

**TOWNSHIP OF JEFFERSON
COUNTY OF MORRIS, NEW JERSEY**

ORDINANCE #25-20

““ORDINANCE AMENDING CHAPTER 490 AND ADOPTING STANDARDS FOR HIGHLANDS COUNCIL REGIONAL MASTER PLAN CONFORMANCE IN THE PLANNING AREA”

WHEREAS, the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) was enacted by the State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, in particular the water resources, which provide drinking water to over 5 million New Jersey residents; and

WHEREAS, the Highlands Act created the Highlands Water Protection and Planning Council (the “Highlands Council”) and charged it with crafting a comprehensive master plan for the New Jersey Highlands Region; and

WHEREAS, the Highlands Regional Master Plan was adopted by the Highlands Council through the adoption of Resolution 2008-27 on July 17, 2008, and became effective on September 8, 2008, as the product of a long-term, participatory, and region-wide planning effort; and

WHEREAS, Section 14 of the Highlands Act expressly requires that municipalities must revise and conform their local master plan and development regulations for that portion of their lands within the Preservation Area, as related to development and use of said lands, with the goals, requirements and provisions of the Regional Master Plan within 15 months of the effective date of adoption thereof, or December 8, 2009; and

WHEREAS, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may at any time voluntarily revise and conform its local master plan and development regulations, as related to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan; and

WHEREAS, the Township of Jefferson is located in the Highlands Region with lands lying within both the Preservation Area and the Planning Area, as defined by section 7 of the Highlands Act; and

WHEREAS, the Governing Body of the Township of Jefferson has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to Township lands located within the Planning Area portion of the Highlands Region; and

WHEREAS, the Petition filed with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the Township of Jefferson; and

WHEREAS, the Governing Body finds that the proposed changes to the municipal planning program are of broad and significant effect, are vital to the protection of the Highlands resources of the municipal Highlands Area, and are compelling to the interests and general welfare of the community;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Township of Jefferson that the following is hereby adopted as an amendment to the Township land use ordinances:

Section 1. Petition for Plan Conformance

A portion of the Township of Jefferson is located within that portion of the New Jersey Highlands Region defined by the Highlands Act, as the “Planning Area” (see definitions). This Ordinance is enacted pursuant to Section 15.a. of the Highlands Water Protection and Planning Act (Highlands Act, N.J.S.A. 13:20-1 et seq.), which provides that a municipality may choose to conform its master plan, development regulations, and other regulations to the provisions of the Highlands Regional Master Plan, with respect to lands located within the Planning Area, and by Ordinance, petition the New Jersey Highlands Water Protection and Planning Council (Highlands Council) for Plan Conformance approval of such planning and regulatory documents.

By adoption of this Ordinance, the Governing Body of the Township of Jefferson establishes that the municipality shall conform its master plan, development regulations, and all other regulations applicable to the use and development of land within the Planning Area of the municipality, to achieve consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan. Said conformance shall be in accordance with the provisions of Highlands Council approval of the municipality’s Petition for Plan Conformance, which was approved by Highlands Council Resolution No. 2025-16, adopted on June 19, 2025. Further, this Ordinance specifically reserves the rights of the municipality as specified by the Highlands Act, with respect to the voluntary nature of Plan Conformance for the Planning Area.

Section 2. Highlands Council Review of Land Development Ordinance Amendments

Any amendment to the Jefferson Township Land Development Regulations shall not be effective until deemed consistent with the Regional Master Plan or deemed not subject to review by the Highlands Council.

Section 3. Repeal and replacement of Chapter 490, Article XI, "Highlands Regional Requirements" with the following

Article XI Highlands Regional Requirements

§ 490-57 Highlands Preservation and Planning Area.

A. Establishment of Highlands Districts.

- (1) In accordance with the delineation as set forth in the Highlands Act (C.13:30-7), the Township of Jefferson hereby establishes the Preservation and Planning Area of the Highlands Region.
- (2) For purposes of this Ordinance, this area shall henceforth be known and designated as the Township of Jefferson Highlands Planning Area.

B. Highlands Land Use Capability Zones.

- (1) In accordance with the Highlands RMP, there are hereby established three (3) primary Land Use Capability Zones (LUCZ), as follows:
 - (a) Protection Zone
 - (b) Conservation Zone
 - (c) Existing Community Zone
- (2) There are hereby established four (4) Sub-Zones:
 - (a) Wildlife Management Sub-Zone
 - (b) Conservation Zone – Environmentally Constrained Sub-Zone
 - (c) Existing Community Zone – Environmentally Constrained Sub-Zone
 - (d) Lake Community Sub-Zone

C. The following exhibits are hereby adopted and included as an attachment to this chapter.

- (1) Exhibit 1: Jefferson Township Highlands Area
- (2) Exhibit 2: Highlands Land Use Capability Zones
- (3) Exhibit 3: Wellhead Protection Areas
- (4) Exhibit 4: Highlands Open Waters and Buffers
- (5) Exhibit 5: Highlands Riparian Areas
- (6) Exhibit 6: Net Water Availability
- (7) Exhibit 7: Forest Area
- (8) Exhibit 8: Prime Groundwater Recharge Areas

§ 490-58 Applicability.

A. Preservation Area. The following Applications for Development involving lands located within the Highlands Preservation Area (as illustrated in Exhibit 1, "Jefferson Township Highlands Area") shall comply with the provisions of this ordinance:

- (1) Any non-residential development in the Preservation Area;
- (2) Any residential development in the Preservation Area that:
 - (a) Requires an environmental land use or water permit; or
 - (b) Results in the ultimate disturbance of one (1) acre or more of land, or a cumulative increase in impervious surface by one-quarter ($\frac{1}{4}$) acre or more.
- (3) Any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of one-quarter ($\frac{1}{4}$) acre or more of forested area, or that results in a cumulative increase in impervious surface by one-quarter ($\frac{1}{4}$) acre or more on a lot; or
- (4) Any capital or other project of a State entity or local government unit in the Preservation Area that:
 - (a) Requires an environmental land use or water permit; or
 - (b) Results in the ultimate disturbance of one (1) acre or more of land or a cumulative increase in impervious surface by one-quarter ($\frac{1}{4}$) acre or more.

B. Planning Area. The following Applications for Development involving lands located within the Highlands Planning Area (as illustrated in Exhibit 1, "Jefferson Township Highlands Area") shall comply with the provisions of this ordinance:

- (1) For residential development, creates three (3) or more new dwelling units or lots.
- (2) For non-residential development:
 - (a) Results in the ultimate disturbance of one (1) acre or more of land; or

- (b) Produces a cumulative increase of impervious surface area of one-quarter ($\frac{1}{4}$) acre or more as of the date of enactment of this Ordinance.
- C. Preservation or Planning Area. The following Applications for Development involving lands located within either the Preservation or Planning Area (as illustrated in Exhibit 1, "Jefferson Township Highlands Area") shall comply with the provisions of this ordinance:
- (1) Introduces or expands on any of the following land uses/facilities:
 - (a) Landfills;
 - (b) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
 - (c) Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
 - (d) Industrial treatment facility lagoons; or
 - (e) Any Major or Minor Potential Contaminant Source (as identified in §§ 490-73 and 74 of this Ordinance, respectively).
- D. All thresholds in A and B above shall be interpreted to apply cumulatively over time on the lot as it existed as of the effective date of this Ordinance. If or when any one of the thresholds is reached, the Ordinance shall apply to any and all development in excess of that threshold. Where an application proposes a mixed use, the thresholds in B(2) shall apply to the whole of the project, while that in A(2) shall apply to the residential component.

§ 490-59 Highlands Council Call-Up.

The municipality shall, within fifteen (15) calendar days of issuance of any decision under this ordinance, provide a copy of the decision to the Highlands Council. The Highlands Council call-up review period shall expire fifteen (15) calendar days following the Highlands Council's receipt of same. Any decision issued under this ordinance shall not be effective until the expiration of the call-up period, or upon notification that the Highlands Council is exercising its review authority and an approval issued by the Highlands Council. Absent any notification from the Highlands Council within the 15-day timeframe, the decision shall be considered effective.

§ 490-60 Exclusions and Exemptions.

The following applications shall not be subject to the standards of this ordinance:

- A. Exclusions. Any application for development in either the Preservation or Planning Area, as follows below, shall not be subject to any provisions of this Ordinance.
- (1) The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Ordinance, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
 - (2) Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Ordinance, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
 - (3) Any Agricultural or Horticultural Use or Development that would not result in either:
 - (a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in § 490-72); or
 - (b) Construction of three (3) or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).
- B. Highlands Act Exemptions. Any application for development exempt from the provision of the Highlands Act (C.13:20-28) shall be exempt from all provisions of this ordinance (with the exception of § 490-70 Affordable Housing). Demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Highlands Area shall consist of one of the following:
- (1) State Agency Determination. State Agency Determinations shall include either a Highlands Applicability Determination (HAD) issued by the NJDEP for a Preservation Area proposal, or a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal, in either case indicating that the proposal qualifies as a Highlands Act Exemption.
 - (2) Municipal Determination. Pursuant to § 490-75, "Municipal Highlands Area Exemptions," effective as of the date of adoption of this Ordinance, for any application involving Highlands Exemptions #1, #2, #4, #6, #7, or #8, indicating that the proposal qualifies as a Highlands Act Exemption.

§ 490-61 Prohibited Uses.

Any of the following uses are prohibited uses within the Highlands Area, unless a prior consistency determination is received from the Highlands Council:

- A. Landfills;
- B. Facilities for the permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
- C. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials; and
- D. Industrial treatment facility lagoons.
- E. Any principal or accessory use, or structure related or devoted to such use, which is designated by the Highlands Council as a Major or Minor Potential Contaminant Source (PCS) (see § 490-73 and § 490-74 is expressly prohibited from that portion of any Tier 1 Wellhead Protection Area lying within 200 feet of the wellhead as shown on Exhibit 2.

§ 490-62 Highlands Open Waters.

- A. Highlands Open Waters and Buffers. All Highlands Open Waters shall include a minimum 300-foot-wide protection buffer, as measured from the edge of the Highlands Open Waters feature indicated in Exhibit 4.
 - (1) No disturbances of Highlands Open Waters are permitted except where previously approved by the Highlands Council.
 - (2) Highlands Open Waters buffers shall be maintained in their undisturbed or pre-existing condition, unless a disturbance is approved in accordance with following:
 - (a) Where a NJDEP a Letter of Interpretation (LOI) or Highlands Resource Area Determination (HRAD) has been issued delineating the location a wetland, the boundaries of said wetland as identified shall govern. However, the buffer shall be 300 feet irrespective of the buffer identified in the LOI.
 - (b) With respect to any wetlands and other Highlands Open Waters features not mapped in Exhibit 4, each shall include a 300-foot wide protection buffer measured from a delineated wetlands line described in a LOI, from a field-delineated boundary line for other features, or as indicated by a Highlands Resource Areas Determination (HRAD) issued by the NJDEP.
 - (c) Any lawful pre-existing structure or improvement located within a Highlands Open Waters protection buffer area may remain and be maintained or rehabilitated, provided that the existing area of disturbance attributed to or associated with such structure or improvement shall not be increased.
 - (d) Disturbances of Highlands Open Waters buffers located in the Existing Community Zone are permitted in previously disturbed areas as follows:
 - [1] Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Existing Community Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.
 - [2] Any disturbance in a previously disturbed buffer must be accompanied by the finding that there will be no net loss of functional value of the buffer. This may include the use of mitigation and restoration of the Highlands Open Water Buffer.
 - a. If existing land uses create a natural or developed barrier to the buffer, then the buffer may be considered to be developable.
 - (e) Protection and Conservation Zone Standards. Disturbances of Highlands Open Waters buffers located in the Protection and Conservation Zone are permitted in previously disturbed areas but in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters.
 - [1] Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Protection and Conservation Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.
 - [2] Any proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers:
 - a. avoid the disturbance of Highlands Open Waters buffers;
 - b. minimize impacts to Highlands Open Waters buffers; and
 - c. mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer.
- B. Riparian Area Standards. Disturbance of any portion of a Highlands Riparian Area, as shown in Exhibit 5, in the Protection Zone is prohibited except for linear development, which shall be permitted only where it has been shown that there is no feasible alternative for the linear development outside of the Riparian Area.
 - (1) To address the “no feasible alternative for linear development” standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Riparian Area
 - (2) For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:

- (a) The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
- (b) Shared driveways are used to the maximum extent possible to access multiple lots.
- (c) An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.

§ 490-63 Critical Habitat.

- A. The location, extent, and type of Critical Wildlife Habitat, Certified Vernal Pools, and Natural Heritage Priority Sites are those areas defined in § 490-72 and identified by the NJDEP. Details on the areas may be found on the Highlands Council's Interactive Map or through the NJDEP.
- B. Critical Wildlife Habitat. No disturbance is permitted in any Critical Wildlife Habitat as defined in § 490-72, except in accordance with the following:
 - (1) A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
 - (a) The nature of the site is such that it does not provide habitat for species of concern;
 - (b) The species of concern are not present on the site during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species' recovery in the Region; or
 - (c) Existing land uses present a human, natural or development barrier to the use of the site by species of concern.
 - (d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.
 - (2) Where disturbance of any Critical Wildlife Habitat has not been confirmed to be in accordance with the above standards, no disturbance shall be authorized without prior written approval of the Highlands Council.
- C. Certified Vernal Pools.
 - (1) No disturbance is permitted in any 300-meter buffer of a certified vernal pool.
 - (2) A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
 - (a) The nature of the buffer is such that it does not provide habitat for species of concern;
 - (b) The species of concern are not present within the buffer during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species' recovery in the Region; or
 - (c) Existing land uses create a natural or developed barrier to the use of the buffer by species of concern.
 - (d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.
- D. Natural Heritage Priority Sites. No disturbance is permitted in any New Jersey Department of Environmental Protection Natural Heritage Priority Site.

§ 490-64 Steep Slopes.

- A. Severely Constrained and Moderately Constrained Slopes as defined herein shall be calculated at the time of application submission and are hereby made a mandatory submission item for any application that falls under the applicability thresholds of this ordinance.
- B. Disturbance of Severely Constrained and Moderately Constrained Slopes is prohibited, with the exception of that required in connection with a linear development. Such linear development, however, shall be permitted only in the event that there is no feasible alternative for such development outside of the Severely Constrained or Moderately Constrained Slopes.
- C. To address the "no feasible alternative for linear development" standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Severely Constrained or Moderately Constrained Slopes. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:
 - (1) The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
 - (2) Shared driveways are used to the maximum extent possible to access multiple lots.
 - (3) An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.

- D. The reviewing municipal authority shall not approve any application pursuant to this subsection if, after review of the information submitted to support an approval, it finds that there is a reasonable alternative to the proposed linear development.

§ 490-65 Prime Groundwater Recharge Areas.

- A. Disturbance of Prime Ground Water Recharge Area (PGWRA), as shown in Exhibit 8, [or Municipally Important Groundwater Recharge Area (MIGWRA)] by any regulated development is prohibited and shall be permitted only upon a finding by the reviewing board that the proposal complies with the provisions of this subsection.
- B. Development shall not occur in PGWRA [MIGWRA] unless either: the entirety of the subject property is located within a Prime Ground Water Recharge Area and thus cannot be avoided, or the disturbance represents the only viable alternate means to avoid Critical Habitat, Highlands Open Waters buffers, Vernal Pool Buffers, Moderately Constrained Steep Slopes, or Severely Constrained Steep Slopes, to the extent that these resources are also present upon the subject property.
- C. Where total avoidance is not feasible, total recharge area disruption (i.e., alteration of natural recharge patterns or volumes) shall not exceed 15% of the PGWRA [MIGWRA] located within the affected parcels, placed where feasible on those parts of the PGWRA [MIGWRA] having the lowest relative recharge rates and the least potential for aquifer recharge based upon site analysis.
- D. Low Impact Development practices shall be used in the design of the development proposal to reduce total recharge disruption to the minimum feasible, within the 15% cap.
- E. Any development application involving disturbance of a PGWRA [MIGWRA] shall be accompanied by a mitigation plan, providing for an equivalent of 125% of pre-construction recharge volumes for that portion of the PGWRA [MIGWRA] that will be disturbed. The recharge mitigation shall occur within the following areas, in order of priority: (1) the same development site to the maximum extent feasible; (2) the same HUC14 subwatershed; or (3) where no feasible option exists in the same HUC14 subwatershed, an interrelated HUC14 subwatershed approved by the Highlands Council.

§ 490-66 Septic Density.

- A. Nothing herein shall be deemed to apply to the replacement or repair of an existing septic system.
- B. Preservation Area. Development proposals involving new or increased demand for septic system capacity in the Preservation Area shall be regulated in accordance with NJDEP Highlands Area Rules (N.J.A.C. 7:38).
- C. Planning Area. All development proposing new or increased demand for septic system capacity in the Planning Area shall be regulated in accordance with this subsection. The following are gross septic density requirements and shall not modify any minimum lot size requirements contained in the Jefferson Township land development ordinance. Every development shall provide for a minimum acreage for each dwelling unit (or equivalent) as noted below.
- (1) Septic System Density Allowances. Septic system density (gross acres per septic system) shall not exceed the following allowances, for each Highlands Zone:
- (a) Existing Community Zone: 9 acres/septic system
 - (b) Conservation Zone: 10 acres/septic system
 - (c) Protection Zone: 25 acres/septic system
- (2) These allowances indicate the minimum acreage required per septic system, where that system is designed for a one-family household generating a maximum flow of 300 gallons of wastewater per day. The resulting acreage shall be applied as the minimum average acreage necessary to support every 300 gallons of daily wastewater flow generated by any proposed use where the unit/square footage figures below shall be applied as 300 gallon-per-day equivalents.
- (3) Equivalent Yields. The following unit/square footage figures shall be applied as 300 gallon-per-day equivalents:
- (a) Residential Uses (All Types, except as provided below) – 1 dwelling unit
 - (b) Deed-Restricted Senior Citizen Residential Units, or Mobile Home Parks with dwelling units less than 500 square feet in size – 1.5 dwelling units
 - (c) Office and Commercial Uses – 2,400 square feet of floor area
 - (d) Industrial (Including Warehousing/Distribution) Uses – 18,182 square feet of floor area (Excluding Process Wastewater Flow)
 - (e) Specific Non-Residential Uses by Facility Type – In lieu of (c) or (d), above, 300 gallon-per-day equivalents may be computed based on the average sewage volumes provided in N.J.A.C. 7:9A-7.4.

§ 490-67 New or Extended Water and Wastewater Infrastructure.

- A. Preservation Area. New, expanded or extended public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are prohibited unless approved by the NJDEP in accordance with the issuance of either a Highlands Applicability Determination or a municipally issued exemption indicating that a project is exempt from the Highlands Act, or a Highlands Preservation Area Approval with waiver pursuant to N.J.A.C. 7:38.
- B. Planning Area – Protection Zone, Conservation Zone, and Environmentally-Constrained Sub-Zones. New, expanded or extended public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater

treatment facilities are prohibited unless approved through a waiver to address a documented threat to public health and safety or for a Highlands Redevelopment Area or Takings Waiver (RMP Policies 7G1 and 7G2).

- C. Planning Area – Existing Community Zone (excluding Environmentally-Constrained Sub-Zone) and Lake Community Sub-Zone. Expansion or creation of public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are permitted: to serve lands which are appropriate for designated TDR Receiving Zones, infill development, or redevelopment; to address public health and safety; or to serve new areas for development.

§ 490-68 Net Water Availability.

- A. Water Conservation Requirements. All development proposals shall incorporate, as applicable, the following water conservation measures to promote sound resource use, reduce supply deficits, and reduce the need for additional utility infrastructure:
- (1) No irrigation systems should be utilized. Where required, they must provide automatic controls based on rain sensors (or soil moisture) for all new and replacement lawn irrigation systems, as required by the electrical subcode at N.J.A.C. 5:23-3.16;
 - (2) Design all non-potable irrigation water uses to ensure that only the necessary amounts of water are used to achieve optimum plant growth, to the maximum extent practicable;
 - (3) Provide for internal recycling or beneficial reuse of reclaimed water in new commercial development projects, to the maximum extent practicable;
 - (4) Rely on stormwater for irrigation purposes to the maximum extent practicable, including but not limited to methods recommended by the U.S. Green Building Council through its Leadership in Energy and Environmental Design (LEED) program;
 - (5) Reduce water losses to the maximum extent practicable, in the rehabilitation of on-site water supply utility infrastructure, through such means as application of American Water Works Association/International Water Association water loss analysis methods (AWWA Manual M-36 or most recent version).
- B. The following shall apply for any development application proposing a new or increased use of potable or non-potable water averaging 6,000 gallons per day or more, derived from: a) any groundwater source in a Highlands Area HUC14 subwatershed, whether through a public community or non-community water supply system well, a non-public well, or an individual private well; or b) any surface water source in a Highlands Area HUC14 subwatershed that is not associated with a safe yield determined by the NJDEP through a water allocation permit.
- (1) Where a Highlands Council-approved Water Use and Conservation Management Plan has been adopted, any development application involving the use of water derived from a subwatershed(s) with a deficit net water availability as shown in the Exhibit 6 shall be regulated fully in accordance with the requirements of such Plan.
 - (2) Absence of Water Use and Conservation Management Plan: No application shall be deemed complete or considered for review by the applicable Board until or unless the Highlands Council has determined that the proposed water use will not exceed the remaining Net Water Availability for the source HUC14 subwatershed(s).

§ 490-69 Forest Resources.

- A. All portions of the Highlands Area identified as Forest Area are found in Exhibit 7.
- B. Any disturbance of more than ¼ acre within the Total Forest Area shall be permitted only upon a finding by the reviewing board that the following requirements have been satisfactorily addressed:
- (1) Demonstration that the proposed disturbance can neither be avoided nor reduced in extent, while adequately providing for a proposed use that otherwise addresses the requirements of this Ordinance;
 - (2) Incorporation of Low Impact Development techniques appropriate to the activity or development project proposed;
 - (3) For any proposed disturbance of one half (½) acre or more, other than that associated with the maintenance of a legally pre-existing use or structure (expressly excluding the expansion of any such use or structure), submission, approval and implementation of a Forest Mitigation Plan designed to minimize the extent of such disturbance, protect forest areas adjacent or proximate to the disturbance area, and mitigate for loss of trees or other forest vegetation removed during the course of such disturbance; and
 - (4) Notwithstanding the preceding provisions, in the case of any proposed disturbance that by definition constitutes deforestation; submission, approval and implementation of a Forest Mitigation Plan designed to minimize the extent of deforestation, protect forest areas to remain, and restore or mitigate for forest area loss.
- C. Forest Impact Report Required. Where disturbance of 1 acre or more of Forest Area as shown on Exhibit 7 is proposed, a Forest Impact Report shall be prepared including the following:
- (1) A map of Forest Area located on or within 500 feet of the subject property, as provided in Exhibit 7.

- (2) A map indicating any Forest Area to be disturbed.
 - (3) A determination of whether the disturbance area qualifies as a Forest under the NJDEP Highlands Area Rules, at N.J.A.C. 7:38-3.9(c). This shall be the Confirmed Forest area.
 - (4) An analysis of the effects (direct and indirect) of the disturbance upon the Confirmed Forest Area.
 - (5) All Forest Impact Reports must be prepared by a State of New Jersey Approved Forester or other qualified professional.
- D. Forest Mitigation Plan. Where the Forest Impact Report confirms that disturbance of 1 acre or more of Confirmed Forest Area will occur, a Forest Mitigation Plan shall be prepared in accordance with the following.
- (1) All Forest Mitigation Plans must be prepared by a State of New Jersey Approved Forester or other qualified professional. A Forest Mitigation Plan must include each of the components listed herein.
 - (2) Mitigation Priority Area Map. Priority Areas are forested locations within the site having the highest ecological value to be targeted for conservation, restoration, or mitigation, including such areas as:
 - (a) Highlands Open Waters and Buffers
 - (b) Riparian Areas, including Floodplains and Floodprone Areas
 - (c) Critical Habitat
 - (d) Steep Slopes and Ridgelines
 - (e) Core Forests and Contiguous Forest Patches
 - (3) Forest Protection Plan. A plan incorporating pre-construction and construction best management practices to ensure the well-being of forest areas adjacent or proximate to the disturbance area.
 - (4) Mitigation Description.
 - (a) A description of the proposed forest restoration, tree planting plan or other mitigation initiative proposed to provide equivalent or enhanced forest ecosystem benefit in consideration of the extent and type of disturbance or deforestation that would result if the use or activity is approved.
 - (b) Planting Plan indicating the specific plantings proposed, including size, species, quantity, location, separation distances, planting details, deer and pest management protections, and maintenance plans.
 - (c) Maintenance Agreement. A minimum 5-year maintenance agreement that outlines care-taking responsibilities of the applicant once the proposed planting has been completed. The maintenance agreement must include monitoring of newly planted stands, provide for protection devices in working order for 5 years, and ensure a survival rate of 70% in year 1, 75% in year 2, 80% in year 3, and 85% in years 4 & 5, plus each year <10% invasive or noxious species.

§ 490-70 Affordable Housing.

- A. In accordance with the requirements of the Fair Housing Act, any development consisting of five (5) or more newly constructed residential units shall reserve for occupancy at least 20% of the residential units constructed for low- or moderate-income households.
- B. Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.
- C. A minimum of 13% of the affordable units shall be reserved for very-low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
- D. No density bonus or presumptive density increase over existing zoning shall be required to be granted by the municipality for the construction of the affordable housing units on site. Density bonuses or presumptive density increases may be provided through Fair Share Plans and implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.
- E. Municipalities shall provide for the local review of the required 20% set aside of affordable units to be provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:
 - (1) An Affordable Housing Production Plan shall detail all issues related to affordable units and must be submitted to the municipality's Development Review Board at the time application is made for any development requiring affordable housing pursuant to this ordinance.
 - (2) The Affordable Housing Production Plan shall be a condition of the completeness determination and is hereby added to the submission requirements checklist for any new residential development or major residential subdivision proposing five or more new units.
 - (3) The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.

- (4) All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning, Zoning, or Land Use Board for consistency with these guidelines, the RMP, and the municipality's certified Housing Element and Fair Share Plan.
- (5) Compliance with the RMP, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.
- (6) Any approval shall be accompanied by a requirement for a development agreement between the applicant and the municipality
- (7) The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.
- (8) Where it has been determined that the provision of some or all affordable housing units on-site would not be consistent with the RMP (i.e., regarding septic system density or resource protection), the units may be provided off-site within the municipality wherever feasible.

§ 490-71 Waivers and Exceptions.

In addition to any variance relief required under the Municipal Land Use Law, relief from § 490-61 (Prohibited Uses), § 490-66 (Septic Density), and § 490-67 (New or Extended Water and Wastewater Infrastructure) of this Ordinance shall require issuance of a Highlands Act waiver. Highlands Act waivers may be issued only by the NJDEP or the Highlands Council in accordance with the respective rules and criteria established by each agency in accordance with the provisions of the NJDEP Highlands Area Rules, the Highlands Act and the Highlands Regional Master Plan. The issuance of a Highlands Act Waiver shall in no case be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances.

Where the Highlands Council and the NJDEP have approved a waiver for a development project in the Preservation Area, the standards of any such approved waiver may be utilized by the municipality in the review of the project, in lieu of the standards found herein.

§ 490-72 Definitions.

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

AGRICULTURAL OR HORTICULTURAL DEVELOPMENT

Construction for the purposes of supporting common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

AGRICULTURAL OR HORTICULTURAL USE

The use of land for common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

AGRICULTURAL IMPERVIOUS COVER

Agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings. (N.J.S.A. 13:20-3.)

APPLICANT

Any entity applying to the Board of Health, Planning Board, Zoning Board of Adjustment, Joint Land Use Board, Zoning Officer, Construction Official or other applicable authority of the municipality for permission or approval to engage in an activity that is regulated by the provisions of this Ordinance.

APPLICATION FOR DEVELOPMENT

The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

BUILDING PERMIT

Used interchangeably with the term "Construction Permit;" see definition below.

CONSTRUCTION PERMIT

A permit issued pursuant to the New Jersey Uniform Construction Code, Chapter 23 of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:23-1 et seq.), providing authorization to begin work subject to the conditions and requirements established under the provisions therein.

CRITICAL WILDLIFE HABITAT

Within the Planning Area, Critical Wildlife Habitat consists of those areas within NJDEP's Landscape Project Version 3.3 (or more recent version as amended) that are Landscape Rank 3 through 5. In addition, it includes areas that are designated Landscape Rank 2 and have a Highlands Conservation Rank of Critically Significant or Significant. Within the Preservation Area, Critical Wildlife Habitat consists of those areas within Landscape Rank 2 through 5, including all Highlands Conservation Ranks. Parcel level mapping may be found on the Highlands Council's interactive map available through the Highlands Council website.

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the MLUL. (N.J.S.A. 13:20-3; N.J.S.A. 40:55D-4.)

DISTURBANCE

The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation. (N.J.S.A. 13:20-3.)

DISTURBANCE, ULTIMATE

The total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

ENVIRONMENTAL LAND USE OR WATER PERMIT

A permit, approval, or other authorization issued by the Department of Environmental Protection pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.). (N.J.S.A. 13:20-3.)

FARM MANAGEMENT UNIT

A parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. (N.J.S.A. 13:20-3.)

FARMSITE

A Farm Management Unit as defined above.

FOREST

A biological community as determined by the method set forth under the NJDEP Highlands Rules, at N.J.A.C. 7:38-3.9.

FOREST MANAGEMENT PLAN

A written guidance document describing the forest resources present on a property, the landowner's management goals and objectives, and the recommended practices or activities to be carried out over time on the land. This tool is used to evaluate a forest land's current state and provide a management process which, over time, meets the landowner's objectives, while maintaining health and vigor of the resource. Forest Management Plans are typically written for a ten year period. (RMP, Glossary.)

HIGHLANDS COUNCIL

The New Jersey Highlands Water Protection and Planning Council.

HIGHLANDS ACT

The Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

HIGHLANDS APPLICABILITY DETERMINATION (HAD)

The determination made by the NJDEP (pursuant to N.J.A.C. 7:38-2.4) of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

HIGHLANDS AREA

That portion of the municipality for which the land use planning and regulation are, or are intended or proposed to be, in conformance with the Highlands Regional Master Plan.

HIGHLANDS OPEN WATERS

All springs, streams including intermittent streams, wetlands, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but not including swimming pools. Highlands Open Waters include seeps, lakes, ponds, and vernal pools; all categories (including springs, streams, and wetlands) as described and identified in Exhibit 4 or subsequently identified or modified by a Letter of Interpretation issued by the New Jersey Department of Environmental Protection.

HIGHLANDS PRESERVATION AREA APPROVAL (HPAA)

An approval issued by the NJDEP pursuant to 7:38-6 pertinent to a regulated activity in the Highlands Preservation Area, and including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b.

HIGHLANDS REGION

All that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

HIGHLANDS RESOURCE AREA DETERMINATION (HRAD)

A formal determination issued by the NJDEP that confirms the presence or absence of a Highlands Resource Area on a site, and if present, its location and applicable boundary lines. A person may apply for an HRAD only, or in connection with an application for an HPAA.

HIGHLANDS SPECIAL ENVIRONMENTAL ZONE

Those areas as designated as Special Environmental Zone in the Regional Master Plan. Special Environmental Zones are only located in the Preservation Area.

IMMEDIATE FAMILY MEMBER

A spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the individual is related by blood, marriage, or adoption. (N.J.S.A. 13:20-3.)

IMPERVIOUS SURFACE

Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

IMPERVIOUS SURFACES, CUMULATIVE

The total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

MAJOR HIGHLANDS DEVELOPMENT

Except as otherwise provided pursuant to subsection a. of section 30 of the Highlands Act ("Exemptions"): (1) any non-residential development in the Preservation Area; (2) any residential development in the Preservation Area that requires an environmental land use or water permit [from the NJDEP, see definition above], or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a State entity or local government unit in the Preservation Area that requires an environmental land use or water permit [from the NJDEP, see definition above], or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. Major Highlands Development shall not include any agricultural or horticultural development or agricultural or horticultural use. Solar panels shall not be included in any calculation of impervious surface. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

MAJOR POTENTIAL CONTAMINANT SOURCES (PCS)

Land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see § 490-73).

MASTER PLAN

For purposes of this Ordinance, all references to the "Township Master Plan," "master plan," or "Master Plan," refer to the municipal master plan, as defined in the MLUL (N.J.S.A. 40:55D-5), as adopted by the Township Planning Board.

MASTER PLAN, HIGHLANDS REGIONAL (RMP)

For purposes of this Ordinance, all references to the Highlands Regional Master Plan (RMP), shall be by use of the words "Highlands Regional Master Plan," "Highlands RMP," "Regional Master Plan," or "RMP."

MINOR POTENTIAL CONTAMINANT SOURCES (PCS)

Land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see § 490-74).

MUNICIPAL LAND USE LAW (MLUL)

The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

NATURAL HERITAGE PRIORITY SITE

Any of the 95 NJDEP Natural Heritage Priority Sites, including habitat for documented threatened and endangered plant species, and lands that include unique or regionally significant ecological communities and other significant natural sites and features.

NJDEP

The New Jersey Department of Environmental Protection.

NJDEP HIGHLANDS AREA RULES

The regulations established by the NJDEP to implement requirements of the Highlands Act, titled "Highlands Water Protection and Planning Act Rules," and codified at N.J.A.C. 7:38-1 et seq.

PLANNING AREA

Lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

PLAN CONFORMANCE

The process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Procedures.

PRESERVATION AREA

Lands within the Highlands Region that are located in that portion designated by the Highlands Act as the "Preservation Area" (see metes and bounds description at N.J.S.A. 13:20-7b).

PRIME GROUND WATER RECHARGE

Those lands designated in the Regional Master Plan as being within a HUC14 subwatershed that most efficiently provide, in the aggregate, 40 percent of total drought recharge volume for the HUC14 subwatershed.

QUALIFIED ENVIRONMENTAL PROFESSIONAL

Someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions.

REGIONAL MASTER PLAN (RMP)

The Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

RESIDENTIAL DEVELOPMENT

Development dedicated to the creation of new dwelling units or the improvement or expansion of existing dwelling units, whether by new construction or conversion of existing building areas or portions thereof, to dwelling use, including any type of residential structure whether a single-family home (including group home), duplex, townhouse, apartment or any other form of multi-family housing construction. For purposes of this ordinance, residential development shall include property improvements associated with and either, required in support of or customarily accessory to, the residential use, including but not limited to porches, patios, decks, driveways, garages, storage sheds, swimming pools, tennis courts, drywells, utility facilities, septic systems, yard grading and retaining walls.

RIPARIAN AREA

Areas adjacent to and hydrologically interconnected with Highlands Open Waters rivers and streams consisting of flood prone areas, wetlands, soils that are hydric, alluvial, or have a shallow depth to ground water, and including wildlife passage corridors within 300 feet of surface Highlands Open Waters features.

SLOPES, MODERATELY CONSTRAINED

All forested non-Riparian Area lands having a slope of 15% to less than 20%.

SLOPES, SEVERELY CONSTRAINED

All lands having slopes of 20% or greater and all lands within Riparian Areas having slopes of 10% and greater.

SOLAR PANEL

An elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (N.J.S.A. 13:20-3.)

STRUCTURE

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

VERNAL POOL

A NJDEP-certified vernal pool plus a 300-meter-wide protection buffer surrounding the perimeter of each such pool. Vernal Pools consist of confined, ephemeral wet depressions that support distinctive, and often endangered, species that are specially adapted to periodic extremes in water pool levels.

§ 490-73 Major Potential Contaminant Sources.

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

- A. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.).
- B. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
- C. Automotive service center (repair & maintenance).
- D. Dry cleaning processing facility.
- E. Road salt storage facility.
- F. Cemetery.
- G. Highway maintenance yard.
- H. Truck, bus, locomotive maintenance yard.
- I. Site for storage and maintenance of heavy construction equipment and materials.
- J. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
- K. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.
- L. Quarrying and/or mining facility.
- M. Asphalt and/or concrete manufacturing facility.
- N. Junkyard/auto recycling and scrap metal facility.
- O. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

§ 490-74 Minor Potential Contaminant Sources.

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant Sources include the following:

- A. Underground storage of hazardous substances or waste of less than 50 gallons.
- B. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
- C. Sewage treatment facility regulated by a NJPDES permit granted under N.J.A.C. 7:14A.
- D. Industrial waste line.
- E. Septic system disposal field.
- F. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C. 7:14A et seq.
- G. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
- H. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
- I. Waste oil collection, storage and recycling facility.
- J. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
- K. Above-ground storage of hazardous substances or waste in quantities of less than 2,000 gallons.

- L. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.

§ 490-75 Municipal Highlands Area Exemptions.

A. Title; purpose; scope/applicability; statutory authority.

- (1) Title. This Ordinance shall be known and cited as the “Township of Jefferson Municipal Highlands Area Exemption Ordinance.”
- (2) Purpose. The purpose of this Ordinance is to set forth the procedural and substantive requirements by which the municipality will issue Highlands Act Exemption Determinations. Such determinations pertain only to Highlands Act Exemptions #1, #2, #4, #5, #6, #7, and #8. Highlands Act Exemption Determinations indicate whether proposed activities, improvements or development projects affecting lands located within the Township Highlands Area are exempt from the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.), and are therefore exempt from the Highlands Water Protection and Planning Council’s (“Highlands Council”) Regional Master Plan, the New Jersey Department of Environmental Protection’s (NJDEP) Highlands Water Protection and Planning Act Rules (“Preservation Area Rules,” N.J.A.C. 7:38-1 et seq.), and from any amendments to the Township’s master plan, development regulations, or other regulations adopted pursuant to the approval of the Township’s Petition for Plan Conformance by the Highlands Council.
- (3) Scope/Applicability. The provisions of this Ordinance pertain to activities, improvements and development projects involving lands located within the Township Highlands Area. The Highlands Area comprises that portion of the municipality for which the applicable provisions of the Township Master Plan, land use ordinances and other pertinent regulations have been deemed by the Highlands Council to be in conformance with the Highlands Regional Master Plan (RMP). The provisions of this Ordinance shall not be construed to alleviate any person or entity from the provisions and requirements of any other applicable ordinances, rules, or regulations of the municipality, or from any other applicable law, regulation, or requirement of any county, state, or federal authority having jurisdiction. Nor shall the provisions of this Ordinance deprive any person or entity from seeking a Highlands exemption determination from the NJDEP or the Highlands Council.
- (4) Statutory Authority. This Ordinance is adopted under the authority of the Highlands Act and the New Jersey Municipal Land Use Law (“MLUL”, N.J.S.A. 40:55D-1 et seq.). In the Highlands Act, the Legislature identified numerous categories of activities that are exempt from the Act, the RMP, the Preservation Area Rules, and any amendments to a master plan, development regulations, or other regulations adopted by a local government to conform them with the RMP. See N.J.S.A. 13:20-28. The Legislature granted the Highlands Council the authority to administer the plan conformance process and to approve, reject, or approve with conditions municipal plan conformance petitions. See N.J.S.A. 13:20-14, -15. The Legislature, through the MLUL, granted authority to New Jersey municipalities to govern land use and development within their borders and, through the Highlands Act, established requirements for Highlands municipalities to conform their land use and development regulations with the RMP. In a July 19, 2012 Memorandum of Understanding (MOU) between the Highlands Council and the NJDEP, the Council and the NJDEP recognized the circumstances in which it would be appropriate for conforming, Highlands Council-certified municipalities to make determinations regarding specified Highlands Act exemptions.

B. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall in no way affect the validity of the ordinance as a whole, or of any other portion thereof.

C. Effective Date. This Ordinance shall take effect after final passage and publication in the manner required by law.

D. Geographic Area of Applicability.

- (1) Highlands Planning Area and Preservation Area. The Highlands Act establishes the Preservation Area and Planning Area of the Highlands Region. It describes the varied attributes of each and sets forth the major land use planning goals that pertain to the lands located within each. The Act defines the geographic extent of the Highlands Region to include the aggregated land area making up its constituent municipalities (N.J.S.A. 13:20-7a). It provides a physical delineation of the Preservation Area by use of a specific metes and bounds description (N.J.S.A. 13:20-7b), designating all remaining lands within the Highlands Region as the Planning Area.
- (2) Highlands Area.
 - (a) The Jefferson Township Master Plan incorporates the Highlands Preservation Area and Planning Area, inclusive of the goals applicable to each, as an integral component of the planning and land use policies of the municipality. For purposes of this Ordinance, these areas are designated as the Township Highlands Area. A map of the Township Highlands Area appears in Exhibit 1.
- (3) Applicability Specified. This Ordinance applies specifically and solely to lands designated as the Township Highlands Area, as delineated in Exhibit 1. See also §490-58 Highlands Applicability.

E. Highlands Act Exemption Determinations.

- (1) Section 30 of the Highlands Act identifies as exempt, specific activities, improvements and development projects affecting lands within the Highlands Region. Such activities, improvements and projects may be proposed as a component of any type of land use application submitted to the municipality for approval, including but not limited to zoning permit applications, building permit applications, and Applications for Development (as defined in § 490-72). Any such qualifying activity, improvement or development project is exempt, with regard specifically to that activity, improvement or development project, from the requirements of the Highlands Act, the Highlands RMP, the NJDEP Preservation Area Rules, and any amendments to the Township's master plan, development regulations, or other regulations adopted pursuant to the approval of Township's Petition for Plan Conformance by the Highlands Council. Such an exemption specifically applies to any Highlands Area land use ordinance adopted by the Township pursuant to the Highlands Council's approval of Township's Petition for Plan Conformance.
- (2) Where any application submitted to the municipality for approval proposes to rely upon a Highlands Act Exemption, the applicant must, as a condition of application completeness, and prior to review or approval of the application by the applicable municipal authority, provide sufficient evidence that the proposed activity, improvement, or development project in fact qualifies as a Highlands Act Exemption. Such evidence shall consist of either a State Agency Exemption Determination or a Municipal Exemption Determination [see (3) and (4) below] indicating that the proposed activity, improvement, or development project qualifies for a Highlands Act Exemption.
- (3) State Agency Exemption Determination. State Agency Exemption Determinations shall consist of either, a Highlands Applicability Determination issued by the NJDEP for a Preservation Area proposal, or a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal. State Agency Determinations may be requested with regard to any Highlands Act Exemption, however for applications involving any exemption not identified at Section F below, a State Agency Exemption Determination is required. Any applicant seeking a formal exemption determination for a capital or other project of any State entity or local government unit, or for any other publicly-owned or controlled land or facility, also must request a State Agency Exemption Determination.
- (4) Municipal Exemption Determination. For an application involving any of the specific exemptions listed in Section F below, the applicant may request a Municipal Exemption Determination. The applicant may rely upon the findings of a Municipal Exemption Determination to the same extent as would apply to an exemption determination issued by the Highlands Council or the NJDEP

F. Highlands Act Exemptions Eligible for Municipal Determination. Effective as of the date on which the municipality receives written authorization from the Highlands Council to proceed, an applicant may seek a Municipal Exemption Determination for the Highlands Act Exemptions listed hereunder.

- (1) Exemption 1. The construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of the Highlands Act (August 10, 2004) or on a lot for which the individual entered into a binding contract of sale to purchase on or before May 17, 2004.
- (2) Exemption 2. The construction of a single family dwelling on a lot in existence on the date of enactment of the Highlands Act (August 10, 2004), provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.
 - (a) A Municipal Exemption Determination indicating that an applicant qualifies under Highlands Act Exemption 2 shall require approval and filing of a Deed Notice along with a site plan delineating the total exempt area and the extent of the disturbance recognized in the Municipal Exemption Determination (see Section J below). Municipal Exemption Determinations in such instances shall not take effect until the applicant has provided proof of filing of the approved Deed Notice.
- (3) Exemption 4. The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or non-horticultural use.
 - (a) For purposes of this Ordinance, this exemption shall not be construed to permit multiple 125% footprint expansions, but rather, to permit one or more reconstruction activities cumulatively resulting in a maximum 125% increase in the footprint of the impervious surfaces lawfully existing on the site, provided they do not cumulatively exceed the one-quarter acre limitation. Any determination of whether the expansion of impervious cover meets the statutory criteria for the exemption must account for the preexisting impervious cover, and such expansion must be contiguous to the location of the existing impervious cover. See In re August 16, 2007 Determination of NJDEP ex rel. Christ Church, 414 N.J. Super. 592 (App. Div. 2010), certif. denied, 205 N.J. 16 (2010).
 - (b) For Preservation Area determinations, the applicable date of lawful existence shall be August 10, 2004, the date of enactment of the Highlands Act. For Planning Area determinations, the date of lawful existence shall coincide with the effective date of the municipally-adopted Highlands Area Checklist Ordinance or Highlands Area Land Use Ordinance, whichever is earlier.

- (4) Exemption 5. Any improvement to a single family dwelling in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system.
 - (5) Exemption 6. Any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.
 - (6) Exemption 7. An activity conducted in accordance with an approved woodland management plan pursuant to section 3 of the "Farmland Assessment Act," P.L.1964, c.48 (C.54:4-23.3) or a forest stewardship plan approved pursuant to section 3 of P.L.2009, c. 256 (C.13:1L-31), or the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester.
 - (7) Exemption 8. The construction or extension of trails with non-impervious surfaces on publicly-owned lands, or on privately-owned lands where a conservation or recreational use easement has been established.
- G. Exemption Designees. Municipal Exemption Determinations regarding Highlands Act Exemptions shall be issued by the Township Planner, Engineer, or Zoning Officer. The Exemption Designees shall be authorized to issue Municipal Exemption Determinations on behalf of the municipality, and shall only begin to do so, after satisfactory completion of a Highlands Council training class for which the individuals have received formal certification from the Highlands Council.
- H. Updates to Training Certification. In the event of programmatic changes, updated information, or modifications to procedures, updated training certification may be required of Exemption Designees in order to maintain qualifications for providing Municipal Exemption Determinations. The Highlands Council will provide training modules on an as-needed basis, to provide base training to new employees, and/or to further the expertise of already-certified individuals. Exemption Designees and the municipalities they serve will be advised of any need for upgraded training, which will be provided and funded by the Highlands Council.
- I. Interim Determinations. For the duration of any period during which the municipality is without a qualified Exemption Designee(s) due to changes in personnel or other extenuating circumstances, applicants seeking Highlands Act Exemption Determinations shall be referred to the NJDEP or the Highlands Council, for a State Agency Determination pursuant to E(3), above.
- J. Application Procedures. Requests for Municipal Exemption Determination shall be submitted on forms provided by the Land Use Department and shall be accompanied by sufficient information and documentary evidence to demonstrate whether the proposed activity, improvement, or development project qualifies for the applicable exemption. Required submission materials applicable to each exemption, appear at Section M, below.
- (1) Completeness Determination. The Exemption Designee shall review the application and all accompanying materials to determine whether sufficient information has been submitted to make a determination on the application. In the event of a finding that the application is incomplete, the Exemption Designee shall, within ten (10) calendar days of receipt, issue such findings in writing to the applicant, indicating what information is required to properly consider the application.
 - (2) Time for Determination. The Exemption Designee shall issue Municipal Exemption Determinations within ten (10) calendar days of receipt of a complete application. The Exemption Designee may consult with the Executive Director (or applicable designee) of the Highlands Council as needed in making any exemption determination, however. In such circumstance, the Exemption Designee shall seek such assistance within the 10-day period and shall issue the determination within at least ten (10) calendar days of receiving the requested guidance. In no case shall failure to meet this date constitute approval of the exemption.
 - (3) Determinations. All Municipal Exemption Determinations shall be provided in writing, shall certify to the applicability or inapplicability of the exemption, and shall include a statement of the rationale for the decision. Any Municipal Exemption Determination certifying to the applicability of Highlands Act Exemptions #2 shall be contingent upon submission of proof of filing of the required Deed Notice, as set forth at (5), below.
 - (4) Notice of Determination Required. The Exemption Designee shall provide copies of all Municipal Exemption Determinations including a copy of the full application, to the Highlands Council and for decisions regarding lands in the Highlands Preservation Area, to the NJDEP, in either case, within ten (10) business days of issuance.
 - (5) Deed Notice for Exemption #2. Any Municipal Exemption Determination that certifies to the applicability of Highlands Act Exemption #2 (Section F, above), shall be issued conditionally, pending fulfillment of the requirement that a deed notice be recorded in the office of the County Clerk or Register, as applicable, indicating the extent of the exemption that has been consumed. The deed notice shall incorporate each of the components listed below and the applicant shall provide a copy of the filed Deed Notice to the Highlands Council within five (5) business days of filing.
 - (a) Clear identification of the name(s) and address(es) of the owner(s) in fee of the property;
 - (b) Designated tax block and lot number(s), street address(es), municipality and county of location of the property;
 - (c) Reference to the Municipal Exemption Determination (by date, numbering if applicable) issued and under which the deed notice is being filed;

- (d) Description of the approved area of ultimate disturbance and the impervious surface area, with verification that these remain below the statutory limits;
 - (e) For properties of one acre or more in area, metes and bounds delineation indicating the portion of the property for which the ultimate disturbance has been authorized;
 - (f) Agreement to abide by the ultimate disturbance and impervious surface limits imposed, any furtherance thereof rendering the Municipal Exemption Determination null and void; and
 - (g) Notice that the owner(s) and subsequent owner(s) and lessees shall cause all leases, grants, and other written transfers of interest in the property to contain provisions expressly requiring all holders thereof to take the property subject to the limitations therein set forth.
- K. Appeal of Municipal Exemption Determination. A Municipal Exemption Determination may be appealed by any affected person/entity by filing a notice of appeal within twenty (20) calendar days of issuance or receipt of said determination, whichever is later, specifying the grounds therefor. Appeals must be filed with the NJDEP in the case of any Preservation Area Exemption, and with the Highlands Council, in the case of any Planning Area Exemption. All appeals shall be copied to the Exemption Designee, who shall immediately transmit to the NJDEP or the Highlands Council, as applicable, copies of the notice of appeal, the Municipal Exemption Determination Application, and all supplemental materials constituting the record that the Exemption Designee relied upon in issuing the Municipal Exemption Determination. Where the Municipal Exemption Determination deems an activity, improvement or development project exempt, the filing of an appeal to the NJDEP or the Highlands Council shall stay all proceedings in furtherance of its approval by the municipality.
- L. Effect of Certified Exemption. Issuance of a Municipal Exemption Determination that certifies to the applicability of a Highlands Act exemption shall recognize the applicant's exemption from the provisions of the RMP, NJDEP Preservation Area Rules, and any municipal ordinances and requirements adopted under the authority of the Highlands Act to achieve Highlands Plan Conformance. The exemption is restricted solely to the extent of the specified activity, improvement, or development project as described in the language of the Highlands Act exemption, or to any lesser activity, improvement, or development project as proposed and certified through a Municipal Exemption Determination Application. Any activity, improvement, or development project, or any part thereof, that is not specifically listed as an exemption or exceeds the limits of an exemption, remains subject to all of the above regulatory programs to the full extent of the respective applicability of each. Issuance of a Highlands Exemption Determination shall not relieve the applicant from securing all other required federal, state, or local approvals.
- M. Submission Requirements.
- (1) All applications shall be accompanied by the Municipal Exemption Determination Application Form, the applicable fees, and the information listed below, as applicable to the particular exemption or exemption(s) being sought by the applicant. All references to professional preparers indicated herein shall be construed to include any and all qualified individuals licensed, certified, or otherwise eligible and authorized to complete such work, in accordance with the applicable laws and legal requirements of the State of New Jersey including but not limited to the MLUL (N.J.S.A. 40:55D-1 et seq.) and Title 13 of the New Jersey Administrative Code, Law and Public Safety. Where the Exemption Designee finds that any submission item is not necessary to address the evidentiary requirements that must be satisfied for issuance of an Exemption Determination, either because alternate items have been provided by the applicant, or the relevant information is readily available through records, maps, or any other documents on file in the offices of the municipality, the Exemption Designee may waive the applicant's obligation to submit such information.
 - (a) Exemption 1.
 - [1] A copy of a deed, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was legally owned by the applicant on or before August 10, 2004 and indicating the lot and block as designated by the municipal tax mapping, the municipality and county in which the lot is located, and the street address;
 - [2] If the applicant did not own the lot, a copy of the binding contract of sale executed by the seller and the applicant on or before May 17, 2004 for the lot on which the house is to be constructed; and
 - [3] A certification by the applicant stating that the single family dwelling proposed for construction on the lot specified and described therein by tax lot and block, municipality and county of location, and street address, is intended for the applicant's own use or the use of an immediate family member as identified therein by name and relationship to the applicant.
 - (b) Exemption 2.
 - [1] A copy of the recorded deed or plat showing that the lot was created on or before August 10, 2004 or proof of subdivision approval on or before August 10, 2004;
 - [2] A property survey certified by a licensed New Jersey Professional Land Surveyor indicating the property boundary lines and overall lot size, and showing what structures currently exist on the lot, if any;
 - [3] A parcel plan certified by a licensed New Jersey Professional Engineer showing all existing and proposed development, including all structures, grading, clearing, impervious surface and disturbance, and including the calculations supporting the claim that impervious surfaces and areas of disturbance are within the limits necessary for Exemption 2; and
 - [4] A metes and bounds description of the area of the lot to be disturbed, limited to less than one acre and a draft conservation restriction or deed notice [pursuant to J(5), above] to cover the balance of the lot.
 - (c) Exemption 4.
 - [1] A parcel plan certified by a licensed New Jersey Professional Engineer depicting:

- a. All existing property improvements, including all structures, grading, clearing, impervious surfaces and limits of disturbance, lawfully existing on the site as of August 10, 2004 for Preservation Area projects and as of the effective date of the municipal Highlands Area Checklist Ordinance or Highlands Area Land Use Ordinance, whichever is earlier; and
 - b. All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading; and
 - [2] A copy of any official documentation of the original date of construction of the building or otherwise establishing the lawfulness of existing impervious surfaces
- (d) Exemption 5.
 - [1] A copy of any official documentation proving the single family dwelling was in existence on August 10, 2004;
 - [2] A description of the proposed improvement; and
 - [3] A certification from the applicant that the property and all improvements will continue to be used for single family dwelling purposes
- (e) Exemption 6.
 - [1] A copy of any official documentation indicating that the place of worship, public or private school or hospital was in existence on August 10, 2004;
 - [2] For improvements to a place of worship, documentation showing that the entity, society or association, or association organized primarily for religious purposes has non-profit status;
 - [3] A site plan certified by a licensed New Jersey Professional Engineer depicting:
 - a. All existing property improvements including all structures, grading, clearing, impervious surfaces and limits of disturbance, existing on the site on August 10, 2004; and
 - b. All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading.
- (f) Exemption 7.
 - [1] For a private landowner with an approved woodland management plan or forest stewardship plan:
 - a. A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., if applicable;
 - b. A brief description of the total area of woodlands that is the subject of the approved woodland management plan or forest stewardship plan;
 - c. A brief description of the length of time that the area to be managed has been in use for woodland management or forest stewardship plan; and
 - d. A copy of the approved woodland management plan or forest stewardship plan.
 - [2] For the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester:
 - a. A brief description of the total area where the normal harvesting of forest products occurs;
 - b. A brief description of the length of time that the area to be managed has been in use for normal harvesting of forest products; and
 - c. A copy of a forest management plan or forest stewardship plan approved by the State Forester.
- (g) Exemption 8.
 - [1] A site plan certified by a licensed New Jersey Professional Engineer showing the proposed trail construction with details including the location, and width of existing and proposed trails and those off-site trails to which they connect, if any;
 - [2] A written description of the non-impervious materials to be used; and
 - [3] For privately owned property, a copy of a deed for the property and the conservation or recreational use easement on the property.

Section 4. Any article, section, paragraph, subsection, clause, or other provision of the Revised General Ordinance of the Township of Jefferson inconsistent with the provisions of this Ordinance is hereby repealed to the extent of such inconsistency.

Section 5. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this Ordinance shall be deemed valid and effective.

Section 6. This Ordinance shall take effect upon its passage and publication and filing with the Morris County Planning Board, and is otherwise provided for by law.

Section 7. This Ordinance may be renumbered for codification purposes.

Section 8. The Municipal Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this Ordinance, after public hearing, the Municipal Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Morris County Planning Board, as required by N.J.S.A. 40:55D-16.

INTRODUCED: OCTOBER 1, 2025
ADOPTED: NOVEMBER 12, 2025

