

NJ Highlands regional master plan

Critical water supply protection ... or land preservation tool?

The public policy goal of protecting a massive water supply is certainly sound. The means chosen to do it ... well ...

By Guliet D. Hirsch

The "Highlands Area" as designated in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, includes 859,000 acres in 88 municipalities. The main purpose of the Highlands regulatory program is to protect the water supply for 4 million people living in 292 municipalities, most of which are located outside the Highlands area.

Other goals include protection of native landscape and species, provision of public recreation opportunities and promotion of agriculture.

When the Highlands Act was signed into law Aug. 10, 2004, all "major Highlands development" in the preservation area was subject to very stringent regulation. On Dec. 4, 2006, DEP rules, found at N.J.A.C. 7:38-1, replaced the Highlands Act standards applicable to the preservation area. These rules restrict development by requiring a lot between 25 and 88 acres in size per septic system, prohibiting public sewer and water service, limiting maximum impervious coverage to 3 percent, imposing a 300-foot buffer on Highlands open waters, limiting net fill to 0 percent in flood hazard areas, and prohibiting construction on slopes over 20 percent.

An additional layer of regulation will be imposed via the municipal and county conformance process. Once the Highlands Council adopts the Regional Master Plan, the 52 municipalities with land in the preservation area are required to obtain Highlands Council approval of land use ordinances and master plans in order to ensure conformance with the RMP. The 36 municipalities with land in the planning area have the option of participating in the conformance process.

Regional master plan

Pursuant to the Highlands Act, the Highlands Regional Master Plan was required to be in place by June 16, 2006. The first draft of the RMP was released that November. It was replaced by a new draft released Nov. 19, 2007. The division of land between the three basic zones has changed substantially from the 2006 to the 2007 draft:

Figure 1

RMP Land Use Capability Zone	11/2006 Draft (acres)	11/2007 Draft (acres)
Protection	557,000	469,462
Conservation	152,000	190,959
Existing Community Lake Community	150,000 N/A	178,242 20,695
Total		859,358

Public hearings are scheduled for Feb. 6, Feb. 11 and Feb. 13. The comment period closes Feb. 28, 2008.

The draft RMP is divided into six chapters. The most significant material is found in Chapter II, which covers natural resource assessment and mapping; Chapter V, which generally describes the programs which will comprise the RMP; and a separate “draft Technical Report Addenda,” released with the draft RMP, which includes analysis of available water, sewer and septic capacity.

There are three main components to the regulatory program:

- “zoning”: overlay zones and standards applicable to each zone;
- “site plan standards”: restrictions to protect natural resources and agriculture applicable in all overlay zones; and
- “landowner compensation”: the Highlands Development Credit program.

Housing, especially affordable housing, and “smart growth” are addressed as afterthoughts. Affordable housing will be provided through “inter-agency coordination” with COAH. A “smart growth manual” is promised in the future, rather than as a critical component of the RMP pursuant to the legislative mandate. N.J.S.A. 13:20-11a.(6). And, like the 2006 draft, the 2007 draft is void of minimum development standards for the Planning Area.

Overlay zones and standards

The Land Use Capability maps are found at alternating pages between pages 71 and 79 of the RMP. Map 1 is the “Overlay Zone Map.” There are three overlay zones and three sub-zones: the Protection Zone (containing the highest quality resource value lands, designated for preservation and exempt or environmentally compatible low-density uses); the Lake Community Sub-zone (areas including lakes 10 acres or larger in size); the Conservation Zone (significant agricultural land and associated natural resources, designated for promotion of agricultural uses); the Conservation-Environmentally Constrained Sub-zone (significant environmental features to be protected from non-agricultural uses); the Existing Community Zone (concentrated development, may support future development); and the Existing Community-Environmentally Constrained Sub-zone (significant constrained areas appropriate for preservation). The acreage in each of the six overlay zones/sub-zones as shown on p. 81 of the RMP is depicted in Figure 2.

There is no breakdown of overlay zones between Preservation and Planning Areas. The RMP does not suggest any density, lot size, coverage or similar zoning standards for any of the overlay zones — except for the septic density criteria.

Map 2 shows water availability; Map 3 shows public community water systems and available capacity; Map 4 shows domestic sewerage facilities and capacity; Map 5 shows septic system yields.

New septic systems

New septic systems in the Preservation Area will have to comply with the current DEP rules requiring a minimum lot area between 25 and 88 acres, depending on the extent of forested area.

Within the planning area, a minimum lot of 26.1 acres will be required in the Protection Zone; a minimum of 10 acres per septic will be required in the Conservation Zone; and a minimum lot of 9.4 acres per septic will be required in the Existing Community Zone.

Public wastewater treatment systems

Within the Protection and Conservation Zones, new systems or expansions/extensions of existing systems is prohibited unless they are required to address a documented threat to public health and safety; serve Highlands Redevelopment Area/cluster development; or to provide minimum practical use. Within the Existing Community zone, new systems or expansions/extensions may be permitted to serve lands appropriate for infill or redevelopment or for the reasons which apply in the Protection/Conservation Zones.

Figure 2

Land Use Capability Zone Map: Acres and Percentages by Zone

Land Use Capability Zone Map	Highlands Region	
	Area (acres)	Percent of Land Class
Protection	469,462	54.63%
Existing Community	146,011	16.99%
Existing Community-Environmentally Constrained Sub-Zone	32,231	3.75%
Lake Community Sub-Zone	20,695	2.41%
Conservation	70,474	8.20%
Conservation-Environmentally Constrained Sub-Zone	120,485	14.02%
Total	859,358	100%

Ground and surface water withdrawals

The Technical Report Addenda includes the council's calculation of available water for future agricultural uses and for future "consumptive/depletive" uses. Of the 183 HUC14 sub-watersheds, the calculation shows that 110 are currently calculated as being in a deficit condition. Where there is a deficit, an additional 1 percent of "groundwater capacity" may be used by new development in the Protection/Conservation Zones and an additional 2 percent may be used in the Existing Community Zone, provided certain conditions are met.

Site plan standards: regulation of natural resources and agriculture

Forest Resource Areas (map, page 23) and High Forest Integrity Areas (map, page 24)

Development in Forest Resource Areas in the Preservation Area is to be prohibited unless an exemption applies. This changes the slightly more flexible rule adopted by DEP N.J.A.C. 7:38-3.9.

Deforestation is to be limited "to the maximum extent practicable" in the Forest Resource Area and High Integrity Forest sub-watersheds in the Existing Community overlay zone. Apparently, forest clearing for agricultural development in the Conservation Zone will not be regulated. Clearing for residential development in the Protection Overlay Zone will be conditioned upon low impact BMPs.

Critical wildlife habitat (map, page 35) and significant natural areas (map, page 36)

Alteration or disturbance is prohibited, except as necessary to protect public health or safety or to provide minimum practicable use on the property. Indirect impacts to these areas are also prohibited.

Highlands open waters and vernal pools (map, page 26)

A 300-foot buffer around Highlands open water features and a 1,000-foot buffer around vernal pools is required. Within the protection/conservation overlay zones, the HOW buffer may be decreased only for health or safety concerns or to allow minimum practicable uses. Within the Existing Community overlay zone, the buffer may be reduced to 75 or 150 feet.

Steep Slopes (map, page 33)

Disturbance on slopes over 20 percent, or over 10 percent in riparian areas, or in the 15 percent to 20 percent range on forested slopes outside of riparian areas will be prohibited.

Lake management areas (map, page 42)

Four tiers of protection are proposed around lakes 10 acres or greater in size. Tier 1 is the shoreline protection tier of 300 feet. The only permitted new development will be water-dependent recreational facilities. Tier 2 is the water quality management tier which includes the shoreline protection tier and an additional 700 feet for a total 1,000 feet from the shoreline. In these areas new septic systems will be prohibited in the Highlands open water buffer or

100 feet, whichever is greater. Special stormwater management controls will be required. Tier 3 is the scenic resource tier which extends from 300 to 1,000 feet from the shoreline. Land development will be subject to building height, screening, lighting and other standards. Tier 4 is the lake watershed tier which includes the entire area draining to the lake.

Well Head Protection Areas (map, page 49)

New septic systems will be prohibited in these areas and only limited stormwater infiltration will be allowed.

Prime Groundwater Recharge Areas (map, page 46)

Land uses within this area that reduce recharge volumes or impair water quality will be prohibited. Any development which is permitted will be conditioned upon recharge equal to 125 percent of pre-existing recharge.

Agricultural resource area (map, page 57)

Although the Conservation Overlay Zone is the primary area where agriculture is to be protected, the RMP also designates a much larger "Agricultural Resource Area." Development within this area in the Protection and Conservation zones will be subject to a mandatory cluster requirement. Preservation of a minimum of 80 percent of the tract is required, and development on the remaining 20 percent is limited, depending on which overlay zone the property is in.

Landowner compensation: Highlands Development Credit

The Highlands Development Credit Program, as required by the Highlands Act, is described in the RMP. A Highlands Development Credit bank is recommended to act as a clearinghouse for information and as the official recording agency for the credit program. The bank will also have authority to buy and sell HDCs. Credits will be available to property owners in the Protection and Conservation Zones within the Preservation Area which were zoned for non-residential uses on Aug. 9, 2004, and land in the preservation area which was residentially zoned on that date and is at least 5 acres in size or three times the required minimum lot size, where the owner chooses to give up an applicable exemption or demonstrates special financial circumstances. Land within the Protection and Conservation Zones in the planning area will only be eligible for allocation of HDCs if approved by the Highlands Council through the municipal conformance process. A formula for allocation of HDCs is found at page 274.

Receiving zones, primarily in the existing Community Zone and Highlands redevelopment areas, may be designated through the municipal conformance process. Four levels of receiving zones are shown on a map at page 277. The fourth level represents land which would be appropriately used as a receiving zone and which has public water and wastewater infrastructure with available capacity. Only 14,850 acres are in this fourth level, and only 2,117 acres are in designated State Plan center or

redevelopment areas. The plan “suggests” a base density of three units per acre in a receiving zone, with an increase up to approximately five units per acre with the purchase of HDCs.

Conclusion

The legitimacy of the public policy goal of protecting a massive water supply for current and future use is undeniable. The reasonableness of the means chosen in the RMP to accomplish that goal can be questioned. Is it rational and cost-effective to protect the Highlands’ natural resources with extensive overlapping regulatory standards such as 300 foot stream buffers, 10 to 26 acre lots (and/or impervious cover limits), tree-clearing prohibitions, critical wildlife habitat preservation, stormwater management controls, flood hazard rules? Do we know the cost of this regulatory approach?

Like the New Jersey Pinelands Program adopted more than 25 years ago, the Highlands RMP relies heavily upon the transfer of development rights to compensate property owners in preservation areas. But unlike the

Pinelands CMP — which identified regional growth areas required to act as development rights receiving areas — the Highlands program is entirely voluntary, and no municipality is obligated to participate. So TDR seems unlikely to provide viable compensation. Public funding options are limited. The Highlands Council has acknowledged the need to acquire 75,000 to 125,000 acres over the next eight years at a projected cost of between \$1.125 billion and \$1.875 billion. One study has suggested the land value loss in the preservation area alone is at least \$15 billion.

If adequate acquisition goals are not set, funding does not materialize and the voluntary TDR program does not quickly become a reality, the Highlands program will not be defensible. The only question is whether property owners will have the nerve and wherewithal to attack it. ☉

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