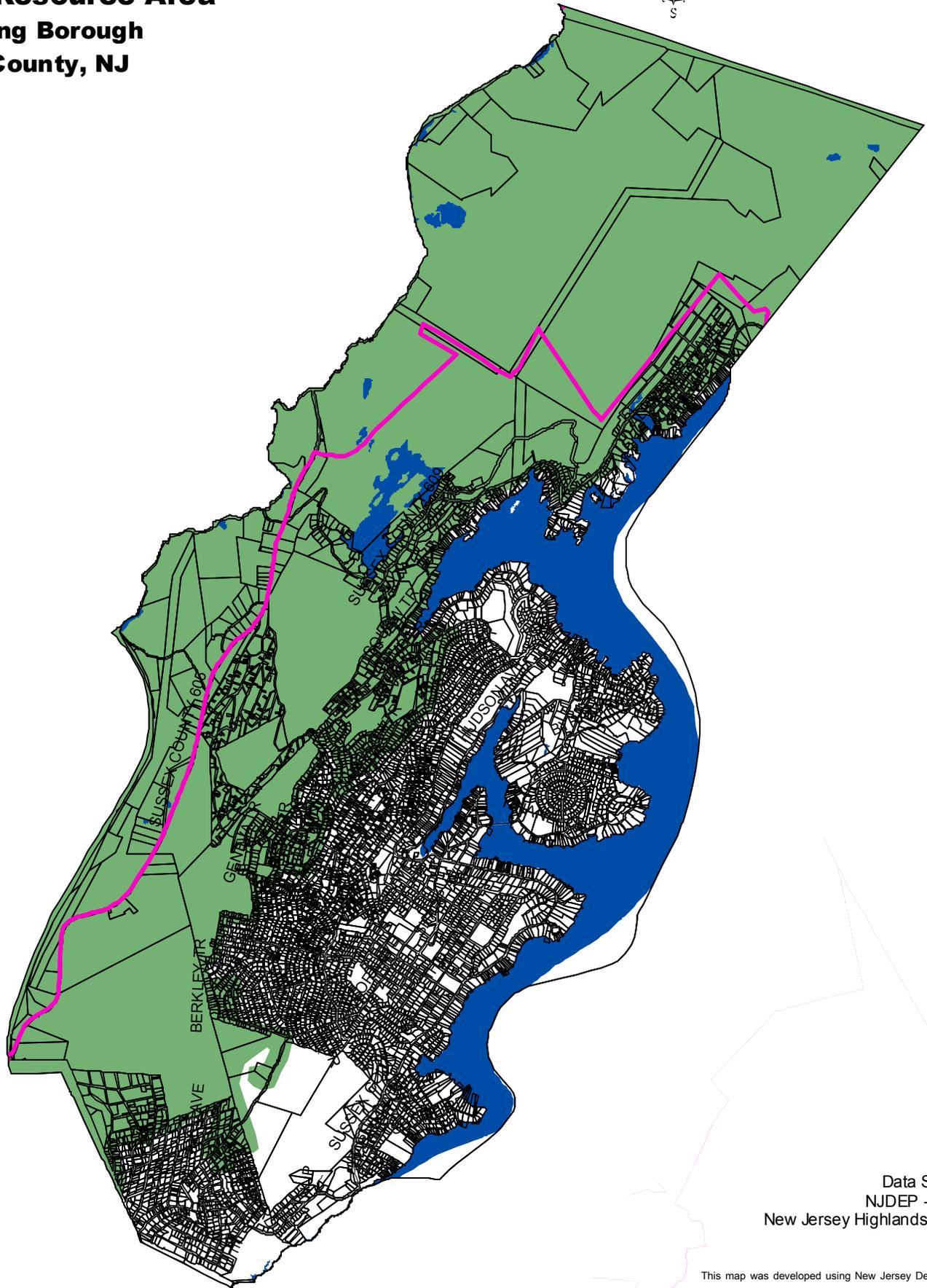
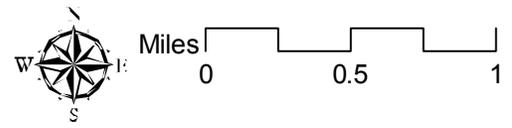
This Order shall take effect immediately. [September 5, 2008]

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APPENDIX C: FIGURE 6.1: STATE PLANNING COMMISSION DESIGNATED CENTERS



**Figure 2 - Highlands Regional Master Plan
Forest Resource Area
Hopatcong Borough
Sussex County, NJ**

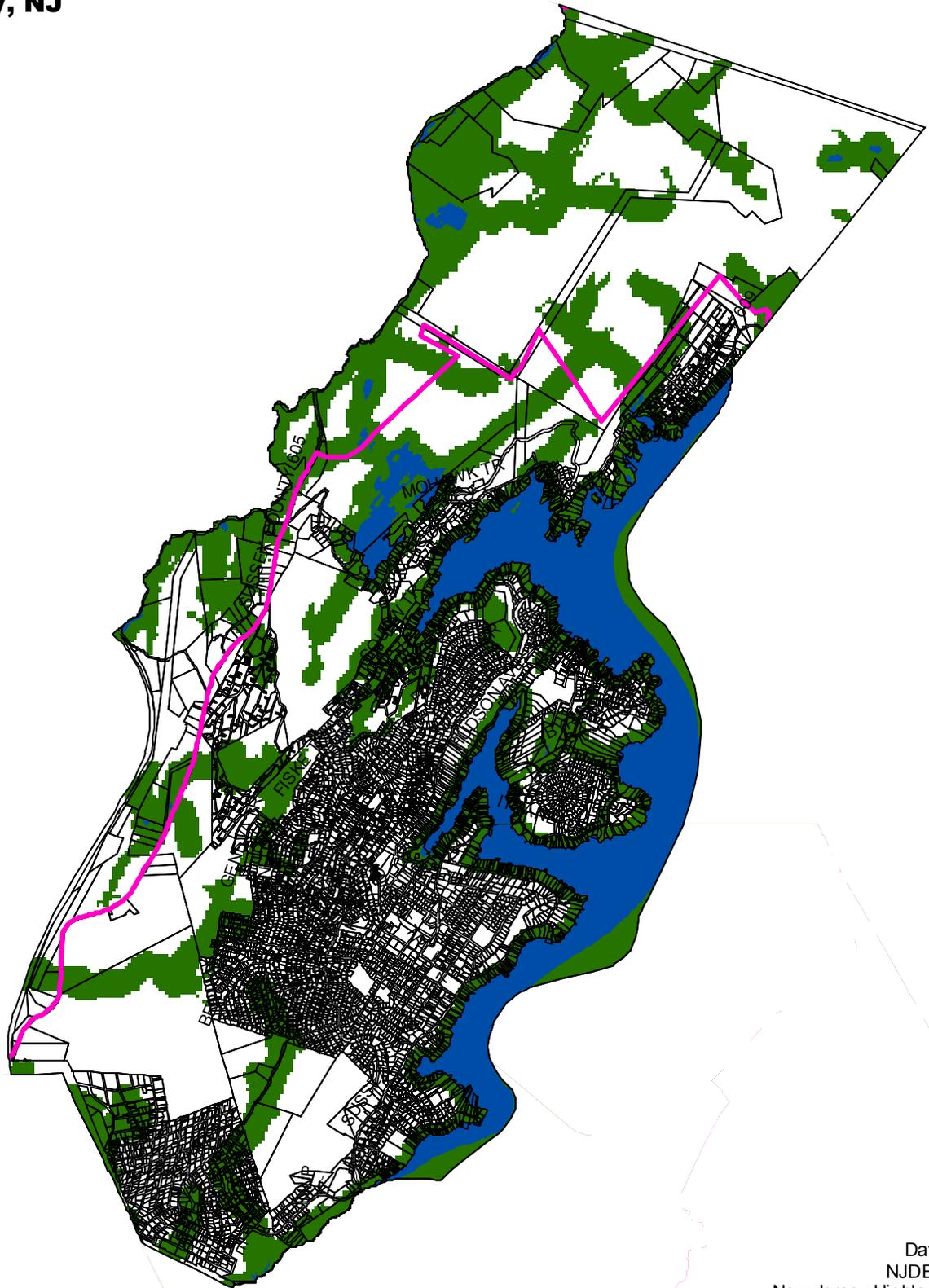
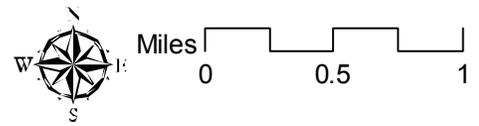


- Legend**
- Water
 - Highlands Preservation Area Boundary
 - Forest Resource Area

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 3 - Highlands Regional Master Plan
Riaprian Area
Hopatcong Borough
Sussex County, NJ**

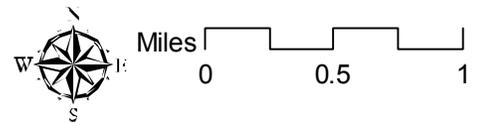


- Legend**
-  Highlands Preservation Area Boundary
 -  Riparian Area
 -  Water

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 4 - Highlands Regional Master Plan
Steep Slopes Protection Area
Hopatcong Borough
Sussex County, NJ**

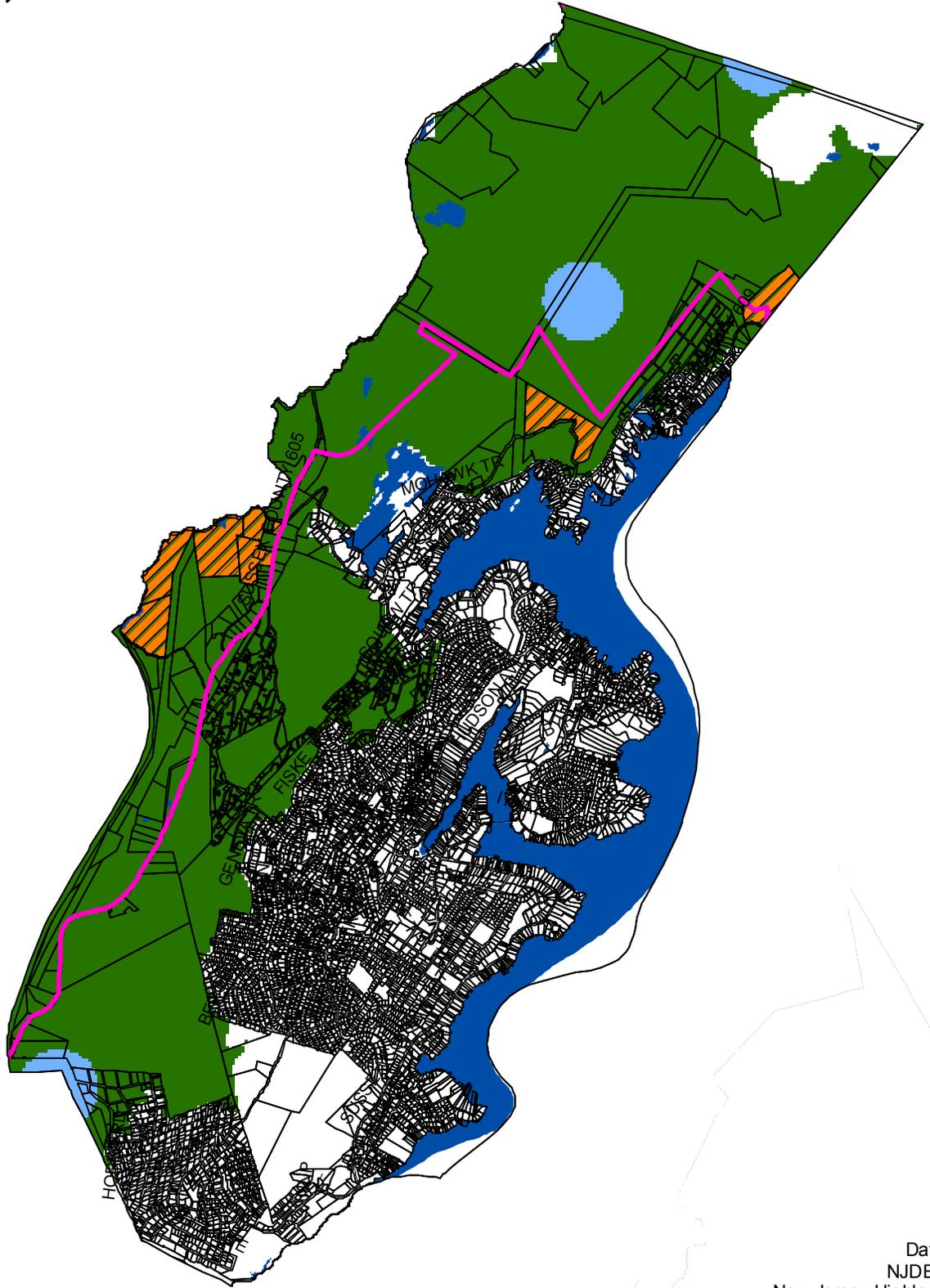
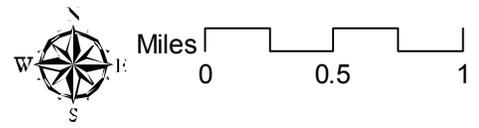


- Legend**
-  Highlands Preservation Area Boundary
 -  Water
 -  Slopes less than 10%
 -  Slopes 10% to 15%
 -  Slopes 15% to 20%
 -  Slopes greater than 20%

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 5 - Highlands Regional Master Plan
Critical Wildlife Habitat
Hopatcong Borough
Sussex County, NJ**

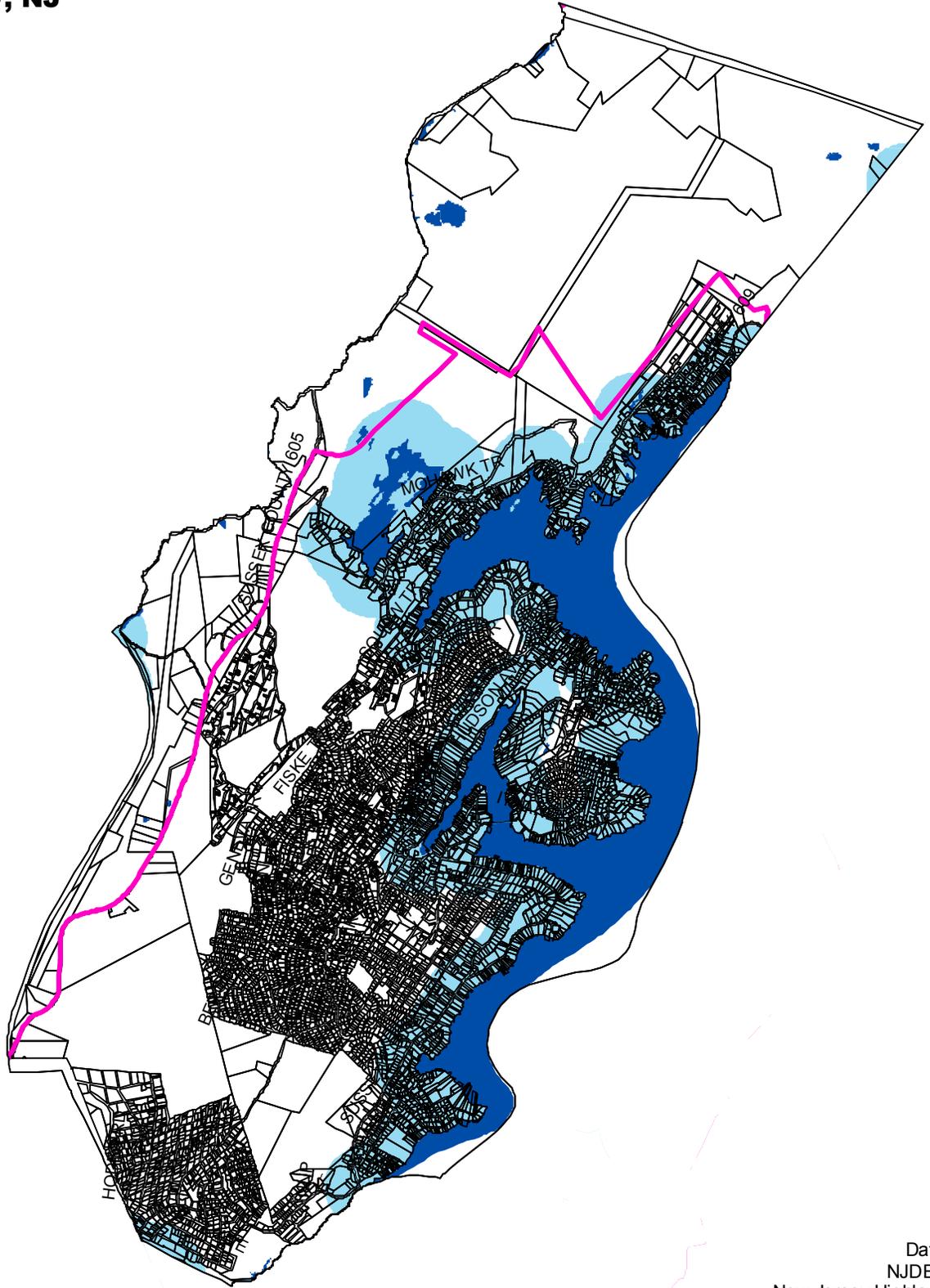
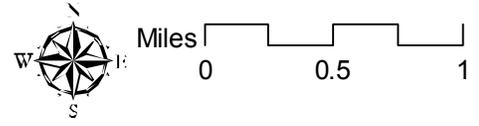


- Legend**
-  Special Environmental Zones
 -  Highlands Preservation Area Boundary
 -  Water
 -  Vernal Pools with 1,000' Buffer
 -  Critical Wildlife Habitat

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 6 - Highlands Regional Master Plan
Lake Management Area
Hopatcong Borough
Sussex County, NJ**

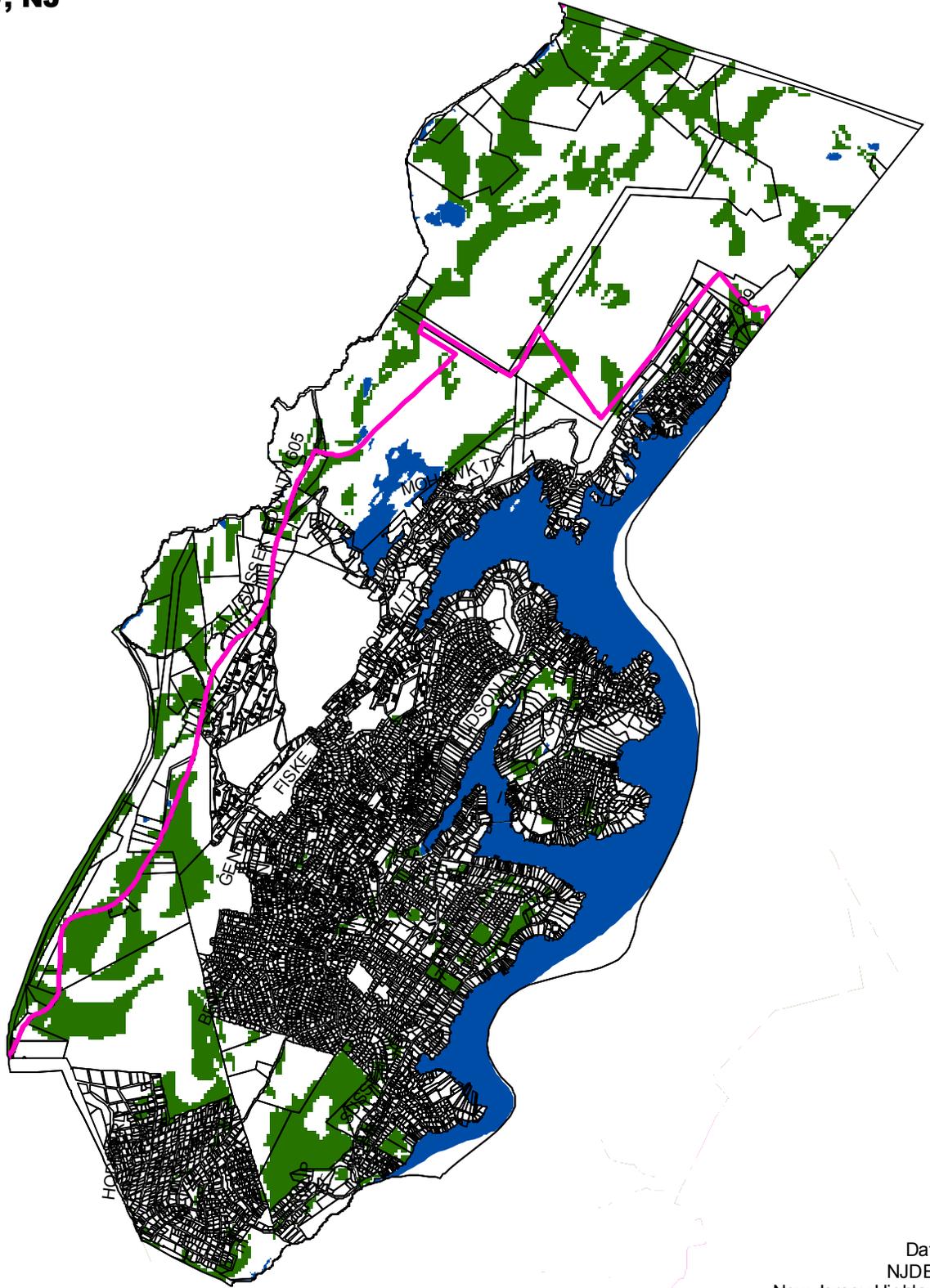
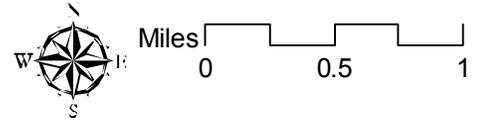


- Legend**
- Lake Management Areas
 - Highlands Preservation Area Boundary
 - Water

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 8 - Highlands Regional Master Plan
Prime Ground Water Recharge Areas
Hopatcong Borough
Sussex County, NJ**



- Legend**
-  Highlands Preservation Area Boundary
 -  Water
 -  Prime Ground Water Recharge Areas

Data Sources:
NJDEP - Roads
New Jersey Highlands Council

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

