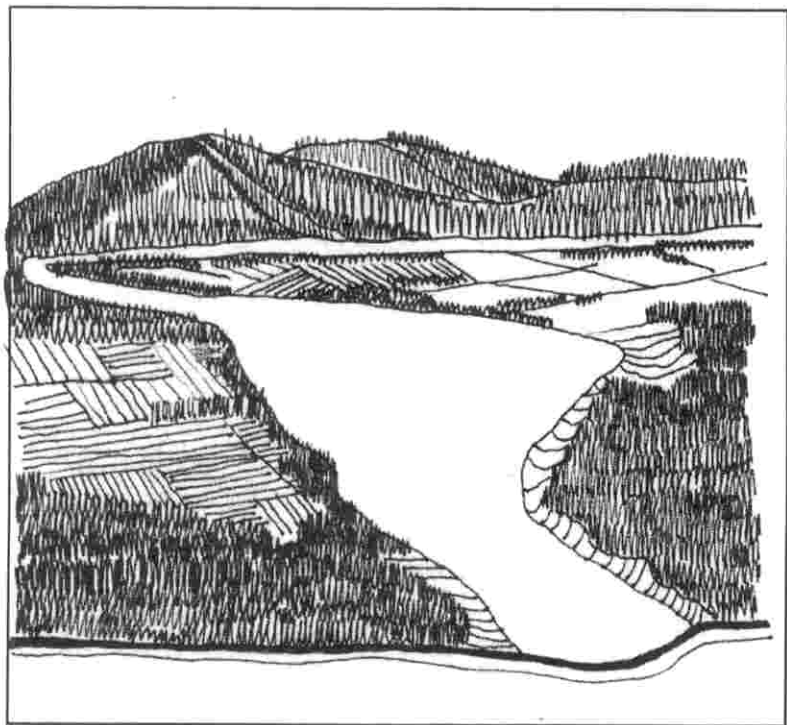


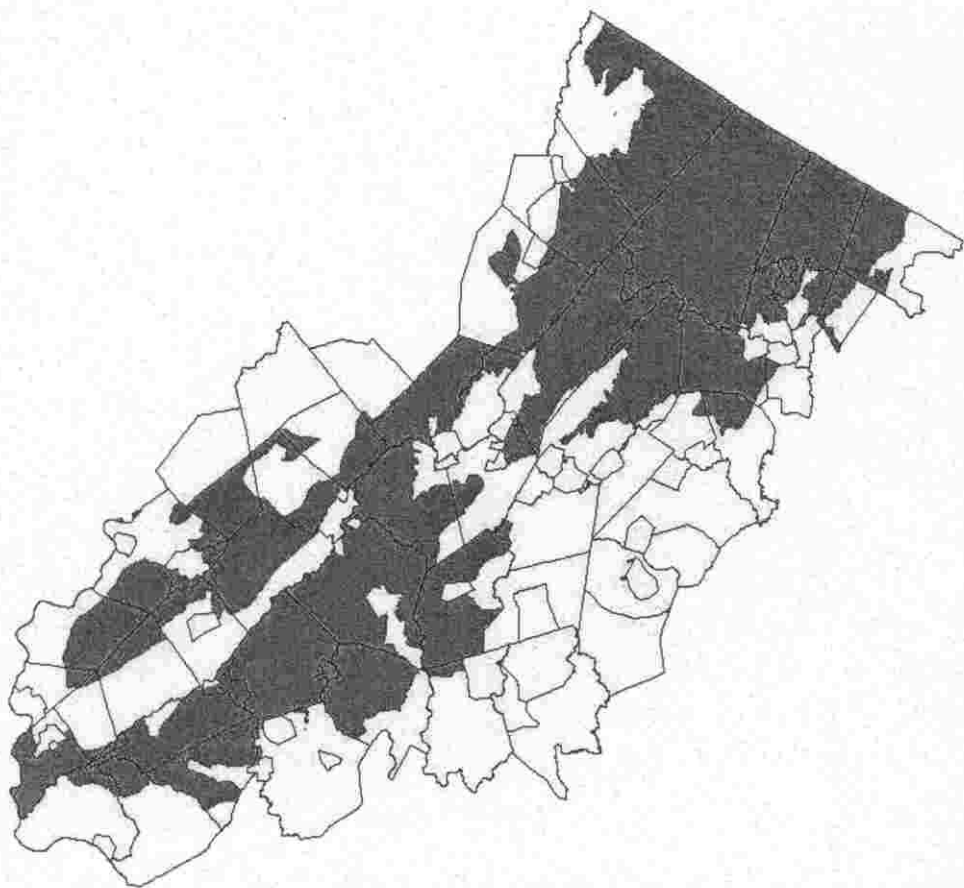
# The New Jersey Highlands Water Protection & Planning Act Primer



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environmental commissions

# NEW JERSEY HIGHLANDS REGION



- MUNICIPAL BOUNDARIES
- HIGHLANDS ACT DESIGNATIONS
- PLANNING AREA
- PRESERVATION AREA

## **The Highlands Water Protection and Planning Act**

With a goal of protecting a major source of drinking water for New Jersey, as well as important habitat, the Highlands law was signed by Governor James McGreevey on August 10, 2004. This law affects 88 municipalities in seven counties including Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren, dividing the 800,000 acre Highlands region into a Preservation Area (398,000 acres) and a Planning Area (402,000 acres).

### **The Plan**

The Act requires a 15-member Highlands Water Protection and Planning Council ("Council") to develop and adopt a Highlands Regional Master Plan ("Plan") for land use in the entire region within 18 months after the Council's first meeting. The first meeting took place December 16, 2004 at the Council's headquarters in Chester Township, so the Plan should be in place by June 16, 2006.

In the Preservation Area, municipal compliance with the Plan is mandatory. Municipalities must revise their master plans and land use regulations to conform to the Plan. Additionally, the NJDEP will be implementing enhanced standards specified by the Act, and municipalities wholly within the Preservation Area will no longer deal with the NJ State Planning Commission, only the Council.

In the Planning Area, municipal compliance with the Plan is voluntary, and municipal ordinances, local zoning and existing state regulations continue to apply as they have in the past. However, the Act provides incentives for conformance with the Plan including enhanced eligibility for grants and cooperative programs from State agencies. Municipalities in the Planning Area should continue to interact with the State Planning Commission through Cross Acceptance and the Plan Endorsement Process.

The Governor can veto any action of the Council, and no action of the Council takes effect until the Governor approves Council meeting minutes.

## Enhanced Standards/Regulation

In addition to existing NJDEP regulatory programs, certain enhanced NJDEP regulations take effect immediately in the Preservation Area. These tightened/enhanced regulations apply to “major Highlands development”.

“Major development” in the Highlands Preservation Area is defined as:

- 1) Any non-residential development except agricultural or horticultural development or use;
- 2) Any residential development that
  - a. requires an NJDEP environmental land use or water permit, or
  - b. results in the ultimate disturbance of one acre or more of land, or
  - c. results in a cumulative increase in impervious surface by one-quarter acre or more;
- 3) Any activity that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area, or in a cumulative increase in impervious surface by one-quarter acre or more on the lot; or
- 4) Any capital or other project of a State entity or local government unit that requires an NJDEP environmental land use or water permit or results in the ultimate disturbance of one-quarter acre or more.

For agricultural or horticultural purposes in the Preservation Area, if agricultural building increases impervious cover by 3% or more of the total farm management unit, the farmer is required to submit a Farm Conservation Plan to the local soil conservation district. If building increases impervious cover by 9% or more, the farmer is required to submit a Resource Management Systems Plan to the soil conservation district, and to the NJDEP for its approval. The Department of Agriculture will adopt rules and regulations necessary to implement this portion of the Act.

The Act directs the NJDEP to implement a Highlands Permitting Program for the Preservation Area. Major development would be required to meet standards defined in the Act including:

- A 300-foot buffer required from “open waters,” including wetlands and intermittent streams, except for some linear development like roads and driveways;
- “No degradation” of surface water required for all new or expanded point source discharges;
- Requirement for NJDEP water allocation permit reduced from 100,000 to 50,000 gallons per day;
- Zero net fill required in flood hazard areas;
- Development on slopes over 20 percent prohibited;
- Disturbance of upland forest areas is prohibited except within 20 feet directly adjacent to a structure and not more than 10 feet of clearing on each side of a driveway if necessary to access a non-forested area;
- Impervious surface coverage limited to 3 percent of a lot.

Sewer service area approvals will be revoked if wastewater collection facilities have not been constructed and are not necessary to serve development exempted under the Highlands Act.

The Act also calls for the implementation of additional regulations by May 10, 2005, including development standards for slopes between 10 and 20 percent, density standards for septic systems, rules to limit or prohibit new or extended public water supply systems and revisions to the wetlands general permit criteria.



## Preservation Area Exemptions

The Highlands Act does include 17 exemptions from the Council's jurisdiction in the Preservation Area, including:

- Construction of a single family dwelling for the use of an individual or a family member, where the land was owned or under contract as of 5/17/04;
- Many improvements to single family homes, including decks or pools;
- The construction of a single family house on a lot that existed on 8/10/04 as long as construction does not disturb one acre or more of land or increase impervious cover by one-quarter acre;
- Any "major Highlands development" that received preliminary or final subdivision approval from a local planning board before 3/29/04 and approval of at least one major NJDEP permit;
- Reconstruction within 125 percent of an existing building footprint;
- Improvements to schools, religious facilities and public facilities;
- Construction of trails;
- Transportation work that does not increase through-capacity travel lanes;
- Existing mining and recycling facilities;
- Public infrastructure projects approved by referendum before 1/1/05;
- Contaminated site remediation;
- Federal military installations;
- Affordable housing projects approved by Superior Court, for three years after receiving final municipal approvals; and
- Activities conducted in accordance with "an approved woodland management plan" or "forest management plan approved by the State Forester".

The NJDEP Land Use Regulation Program manages inquiries regarding exemptions.

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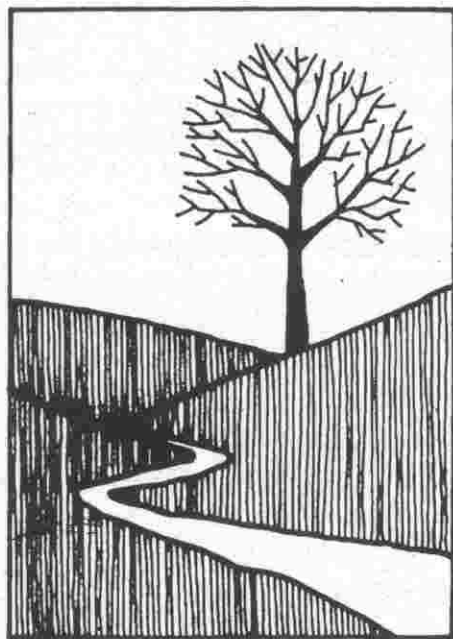
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**Preservation Area Land Use Capability Component** – includes a land use capability map and policies for planning and managing development and land use in the Preservation Area. This component also identifies parts of the Preservation Area where no development should occur in order to protect water resources and environmentally sensitive lands.

The resource assessment, transportation and smart growth components will only be advisory in the Planning Area.

Nine to 15 months after adoption of the Plan, a municipality that is wholly or partially in the Preservation Area must submit revisions to its master plan and development regulations to the Council showing its conformance to the Plan. If a municipality does not come into conformance, the Council will have local enforcement authority. The Act sets out procedures for voluntary conformance for portions of a municipality that are within the Planning Area.

A municipality may adopt changes to its master plan and development regulations that are stricter than necessary to obtain conformance, as determined by the Council.





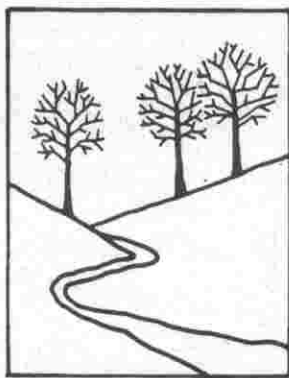
## Transfer of Development Rights (TDR)

The Act also requires the Council to establish a TDR program, separate from the Plan, by December 10, 2005. With this program, growth can be shifted from environmentally sensitive areas in the Preservation Area where no development will occur (“sending zones”) to growth-compatible areas in the Planning Area (“receiving zones”).

Under the Highlands Water Protection and Planning Act, the Council must establish a TDR program prior to the adoption of the Highlands Regional Master Plan. A separate law recently authorized TDR statewide and pursuant to the Highlands Act, the Office of Smart Growth must establish a TDR pilot project within the Highlands Region prior to the Council establishing its TDR program. The Highlands TDR program must comply with the new State TDR law.

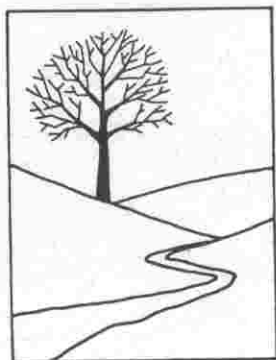
The designated receiving zones must total 4% of the land area of the Planning Area, to the extent that that goal does not compromise the integrity of the ecosystem of the Planning Area. The receiving zones are to be in the Planning Area or outside the Highlands in counties partially in the Highlands, and are voluntary.

The Act offers financial incentives to Planning Area municipalities for the creation of one or more TDR receiving zones, including planning grants of up to \$250,000; reimbursement for costs of amending local ordinances to create a receiving zone; the ability to impose development impact fees; legal assistance if sued; and priority status for state infrastructure spending. Receiving zones must provide for residential densities of five dwelling units per acre or more.



## What this means to a Highlands municipality

- If a municipality is wholly or partially in the Planning Area, it will have to deal with two regional planning agencies, the NJ State Planning Commission and the Council. If a municipality is wholly in the Preservation Area it will deal solely with the Council. The Council will oversee the implementation of land use authority in a municipality.
- The Council will have the right to review certain public developments including those building projects of local governments anywhere within the Highlands Region. It will have the right to reject such projects in the Preservation Area.
- The municipal finance director, attorney and assessor should review the Act carefully for the procedures used to determine if a municipality can collect property tax stabilization funds as a result of fiscal stress that might be caused by the Act.
- Affordable housing projects that are the result of a past legal settlement will be exempt from the law. Future COAH-related affordable housing projects will need to be sited in places designated for growth by the State Planning Commission or the Council.
- Planning grants will be available to municipalities in exchange for Plan conformance and a demonstrated willingness to create a "receiving zone" under TDR. Because implementation of the Act will require a lot more staff time by local planning offices, municipalities should be aware of and take advantage of these grants.



## **For homeowners in the Preservation Area**

- If a homeowner already owns a lot, the homeowner may build a home on it for his/her own use or that of an immediate family member. This kind of building is exempt from the law, though not from municipal ordinances otherwise in effect.
- The construction of a single-family home on any pre-existing lot is exempt from provisions of the bill, provided that it does not disturb more than one acre or increase impervious surface by one-quarter acre or more.
- A homeowner's right to reconstruct, modify, and extend his current dwelling is generally protected, with only slight restrictions on reconstruction. Improvements like decks, garages, driveways, and swimming pools are specifically exempted.

## **For homeowners in the Planning Area**

The local zoning and planning boards will continue to be the ultimate authority over what a property owner can do with a lot. The Council's recommendations will be advisory, and the new DEP regulations specified under the Act will not apply.

### **Additional Information Sources:**

New Jersey Highlands Council at [www.nj.gov/njhighlands/index.html](http://www.nj.gov/njhighlands/index.html)

A map of the Highlands Region with the Preservation and Planning Areas can be found at [www.nj.gov/dep/highlands/highlands\\_map.pdf](http://www.nj.gov/dep/highlands/highlands_map.pdf)

NJDEP Highlands Water Protection and Planning Act Guidance at [www.state.nj.us/dep/highlands](http://www.state.nj.us/dep/highlands)

Rutgers Cooperative Extension Highlands Guidance at [www.rce.rutgers.edu/highlands](http://www.rce.rutgers.edu/highlands)

## **Goals of the Regional Master Plan**

The goals provide a basis for predicting that future growth opportunities identified in the Plan will be focused, regulated and limited. These goals are particularly important for the Planning Area because they acknowledge that the essential character of the Highlands environment should be protected and maintained, and that conservation and natural resource protection is also paramount in the Planning Area.

### **Preservation Area Goals**

- (1) protect, restore, and enhance the quality and quantity of surface and ground waters therein;
- (2) preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state, thereby ensuring the continuation of a Highlands environment which contains the unique and significant natural, scenic, and other resources representative of the Highlands Region;
- (3) protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat for fauna and flora;
- (4) preserve farmland and historic sites and other historic resources;
- (5) preserve outdoor recreation opportunities, including hunting and fishing, on publicly owned land;
- (6) promote conservation of water resources;
- (7) promote brownfield remediation and redevelopment;
- (8) promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities within the framework of protecting the Highlands environment; and
- (9) prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area.

## **Planning Area Goals**

- (1) protect, restore, and enhance the quality and quantity of surface and ground waters therein;
- (2) preserve to the maximum extent possible any environmentally sensitive lands and other lands needed for recreation and conservation purposes;
- (3) protect and maintain the essential character of the Highlands environment;
- (4) preserve farmland and historic sites and other historic resources;
- (5) promote the continuation and expansion of agricultural, horticultural, recreational, and cultural uses and opportunities;
- (6) preserve outdoor recreation opportunities, including hunting and fishing, on publicly owned land;
- (7) promote conservation of water resources;
- (8) promote brownfield remediation and redevelopment;
- (9) encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage 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
- (10) promote a sound, balanced transportation system that is consistent with smart growth strategies and principles and which preserves mobility in the Highlands Region.

HIGHLANDS COUNTIES	HIGHLANDS MUNICIPALITIES	HIGHLANDS DESIGNATIONS
<b>Bergen</b>	Mahwah Township Oakland Borough	Partial Partial
<b>Hunterdon</b>	Alexandria Township Bethlehem Township Bloomsbury Borough Califon Borough Clinton Town Clinton Township Glen Gardener Borough Hampton Borough High Bridge Borough Holland Township Lebanon Borough Lebanon Township Milford Borough Tewksbury Township Union Township	Partial Partial All Preservation Area All Preservation Area Partial Partial All Preservation Area Partial Planning Area Partial Planning Area Partial Planning Area Partial Partial
<b>Morris</b>	Boonton Town Boonton Township Butler Town Chester Borough Chester Township Denville Township Dover Town Hanover Township Harding Township Jefferson Township Kinnelon Borough Mendham Borough Mendham Township Mine Hill Township Montville Township Morris Plains Borough Morris Township Morristown Town Mount Arlington Borough Mount Olive Township Mountain Lakes Borough Netcong Borough Parsippany-Troy Hills Twp Pequannock Township Randolph Township Riverdale Borough Rockaway Borough	Planning Area Partial Planning Area Planning Area Partial Partial Planning Area Planning Area Planning Area Partial Partial Planning Area Planning Area Planning Area Partial Planning Area Planning Area Planning Area Partial Partial Partial Planning Area Planning Area Planning Area Partial Partial Planning Area Planning Area

<b>Morris (cont'd)</b>	Rockaway Township	Partial
	Roxbury Township	Partial
	Victory Gardens Borough	Planning Area
	Washington Township	Partial
	Wharton Borough	Planning Area
<b>Passaic</b>	Bloomington Borough	Partial
	Pompton Lakes Borough	Planning Area
	Ringwood Borough	All Preservation Area
	Wanaque Borough	Partial
	West Milford Township	All Preservation Area
<b>Somerset</b>	Bedminster Township	Partial
	Bernards Township	Planning Area
	Bernardsville Borough	Planning Area
	Far Hills Borough	Planning Area
	Peapack-Gladstone Borough	Planning Area
<b>Sussex</b>	Byram Township	Partial
	Franklin Township	Planning Area
	Green Township	Partial
	Hamburg Borough	Planning Area
	Hardyston Township	Partial
	Hopatcong Borough	Partial
	Ogdensburg Borough	Partial
	Sparta Township	Partial
	Stanhope Borough	Planning Area
Vernon Township	Partial	
<b>Warren</b>	Allamuchy Township	Partial
	Alpha Borough	Planning Area
	Belvidere Town	Planning Area
	Franklin Township	Partial
	Frelinghuysen Township	Planning Area
	Greenwich Township	Partial
	Hackettstown Town	Partial
	Harmony Township	Partial
	Hope Township	Planning Area
	Independence Township	Partial
	Liberty Township	Partial
	Lopatcong Township	Partial
	Mansfield Township	Partial
	Oxford Township	Partial
	Phillipsburg Town	Planning Area
	Pohatcong Township	Partial
	Washington Borough	Planning Area
Washington Township	Partial	
White Township	Partial	