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Memorandum

To: West Milford Planning Board

From: Chuck McGroarty, PP, AICP

Date: August 27, 2009

Re: Excerpts
Highlands: Model Highlands Element for Municipal Master Plans

This memorandum provides selected excerpts from the document under review and discussion by the Planning Board. That document is entitled: *Highlands Element – Draft Master Plan Supplement...Draft For Submission to the New Jersey Highlands Water Protection and Planning Council Toward Achieving Plan Conformance With the Highlands Regional Master Plan*. Although designated as an Element, it actually consists of 12 separate “Elements” which are as follows:

1. Polices, Goals, & Objectives
2. Land Use Plan
3. Housing Plan (forthcoming)
4. Conservation Plan
5. Utility Services Plan
6. Circulation Plan
7. Land Preservation and Land Stewardship Plan
8. Community Facilities Plan
9. Sustainable Economic Development Plan
10. Historic Preservation Plan
11. Development Transfer Plan (optional)
12. Relationship of Master Plan to State/Regional/Local Plans

The following excerpts are provided to assist the Planning Board in its review. All added emphasis is mine. The page(s) from the Highlands Master Plan document associated with the text is also provided.

INTRODUCTION

The Highlands Element amends or creates in limited form (where not already existing), each of the components of the municipal Master Plan, as provided in the sections that follow. The Highlands Element is intended to apply in conjunction with the language of the existing Borough/Township/Town Master Plan to the maximum extent feasible. **In**

the event of conflicts between the two, the Highlands Element shall supersede, unless the existing municipal Master Plan provisions are more restrictive. (Page 2)

RELATIONSHIP BETWEEN HIGHLANDS ACT & MLUL

To the extent that MLUL criteria for approval of variances, waivers, exceptions and/or any other relevant aspect are altered or supplemented by provisions indicated in the Highlands Element, authority for such modifications derives from passage of the Highlands Act.

- 1. Any variance or exception shall be conditioned upon a written determination, specifically included in an approving resolution, that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a(1) through (7) (N.J.S.A. 13:20-34) of the Highlands Act to the maximum extent possible.**
- 2. A waiver may be issued or authorized by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP: 1) if determined to be necessary in order to protect **public health and safety**; 2) for **redevelopment** in accordance with a Highlands Redevelopment Area Designation (see Land Use Plan, Section F); or 3) in order to **avoid the taking of property without just compensation**. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible. Waivers to requirements of the RMP are addressed separately from New Jersey Department of Environmental Protection (NJDEP) waivers to its Highlands Preservation Area regulations at N.J.A.C. 7:38.**
- 3. Variances for density of development (i.e., permitted number of dwelling units per acre) in excess of that permitted by a Land Use Ordinance that has been approved by the Highlands Council for conformance with the RMP, or for any use, bulk standard, or other requirement of such Ordinance that would result in an increase in the permitted use of septic system yield shall be authorized by the Highlands Council, only where: 1) **water availability**, water supply utility capacities and either wastewater utility capacities or septic system yield **are in excess of development yield based on municipal zoning limitations** and moreover, are sufficient to support the development proposal; 2) **Highlands resources will not be adversely affected** by virtue of the proposed increase in density or use of septic system yield; and 3) **the applicant secures Highlands Development Credits (HDCs) in sufficient quantity to meet criteria to be set forth and established by the Highlands Council.** This provision shall not apply in the case of a variance requested pursuant to a specific development or land use activity that is exempt from the Highlands Act.**

4. With respect only to the Preservation Area, the Highlands Council will coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in accordance with a Highlands Redevelopment Area Designation (see Land Use Plan, Section F); or 3) in order to avoid the taking of property without just compensation. (Page 7)

LAND USE PLAN

A. HIGHLANDS ZONES AND SUB-ZONES

Highlands Zones are intended to ensure that the **density and intensity** of future development and/or redevelopment do not exceed the capacity of the land, natural resources, and existing infrastructure to support it. **(Page 8)**

B. LAND USES

The intents and purposes for each municipal land use category or zoning district, as set forth by the underlying Land Use Plan, are herewith amended to recognize and give priority to the intents and purposes listed above for the Highlands Zones and Sub-Zones. As to land use classifications (e.g., single- or multi-family residential, commercial, industrial) and specific permitted land uses, **a thorough review and comparison between municipal and Highlands Zones and Sub-Zones must be undertaken to assess compatibility and to determine whether zoning amendments (pertinent to non-exempt development) are necessary to achieve consistency. Until such time as that examination is complete, permitted uses shall remain in effect for non-exempt development, with the significant caveat that each is subject to compliance with:** a) all **resource constraints** (discussed at length in the Conservation Plan Element); b) all applicable provisions of both the **NJDEP Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38)** and the New Jersey Department of Agriculture (NJDA) Agricultural Development in the Highlands Rules (N.J.A.C. 2:92); and c) the **density and intensity requirements set forth in the section that follows** (see Section C, Density and Intensity of Development).

Specific immediate changes to permitted uses will include the following, each pending the adoption of implementing ordinance provisions approved by the Highlands Council: (Page 10)

C. DENSITY AND INTENSITY OF DEVELOPMENT

To the extent that the existing development density and intensity standards of the underlying zone districts (as defined and applied under the existing Land Use Plan and Zoning Ordinance) are consistent with the parameters of this section, they shall remain in effect. **Where any density or intensity goals of the existing Land Use Plan are**

inconsistent with these limits, they are herewith modified with respect to the Highlands Area, to the extent necessary to conform to the Highlands RMP. For purposes of these provisions, density of development standards refer to the requirements of the underlying Zoning Ordinance that regulate the permitted number of dwelling units per acre of land, whether specifically defined as density standards or set forth as minimum lot size requirements for application to specific zoning districts. **Intensity of development standards refer to those requirements used to define the relationship between the permitted extent, form and location of development of a lot, to the size, shape, and configuration of the lot on which it is situated (e.g., floor area ratio, building coverage, building height, yard setbacks, number of stories).** (Pages 12-13)

Permitted density and intensity allowances for the Highlands Area must also reflect municipal intents with respect to growth and development of the community. **A comprehensive analysis will be required as follow-up to adoption of the Highlands Element, to determine specific density and intensity allowances for future non-exempt development within the Highlands Area.** The Board will, with the assistance of its professionals, complete this analysis to determine: 1) the capacity for future growth and development of the Highlands Area (based on the RMP, Technical Reports, NJDEP Rules); 2) the extent to which such growth may be appropriate within the relevant portions of the community; and 3) the specific allocation of such growth and development over the Highlands Zones and Sub-Zones. (This analysis will take place with assistance from the Highlands Council after the Borough/Township/Town has achieved Basic Plan Conformance.)

Until such time as the full analysis can be completed, applications for development within the Highlands Area require reviews for consistency on a project-by-project basis. (Page 13)

6. Net Density/Intensity Standards.

The following net density/intensity standards shall apply to new development served by new or extended public water supply utility infrastructure (excluding that served by septic systems), new or extended wastewater utility infrastructure, or both, pursuant to the preceding sections. The intent of these provisions is to minimize the disturbance associated with installation of such utility infrastructure, while at the same time, reducing per unit infrastructure costs and ensuring optimal efficiency of use. (Page 15)

New Non-Residential Development.

The net floor area ratio (FAR) applicable to new non-residential development shall not be less than 0.84 for the developed portion of the site, as determined in accordance with the provisions hereunder. Unless the provisions of the underlying

Zoning Ordinance would permit a higher net FAR than 0.84, this figure shall also apply as a maximum allowance.

1. The net FAR shall be calculated by dividing the total floor area proposed for the subject property, by the area of the proposed developed portion of the property, where the total floor area is the numerator and the developed portion is the denominator.
2. For purposes of the net FAR calculation, the total floor area (the numerator) shall include the area of all floors of all buildings and structures having floors located on the subject property, measured for each floor at the exterior elevation line of the building or structure, and including any below-grade or attic flooring, flooring associated with any mezzanine or loft area, the floor area of any parking garage (enclosed or unenclosed, but not including at-grade, nonstructural parking areas), the floor area of any porch, balcony, deck, exterior stairway or access ramp, and where any open interior space extends vertically through more than one story of a building or structure (such as a 2-story foyer), the area of the opening at the floor level of each story it intersects, as though the flooring extended throughout.
3. **For purposes of the net FAR calculation, the developed portion of the property (the denominator) shall include the impervious surface area of all buildings and structures served by physical connection to the new or extended utility infrastructure; the impervious surface area of any on-site parking structure (excluding any portion located beneath a building), including surface parking areas and access driveways; and the area of any disturbance including grading required in connection with the construction of such buildings, structures and parking areas.** Any impervious surface area dedicated to pedestrian or bicycle use and access, including but not limited to sidewalks, bicycle paths or trails, or bicycle storage areas shall be excluded from the developed portion summation, inclusive of any disturbance related to its construction. Similarly excluded, shall be any disturbance relating to site improvements such as stormwater management systems and facilities, that incorporate Low Impact Development practices (see Section K). **Where any portion of an on-site parking area is shared toward satisfaction of the parking requirement pertaining to an off-site use, that portion, inclusive of the driveway(s) and aisle(s) required to provide access to it, shall be included in the developed portion summation at a rate of 50% of its actual coverage area.**
4. For purposes of calculating the required number of parking spaces associated with any development covered under this section, only that portion of the floor area of any building or structure devoted specifically to the permitted use generating such parking requirement shall be included. Floor area devoted to such items as building mechanical equipment and utilities, incidental storage, stairways or elevators, or located in an unheated or unfinished space, or having a ceiling height

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- less than that required for inclusion as habitable or occupiable space under the building code, shall be excluded.
5. For purposes of compliance with the parking requirement (number of spaces) associated with any development covered under this section, credit shall be applied for:
- Each parking space located on-site including surface parking, underground parking, garage or parking deck parking;
 - Each shared off-site parking space located within 1,500 feet of the site for which the applicant satisfactorily demonstrates suitability and long-term rights of access;
 - Pertinent to any portion of the parking required for business patrons, the average number of available public parking spaces located within 1,500 feet of the site (whether on-street or provided via structured parking) during proposed peak business hours, as determined through a professionally conducted parking study, with this number shared proportionately in the event of other known development approvals generating similar parking demands during the same peak hours; and
 - Where demonstrated by certified information specifically pertinent to operation of the business or businesses to be located on the site (and incorporated into the conditions of any approval), each employee parking space made unnecessary by virtue of documented use of alternate means of transportation such as car- or van-pooling, walking, bicycling, mass transit, or any other form of public transportation.
6. Where any parking structure proposed in satisfaction of the requirements of this section would occupy grade level area beneath or within a building, the building shall be designed to provide habitable or occupiable space (as defined pursuant to the building code) devoted to the permitted principal use of the building, throughout any at-grade portion facing on and accessible to/from the public street (or other like public or semi-public area) serving or adjacent to the building or building site. (Pages 16-17)

F. REDEVELOPMENT PLANNING

The Planning Board has identified/will examine the potential for redevelopment opportunities within the Highlands Area. The term “redevelopment” is used herein to refer to reconstruction or re-use of previously developed and underutilized properties (which may include Preservation Area sites that have 70% or greater of impervious surface, as well as other redevelopment and “grayfield” sites in the Planning Area), and to the rehabilitation and re-use of “brownfield” sites (identified as such by NJDEP where

in the Preservation Area). Unless specifically stated otherwise, neither the term “redevelopment,” nor the phrase “in need of redevelopment” is used herein to invoke the definitions, processes, powers or any other facet of the provisions of the New Jersey Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). (Page 22)

F. LAKE MANAGEMENT

Of particular concern to the Township are the potential negative impacts of land development practices that do not properly consider the constraints and challenges presented by lake management areas. As discussed in the ERI, overdeveloped, damaged and poorly managed shore land areas can degrade water quality, harm lake ecosystems, diminish natural aesthetic values, and cause an overall loss of property values for lake communities. Lakes can also be harmed by pollutant sources in the watershed area draining to them. Polluted lakes can, in turn, damage downstream streams and rivers.

Accordingly, the below-listed goals and objectives will guide the regulation and management of the Township Highlands Lake Management Area.

1. To prevent degradation of lake water quality, protect lake ecosystems, and promote lake area aesthetic values in the Lake Community Sub-Zone.
2. To protect lake water quality and associated ecosystems from the impacts of present and future development for all lakes. Applicable management strategies should address direct and proximate potential impacts from such activities as shoreline modification and development, dredging and pollutant discharges including those from septic systems, cesspools and other forms of wastewater management.
 - Ensure that land use and development activities in the Shoreland Protection Tier do not damage on-shore and near-shore ecological resources and cause direct pollutant loadings to lake waters.
 - Ensure that land use and development activities in the Water Quality Management Tier do not contribute continuous pollutant loadings to lake waters.
 - Develop and implement lake restoration management plans to protect, restore and, where possible, enhance lake water quality through management of pollutant sources in the Lake Watershed Tier.
3. For each lake in the municipality identified as water quality-impaired, to either ensure compliance with Total Maximum Daily Load (TMDL) limitations adopted by the NJDEP, or to develop and implement lake restoration management plans. Such plans should include at minimum, watershed delineation, description of

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- point and nonpoint sources of pollution in the watershed, lake monitoring schedules, existing and proposed in-lake management techniques, and recommended watershed best management practices.
4. To protect the character of the Township Highlands Lake Management Area.
 - Assess existing zoning requirements to determine whether amendments are necessary to ensure that development is compatible with shoreline uses and activities and that it occurs at a scale and intensity appropriate to the Lake Management Area.
 - Protect the visual and scenic resources in the Scenic Resources Tier through such means as vegetative screening, limits on tree removal, shore line building/disturbance setbacks, and building height limitations.
 5. To maximize opportunities for public access to lakes and lake areas (excluding those under private ownership/management) for appropriate passive and active recreational uses that do not degrade lake environments.
 6. To maintain lakes or restore lake beds and downstream areas when lakes are drained. Damages to lake bed and/or downstream stream habitat, for example, should be prevented, mitigated or restored as needed following the breach or removal of a dam. Achieving this goal will require dedicated sources of funding from public and private sources, as applicable. (Pages 34-36)

G. WATER RESOURCES AVAILABILITY

11. To permit new consumptive or depletive water uses within a Current Deficit Area only under the auspices of a **Water Use and Conservation Management Plan; or until such a Plan is in place, to permit such uses only within the allocated Conditional Water Availability** and provided that mitigation of the proposed use is accomplished within the same HUC14 subwatershed through: a permanent reduction of existing consumptive and depletive water uses; ground water recharge in excess of the requirements of N.J.A.C. 7:8 (Stormwater Management Rules); or other permanent means. (Page 37)

c: Mayor Bettina Bieri
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