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JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

**MEETING AGENDA**  
***Thursday, March 6, 2008 - 4:00 p.m.***  
(REVISED March 5, 2008)

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – February 28, 2008
6. CHAIRMAN'S REPORT (and Council Member Reports)
7. EXECUTIVE DIRECTOR'S REPORT
  - a. Status of Public Comments and Next Steps
  - b. Letter regarding Proposed COAH Third Round Regulations
8. COMMITTEE REPORTS
9. CONSIDERATION OF RESOLUTION – *Proposed Amendment of the Sussex County, Upper Raritan and Upper Delaware WQMPs – Mount Arlington Borough and Roxbury Township (Morris County)* - (voting matter with public comment)
10. CONSIDERATION OF RESOLUTION - *Proposed Amendment to the Northeast Water Quality Management Plan, Borough of Oakland Wastewater Management Plan, Pinnacle Project, Borough of Oakland (Bergen County)* - (voting matter with public comment)
11. PUBLIC COMMENTS
12. EXECUTIVE SESSION (if deemed necessary)
13. ADJOURN

**NEW JERSEY HIGHLANDS WATER PROTECTION  
AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF MARCH 6, 2008**

**PRESENT**

JOHN WEINGART ) CHAIRMAN

KURT ALSTEDE ) COUNCIL MEMBERS  
ELIZABETH CALABRESE )  
TRACY CARLUCCIO )  
BILL COGGER )  
TIM DILLINGHAM )  
JANICE KOVACH )  
MIMI LETTS )  
DEBBIE PASQUARELLI )  
ERIK PETERSON )  
JACK SCHRIER )  
GLEN VETRANO )

**VIA TELECONFERENCE**

TAHESHA WAY )

**ABSENT**

SCOTT WHITENACK )

**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 63rd meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:10pm.

**ROLL CALL**

The members introduced themselves.

**OPEN PUBLIC MEETINGS ACT**

Chairman Weingart announced that the meeting was called in accordance with the Open Public meetings Act, N.J.S.A. 10:4-6 and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

**PLEDGE OF ALLEGIANCE** was then recited.

**APPROVAL OF MINUTES OF FEBRUARY 28, 2008** was deferred to the next meeting on March 27, 2008.

The Chair, John Weingart, had no report and introduced Executive Director Swan.



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**EXECUTIVE DIRECTOR'S REPORT**

Ms. Swan began with the status of public comments received on the Regional Master Plan noting that they had been scanned and the staff is working on categorizing them. Although she did not provide a date for completion of that work, she did mention that the staff is working diligently on the project. She also reported that the public comment period had closed February 28, 2008, and that 288 comments were received by email and 114 received by mail.

Ms. Swan continued her report with a summary of the public comments at the public hearings as follows: February 6: 41 people spoke, 19 written; February 11: 33 people spoke, 11 written; February 13: 52 people spoke, 20 written. She noted that it was important to look at both sets of comments. She will be sending an email tomorrow with information on public hearing comments for council review. In total, there were 482 comments with some duplicates and several late comments. The approximate breakdown was 52 commentators from Counties/Municipalities; 300 from Groups/organizations; and 130 from individuals. Ms. Swan stated that, by the next Council meeting, the summary review of comments would be complete or she would provide a date for completion. She also said that staff is pulling out different comments to review issues with the Council.

Ms. Pasquarelli asked if comments were being received on TDR and also inquired as to when the TDR mapping had been released. Ms. Swan replied that the mapping had been part of the November 19, 2007 release of the final draft RMP. She reiterated that the TDR receiving areas were just mapped as potential and that the mapping was a starting point. She noted that resource assessment and infrastructure analysis was a key component in future determination of these zones.

Mr. LeJava mentioned that there is a 6-page section in the Technical Addenda describing the four levels of analysis for TDR receiving zones and also noted that the designation of an actual receiving zone would come back for Council approval. Ms. Pasquarelli commented that there needs to be clarification on this process for municipalities. Chairman Weingart noted that, even if information is accurate for a specific site for potential TDR, a municipality can choose whether or how to designate a site and can still conform.

Ms. Swan explained that staff had received comments concerning the Scenic Resources and Redevelopment procedures. She reported that there were 8 comments received for the impervious surface method including issues regarding identifying vegetated surfaces, soil classification, and whether some surfaces would be considered impervious for redevelopment but not new development. She asked that those comments be included with redevelopment comments and the combined product be put out for 30 days public comment after which the Council would review again. She noted that looking at these issues as a whole would be more meaningful. She also asked that the scenic resources procedures be put out for an additional 30-day comment period prior to Council review.

Mr. Dillingham encouraged that there be adequate time for review. Chairman Weingart asked that members keep their Thursday's open and announced that additional meetings

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would be scheduled. He then acknowledged that Mr. Peterson joined the meeting and Ms. Way was on the phone. The next Council meeting will be March 27<sup>th</sup> at 10 am.

Ms. Swan continued her report with a discussion of a draft letter to COAH regarding COAH's third round regulations. She stated that the public had been provided with a document outlining the issues raised in the draft letter. Ms. Swan explained that Mr. Borden had prepared the draft letter and the final version of the letter must be received by COAH by March 22<sup>nd</sup>. She noted the obligation of COAH to consider the RMP when considering the third round. Ms. Letts commented that if towns are to increase their density and overlay their COAH obligation – that action would be difficult. Ms. Swan reviewed a portion of the letter addressing those concerns. There were no additional comments and staff was directed to send the letter.

Ms. Swan then highlighted the informational meetings being covered by staff, including a March 4 meeting with the Town of Clinton. She will make a presentation at the NJCF Land Rally Saturday, March 8. Ms. Swan stated that the next informational meetings will be March 10<sup>th</sup> at Mountain Lakes; March 12<sup>th</sup> at Mendham Borough; March 18<sup>th</sup> at Chester Township; and a March 18th meeting with COAH. She commented that the meetings were a beneficial connection between staff and the public. She noted that TDR questions were being raised frequently as well as questions regarding the Council's grant programs.

Chairman Weingart noted there were no committee meetings and that the Pinnacle matter would be next topic addressed.

Mr. Schrier spoke about the Pinnacle project being discussed at the last Council meeting. He stated that he had called up the Pinnacle project to raise the issues to the full Council and members of the public in order not to have the time period expire. He also mentioned that he had no problem with the actions of the Natural Resources Committee and was not trying to undermine the Committee's work. He read his email to Ms. Swan asking to call up this project and explaining that it was to gain clarity on the comments made by Pinnacle's Attorneys that the project was exempt from the Highlands Act and RMP.

Mr. Schrier continued by saying that someone had raised the issue of the appearance of a conflict due to a contribution to his campaign by someone in the engineering firm that worked on the Pinnacle project. He acknowledged that he did not still know how he would vote on the matter, but that, in order to ensure that there was not an issue of conflict, he would recuse himself from this matter. Further, he would recuse himself from the other WQMP matter before the Council as a result of possible perception of conflict. He noted that elected officials are appointed to the Council by law and that this makes these matters far more complex.

Mr Peterson also recused himself from the Pinnacle matter and the other WQMP matter before the Council. He explained that he received a phone call on his way to the meeting raising the same issue of receiving a contribution from a consultant from the Pinnacle project. He said he was unaware of any contribution from the consulting firm and he asked that the individual raising the concern provide details on this contribution.



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Chairman Weingart asked that staff prepare a request for clarification on this issue from the State Ethics Commission. He also stated that there had been ethics training for Council members today and that this issue was discussed with the recommendation to err on the conservative side. He noted that Mr. Schrier had not known of the potential conflict regarding the contribution from the consultant when he called up the Pinnacle matter.

Ms. Pasquarelli attended the ethics training and mentioned that an appearance of impropriety is important. She commented that calling up recommendations from the Natural Resources Committee required attention to protocol.

Ms. Calabrese asked whose responsibility it is to research conflicts. Mr. Weingart mentioned that if a Council member does not know they have a conflict, it cannot bias their vote. Ms. Carluccio mentioned that with the public seats on the council, the Council needs to follow strict advice and err on the side of caution. With the requirement of a quorum and requirement of elected officials, she stated that the Council will continue to have this problem. Ms. Carluccio suggested that elected officials should not necessarily be in public seats. Mr. Alstede said he had hundreds of customers and was concerned as to whether someone could raise that fact as a conflict. Mr. Cogger commented that an accusation can be viewed as manipulation of the work of the Council.

Chairman Weingart then asked Ms. Swan to summarize the Pinnacle matter.

Ms. Swan framed the issue and the rationale for the call up. She began with a reminder to Council members regarding the legal memo provided to members on May 2, 2007, which explains the process for Council review of WQMP amendments including those deemed to be exempt from the Highlands Act and RMP. She stated that, under NJDEP's Highlands rules, NJDEP shall not approve a WQMP amendment in the Preservation Area or the Planning Area without first obtaining a recommendation from the Highlands Council on the consistency with the draft RMP. Ms. Swan explained that more stringent consistency finding requirements will be created upon adoption of the RMP. She also reiterated that, as discussed in the legal memo, there is no exclusion of exempt projects under NJDEP's Highlands rules - NJDEP must receive a recommendation from the Highlands Council for all WQMP projects. Under DEP's Water Quality Management Act Rules the Council as a Regional Planning entity must provide recommendations.

Ms. Swan then reviewed the chronology of WQMP reviews beginning in June of 2007. A resolution was passed at the June 12, 2007 Council meeting setting forth the approach to exempt projects. She continued by highlighting that the Council had previously considered WQMP amendments for exempt projects, specifically Valley View Church and Arthur Stanlick School in Jefferson. She also noted that a consultant to the Pinnacle project wrote to the Highlands Council on October 26, 2007, to request a review of the enclosed materials on Pinnacle in accordance with the Highlands rules to provide NJDEP with a recommendation. Ms. Swan stated that the letter notes that the project is exempt from the Highlands rules. On February 19, 2008, the Pinnacle project was noticed in the NJ Register.

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The Natural Resources Committee voted to accept staff recommendations on February 14, 2008. The letter to NJDEP was prepared and sent to Council members on February 20, 2008, and the call up period would be concluded on February 28, 2008.

CONSIDERATION OF RESOLUTION – *Proposed Amendment to the Northeast Water Quality Management Plan, Borough of Oakland Wastewater Management Plan, Pinnacle Project, Borough of Oakland (Bergen County) – (voting matter with public comment)*

Mr. Cogger introduced a motion to uphold the staff recommendation. Ms. Carluccio seconded it.

**PUBLIC COMMENT ON RESOLUTION**

**Jeff Tittel, NJ Sierra Club**

Mr. Tittel showed a photograph depicting the scenic ridge of which the Pinnacle project is part of, describing it as the most famous photo of the Highlands. He spoke to the environmental constraints of the project and advocated that the Council uphold the staff recommendation.

**Mr. John McKinney, Esq., Wolff and Samson, PC**

He requested that the Council reject the resolution and asked that the letter from his associate Dennis Toft that was hand delivered to Council offices today be included in the record of public comment.

**Jacqueline Schram, Pines Lake**

She spoke to the significant flooding in the area due to Hurricane Floyd and asked that the Council vote to uphold the staff recommendation.

**Bob Simpson, Wayne**

Mr. Simpson noted that he as an Environmental Commission member, but was speaking as an individual and that he maintains a portion of trail for the NJ/NY Trail Conference. He spoke to the pristine nature of the area and spoke against the development being completed for the sake of the Highlands Region. He mentioned that Native Americans held mountain tops sacred. Land, water and air are part of everyone's commons, he commented.

**Brenda Holzinger, NY/NJ Trail Conference**

She lives next to the Pinnacle area and noted that this project represents the only remaining greenway to connect the Ramapo Mountain State Forest and the High Mountain Park Preserve. She submitted a map for the public record highlighting her comments.

**Jeff Schwartz, Oakland**

He is a resident adjacent to the Pinnacle area in question. He noted that Oakland does not need this project to satisfy its COAH obligation. He noted that there is a settlement agreement not a court judgment and he did not believe that Pinnacle was exempt from the Highlands Act. He also mentioned that there had been long term attempt on behalf of



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Oakland to buy the property for open space and that the Pinnacle group had not been cooperative with those efforts. He advocated for passing the resolution.

**Julia Somers, NJ Highlands Coalition**

She announced that she had made the phone call inquiring about Council members and conflicts as a result of receiving campaign contributions. She noted that she had researched this information online and would provide the printouts if asked. On the issue of Pinnacle, she stated that the Council should have faith in its staff and committees established. With respect to the threatened and endangered species testimony given by Peggy Snyder, an engineer and consultant, it is her opinion that the search for the barred owl was not done according to DEP regulations. She advocates for maintaining the Pinnacle project area as open space and supports the recommendation of the Natural Resources Committee and staff.

**Jeff Alfaro, Oakland**

He lives next to the Pinnacle project and emphasized the water issues. He expressed concerns regarding drought conditions and water withdrawal. He supports the resolution.

**Betsy Stagg, Oakland**

She noted that the township has been trying to purchase this property for six years. She supports the resolution.

**David Pringle, NJ Environmental Federation**

He believes that the determination of ethical conduct should be sought from the Attorney General's office not the Ethics Commission. He supports the resolution.

**Wilma Frey, NJCF**

She urged support for the resolution and asked that the Council have faith in the legal opinion given by Chief Counsel, Tom Borden.

**Betsy Kohn, Co-Chair, North Jersey Sierra Club**

She believes that this project persists through a series of poor decisions including the builder's remedy. She supports the resolution.

**Eliot Ruga, NJ Highlands Coalition**

He spoke to this property being the poster child for unique character and that throughout the RMP drafts, unique character is mentioned.

**Council Comments**

Ms. Calabrese commented that the committee structure should be supported to divide the workload and that Bergen County needs more open space. She does not support the project.

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Ms. Letts noted that the legal memorandum issued May 2, 2007 from Tom Borden made it clear what the Council was required to do with respect to WQMP amendments in making determinations on consistency.

Mr. Dillingham also urged the Council to approve the resolution. He commented that the issue of exemptions and jurisdiction had been discussed in the past. He also noted that there was a great deal of time spent in committee trying to make an objective review.

Mr. Cogger complimented the staff and thanked them for the support given.

Ms. Kovach also complimented the staff and supported the use of committee review.

Ms. Carluccio emphasized that Executive Order 109 issues are the basis for this Council decision based on riparian, open water issues and water resource impact issues. She supports the resolution.

Ms. Pasquarelli supports other Council members' comments and asked about exemptions.

Mr. LeJava noted that, although a project may be exempt from the Highlands Act and NJDEP's Highlands rules, that does not obviate the need of the Council to conduct a review of the project under DEP's Water Quality Management Act rules.

Ms. Way supported the resolution.

Mr. Weingart then asked for a roll call vote. The vote was as follows: Alstede, aye; Calabrese, aye; Carluccio, aye; Cogger, aye; Dillingham, aye; Kovach, aye; Letts, aye; Pasquarelli, aye; Vetrano, abstain; Way, aye; Weingart, aye. The motion is APPROVED. Schrier/Peterson recused and Vetrano abstained.

CONSIDERATION OF RESOLUTION – Proposed Amendment to the Sussex County, Upper Raritan and Upper Delaware WQMPs and HPAA with Waiver.

Ms. Swan summarized the issues with respect to the Mt. Arlington resolution describing the expansion of the sewer service area to include 45 existing developed residential parcels because of the concern for public health and safety and the already documented negative impact to Lake Hopatcong. She indicated that HPAA waiver request and proposed WQMP amendment request was deemed by staff to be consistent with the draft Final RMP.

Ms. Letts introduced a motion for this resolution. Mr. Cogger seconded it.

**PUBLIC COMMENT ON THIS RESOLUTION**

**Art Ondish, Mayor Mt. Arlington/Erin Phil Suburban Consulting Engineers**

Mr. Ondish spoke in support of the resolution. He also mentioned that he was the chair of the Lake Hopatcong Commission and the Commission supported the resolution.



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There was some discussion among Council members regarding the process and Mr. Weingart clarified that the full Council was taking up this matter rather than the Natural Resources Committee because it was a matter of public, health and safety and because the Council would meet as a whole now that we are in the process of preparing for adoption of the RMP. Ms. Swan reminded the Council that the Chair had announced this at the previous Council meeting.

Ms. Carluccio commented that she would not support the resolution because the project was in a current deficit area.

Mr. Weingart called for a roll call vote as follows: Alstede, aye; Calabrese, aye; Carluccio, nay; Cogger, aye; Dillingham, aye; Kovach, aye; Letts, aye; Pasquarelli, aye; Way, aye; Weingart, aye. The motion was APPROVED. Schrier/Peterson recused themselves and Vetrano abstained.

Ms. Pasquarelli asked if she could make some comments regarding the draft letter to COAH as she was not in the room when the letter was being discussed. She believes there are some substantive issues that the Council should be commenting on, including for example, TDR receiving zones and a town's ability to conform to the rules. Ms. Pasquarelli asked whether the comments in the letter were addressing both the Planning and Preservation Areas and Ms. Swan responded that they were. Ms. Pasquarelli then used West Milford as an example and thought that that municipality will have a difficult time adhering to the affordable housing obligations arising out of COAH revised rules. She does not think the growth obligations are consistent with the Highlands Regional Master Plan. Ms. Swan noted that Ms. Pasquarelli's comments were addressed in the letter and that they will also be addressed in a Memorandum of Understanding with COAH. Ms. Swan offered to work with Mr. LeJava on the TDR section of the letter to further discuss the potential difficulty of achieving COAH's obligations with the protections offered by the Highlands RMP. Ms. Swan framed the issue as two fold – one issue is the growth share obligation and the other is the planning required to match the numbers given by COAH. She also noted that a build out analysis will be ready after adoption for both the Preservation and Planning Areas that will aid COAH in understanding the growth potential of the Region under the RMP and its influence on affordable housing obligations.

Ms. Letts commented that she anticipated lots of conflicts between the RMP and COAH. Mr. Dillingham also commented that he was concerned about the newspapers accounts that the Highlands Council was standing in the way of affordable housing.

Ms. Swan asked for direction and Mr. Weingart asked that the language be revised and circulated by email for comment.

Mr. Alstede reported that there would be a report for the next meeting that the staff was working on for the support for Department of Agriculture and hopefully would be discussed at the next council meeting.

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**PUBLIC COMMENT**

**David Shope, Long Valley**

He went to his township (Lebanon) to obtain TDR forms and was not able to secure them. He asked about whether the public comment would be individually responded to by the Council. Mr. Weingart said that there would be a public response document summarizing the comments received. He specified that the Regional Master Plan is not a regulation so that there is no requirement to publish a response to comment document in the New Jersey Register but that the Council has nevertheless decided to prepare such a document. Mr. Shope commented that he does not believe there is a water deficit because surface water is not being considered. He mentioned an additional allocation of water to Royce Brook Country Club golf course. He noted that two Council members are paid environmentalists in connection with the recusal of two other members.

**Wilma Frey, NJCF**

She commented that in her initial review of the COAH rules that she was concerned about the time period from which COAH drew population figures and extrapolated as well as the amount of undeveloped land and the way the numbers were developed.

**Jeff Tittel, NJ Sierra Club**

He addressed inclusionary zoning projects and how they conform to the Highlands plan. He also noted the development of numbers for example in Ringwood. Ringwood has only built 32 houses in the last three years and he has a difficult time understanding their number of 120.

Ms. Letts commented that MOD4 tax data was used by COAH. The designation of vacant land does not reflect open space lands.

**Dave Peifer, ANJEC**

He looks forward to an ongoing dialogue on impervious surfaces. On the subject of call up provisions, he recommended that the process only be used for really serious issues such as unresolved findings from the Committee. He also recommended that the call up provision be triggered by a super majority vote of the Council, and not simply one individual Council member. He advocated trusting staff and committee recommendations. With respect to Mt. Arlington WQMP amendment and the definition for public, health and safety under the DEP's Highlands rules, he believed that the basis for potentially issuing the waiver is a bit thin. He noted there were procedures used by EPA and DEP that look at issues like number of failing septs and number of failing wells. He also commented that when an extension of sewer is allowed in the Preservation Area, he recommended adding some findings to ensure that the growth is controlled. He added examples such as: using a conservation restriction and looking at infrastructure e.g., the size of pipes and pumps.

Ms. Pasquarelli introduced a motion to adjourn and Ms. Calabrese seconded it. The meeting was adjourned at 6:30 pm.

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CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 3/28/06

Name: Paula M. Dees  
Paula M. Dees, Executive Assistant

TRUE COPY

Vote on the these  
minutes

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede				✓
Councilmember Calabrese				✓
Councilmember Carluccio	✓			
Councilmember Cogger	✓			
Councilmember Dillingham				✓
Councilmember Kovach	✓			
Councilmember Letts	✓			
Councilmember Pasquarelli				✓
Councilmember Peterson				✓
Councilmember Schrier	✓			
Councilmember Vetrano				✓
Councilmember Way	✓			
Councilmember Whitenack	✓			
Councilmember Weingart	✓			

**PUBLIC COMMENTS SUBMITTED**



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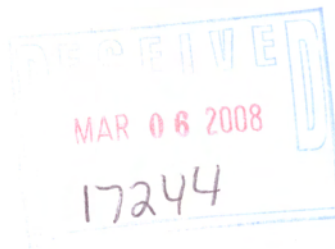
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PLEASE REPLY TO WEST ORANGE



March 5, 2008

### ***Via Federal Express***

Honorable John R. Weingart, Chairman  
And Council Members  
New Jersey Highlands Water Protection  
and Planning Council  
100 North Road  
Chester, New Jersey 07930-2322

Re: Pinnacle Communities/ Proposed amendment to the North  
East Water Quality Management Plan

Dear Chairman Weingart and Council Members:

On behalf of our client, Pinnacle Communities, Ltd., we are submitting this letter to further respond to the Council's staff memorandum dated February 29, 2008 and for the Council's consideration in connection with the resolution that is scheduled for discussion at your meeting on March 6, 2008.

While we appreciate the recognition by the staff that the Pinnacle project is exempt from the Highlands Act, and therefore not subject to a "full RMP review", the substance of the staff comments continue to attempt to make the project subject to Highlands Act requirements. Simply put, as the Act makes clear, any provision adopted by the Council or any other agency pursuant to the Highlands Act is legally inapplicable

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to this project. N.J.S.A. 13:20-28. Most of the staff comments continue to apply Regional Master Plan, or other Highlands standards to the project under the false premise that they are permissible areas for comment under the NJDEP rules. This is simply an attempt to do indirectly, what cannot be done directly. Each of these concerns is discussed below.

### **1. Inclusion of Lands along riparian areas**

As was noted by the testimony of Dr. Raymond Walker at the Natural Resources Committee meeting, and in Pinnacle's supplemental submission, the project as proposed fully complies with all applicable riparian buffer requirements. This includes the 300 foot buffers attendant upon C-1 water ways. The staff's position that other riparian areas are being improperly impacted is nothing but a back door effort to impose the additional riparian buffer requirements of the Highlands Act on this project. This is inconsistent with the exemption language of the Act, and cannot lawfully be a basis for a comment to NJDEP. Similarly, to the extent this comment is based upon the Council's "Resource Assessment", this is a Highlands Act document that is not a proper basis for comparison. (Pinnacle further notes that this Resource Assessment was never made available to it for review and comment.) Because this project is exempt from the Highlands Act, staffs position cannot be a basis for recommending that the permit be denied.

### **2. Barred Owl habitat**

To our knowledge, the Highlands Council staff has never conducted any independent review or analysis of whether the site constitutes critical habitat for barred owl, or if the proposal will impact this habitat. If there is anything beyond the conclusory statements in the staff reports, it has not been provided. The only facts of record before the Council on this issue are those presented by the applicant. As Dr. Walker's presentation on this issue demonstrated, the barred owl issue on this site has been fully vetted with the appropriate experts at NJDEP, and the project as designed will preserve whatever minimal corridor habitat value the site provides. Pinnacle continues to be troubled by the fact that staff continues to assert incorrectly that the NJDEP's findings apply to only those areas affected by wetlands rather than the entire project, despite repeated efforts to correct this factual error. The Highlands Council has no factual or legal basis to recommend that the application be denied based upon the alleged presence and barred owl habitat.

### **3. Water availability**

The staff's assertion that the project is located in a HUC14 with a water availability deficit is also an improper application of the Highlands Act to this project. As with the riparian comments, the staff has not provided an adequate explanation of how it calculated water availability for the project. It does not appear in the staff report, how the calculation of water availability was performed. The staff should be required to



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share this calculation and its basis so that it can properly be vetted and understood. At best, it is a net opinion of staff with no apparent basis. From other documents, it appears that this determination is based upon either the draft Regional Master Plan, or the Draft Water Resources Technical Report which is on the Council's web site. Notably, both of those documents are drafts, that have not been adopted and as such cannot be the basis for a valid comment. More significantly, both documents are derived from the Highlands Act itself, and are therefore inapplicable to this project as a matter of law.

As noted in Pinnacle's prior submission, in fact, Oakland Borough is legally obligated to provide water for this project. The most recent water master plan for the Borough of Oakland indicates capacity of over 6 million gallons per day from 11 wells. There are also two interconnections with the Hackensack Water Co and the Pompton Lakes MUA. There is more than adequate water in the system to serve this project, and Oakland is required to do so by Court Order.

In short, because the water availability concern is wholly a creation of the Highlands Act, it cannot lawfully be a basis for recommending that the application be denied as this project is specifically exempted from the Highlands Act.

#### **4. TMDL**

The last point raised by staff is that the application still be denied because it fails to demonstrate project complied with the TMDL for the Ramapo River. Based upon our review, no TMDL has been adopted as yet. Therefore, this comment has no basis in law or fact. To the extent any new requirements are adopted in the future that become applicable to the project, they will be addressed at the appropriate time.

#### **Summary and Conclusion**

In summary, Pinnacle urges the Council to not submit a letter to NJDEP recommending that the application be denied. Two of the issues raised by staff - riparian zones and water availability - are barred from consideration by the Highlands Act exemption. No TMDL has been adopted for the Ramapo River and NJDEP, which is more qualified than the Council on this topic, has fully considered the barred owl issue.

One final note, Pinnacle also takes issue with the staff's intimation that this project is trying to cloak itself in the mantle of affordable housing to justify alleged bad planning and environmental impacts. To the contrary, over the years the project has been downsized from over 700 units, to the current 209. The affordable housing percentage has remained the same at 20 percent including the units being constructed on site, and the financial contribution the developer has agreed to make to Oakland. Moreover, substantial redesigns of the project have been done on several occasions, to ensure full compliance with all applicable and increasingly stringent environmental

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requirements. Over the almost 20 year time period from when this project was originally proposed until now, the developer has gone to great lengths to ensure that real environmental concerns were addressed. Most importantly, the legislature, in adopting the Exemption 17 made the policy determination that this, and similar affordable housing projects, would not be subject to the additional layer of environmental regulation or planning imposed by the Act. This Council may not lawfully undo what the legislature decreed even if some may claim that it is bad planning. These comments are misplaced and should be retracted.

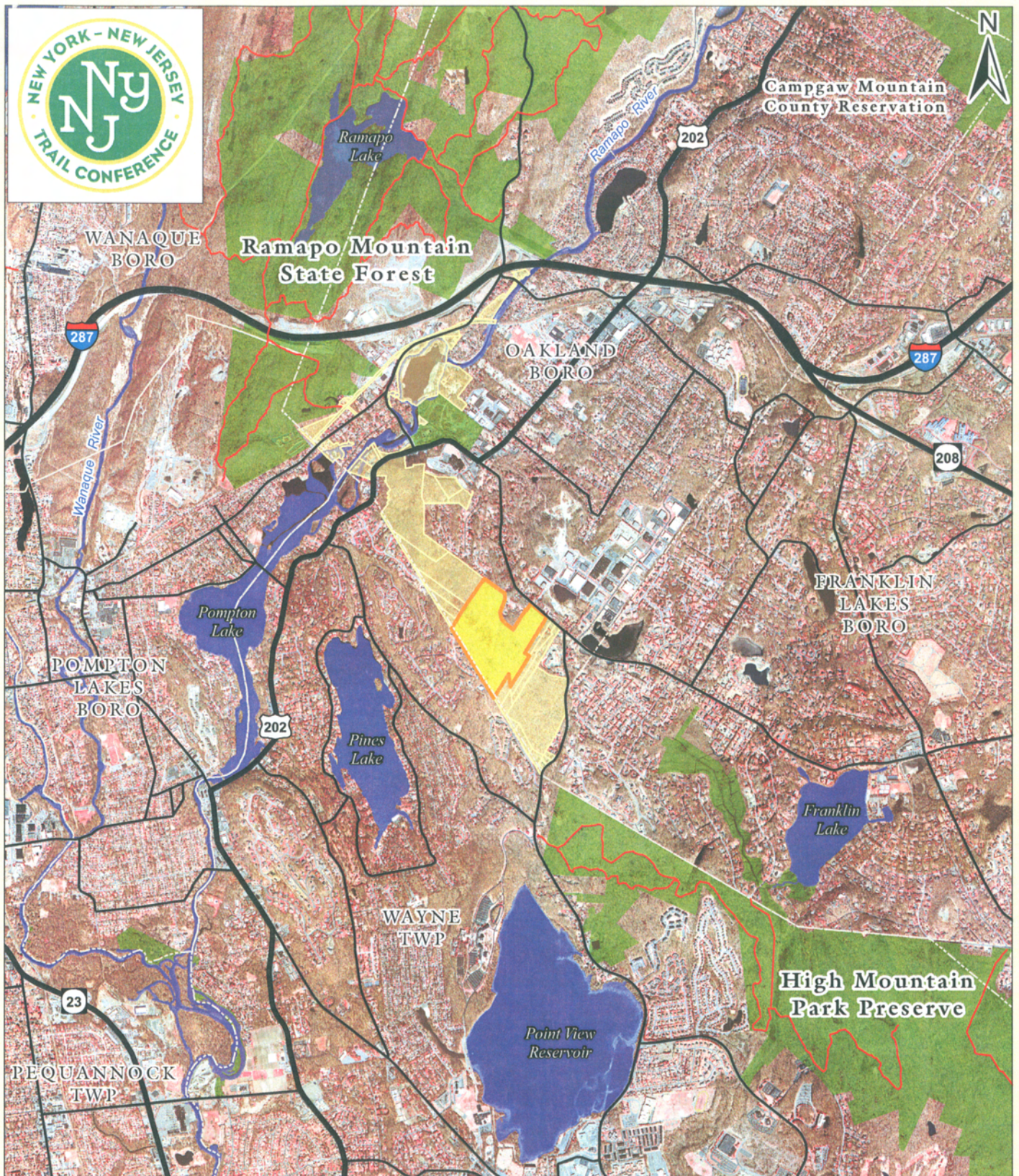
Respectfully submitted,  
Wolff & Samson PC  
Attorneys for Pinnacle Communities








DENNIS M. TOFT

DMT;jmc





SUBMITTED BY BRENDA HOLZINGER

- |  |  |
|--|--|
|  Protected Land |  Trails |
|  Pinnacle Tract |  Roads  |
|  |  Rivers |

## Ramapo to High Mountain Corridor

0 0.5 1 Miles

Data Sources: NJDEP, NJDOT, and NJ Highlands Council

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## **RESOLUTION 2008-6**

### **NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL RECOMMENDATION ON PROPOSED WATER QUALITY MANAGEMENT PLAN AMENDMENT FOR MOUNT ARLINGTON AND ROXBURY**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council);

**WHEREAS**, the New Jersey Department of Environmental Protection (NJDEP) had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

**WHEREAS**, the Highlands Rules, at N.J.A.C. 7:38-1.1, specifies that pending completion of the Regional Master Plan, NJDEP shall not approve a Water Quality Management Plan (WQMP) amendment for a project proposed in the Planning Area or Preservation Area of the Highlands Region without first obtaining a recommendation from the Highlands Council; and

**WHEREAS**, the Highlands Rules, at N.J.A.C. 7:38-1.1, were adopted in accordance with the Highlands Act as well as the Water Quality Management Act which specifically requires a continuing planning process to coordinate and integrate water quality management plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities; and

**WHEREAS**, a proposal has been submitted to amend the Sussex County, Upper Raritan and Upper Delaware Water Quality Management Plans to modify the Musconetcong Sewage Authority Wastewater Management Plan and expand the sewer service area to include 45 existing developed residential parcels (44 homes and two apartment buildings) located along Southard Road, Parker Road, and Circle Drive within the Borough of Mount Arlington and Roxbury Township, Morris County (Proposed Amendment); and

**WHEREAS**, the Borough of Mt. Arlington is specifically requesting a Highlands Preservation Area Approval (HPAA) with waiver pursuant to N.J.A.C. 7:38-6.5 (waiver for the protection of public health and safety) on the basis that the Proposed Amendment directly affects the protection of public health; and

**WHEREAS**, the NJDEP has proposed adoption of the Proposed Amendment through publication of a notice in the New Jersey Register, dated February 4, 2008, and is seeking a recommendation from the Highlands Council in accordance with the Highlands Rules at N.J.A.C. 7:38-1.1; and

**WHEREAS**, consistent with NJDEP's Highlands Rules at N.J.A.C. 7:38-1.1, and the procedures adopted by the Highlands Council pursuant to Resolution 2007-18 for review of WQMP amendments for a proposed project, Highlands Council staff conducted a review of the Proposed Amendment based upon the standards and policies set forth in the 2007 Final Draft Regional Master Plan (RMP); and

**WHEREAS**, the Highlands Council staff review concluded that the Proposed Amendment is consistent with the goals, policies, and objectives of the Final Draft RMP and would serve existing public health and safety needs, would serve to correct existing environmental degradation (and it is

## RESOLUTION 2008-6

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL RECOMMENDATION ON PROPOSED WATER QUALITY MANAGEMENT PLAN AMENDMENT FOR MOUNT ARLINGTON AND ROXBURY

not intended or designed to support future development), and would not encroach upon sensitive environmental resources; and

**WHEREAS**, the Highlands Council staff recommended that the Highlands Council authorize the issuance of a letter to NJDEP stating that the Proposed Amendment and HPAA waiver request is consistent with the Final Draft RMP; and

**WHEREAS**, the Highlands Council duly considered the Proposed Amendment, the Highlands Council staff recommendation, and all public comments;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director is hereby authorized to issue a recommendation letter to NJDEP consistent with the staff recommendation.

#### CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 6<sup>th</sup> day of March, 2008.



John Weingart, Chairman

#### Vote on the Approval of this Resolution

	<u>Yes</u>	<u>No</u>	<u>Recuse</u>	<u>Absent</u>
Councilmember Alstede	✓			
Councilmember Calabrese	✓			
Councilmember Carluccio		✓		
Councilmember Cogger	✓			
Councilmember Dillingham	✓			
Councilmember Kovach	✓			
Councilmember Letts	✓			
Councilmember Pasquarelli	✓			
Councilmember Peterson			✓	
Councilmember Schrier			✓	
Councilmember Vetrano			✓	
Councilmember Way	✓			
Councilmember Whitenack				✓
Councilmember Weingart	✓			

## **RESOLUTION 2008-7**

### **NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL RECOMMENDATION ON PROPOSED WATER QUALITY MANAGEMENT PLAN AMENDMENT FOR PINNACLE TRACT**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the New Jersey Department of Environmental Protection (NJDEP) had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

**WHEREAS**, the Highlands Rules, at N.J.A.C. 7:38-1.1, specifies that pending completion of the Regional Master Plan, NJDEP shall not approve a Water Quality Management Plan (WQMP) amendment for a project proposed in the Planning Area or Preservation Area of the Highlands Region without first obtaining a recommendation from the Highlands Council; and

**WHEREAS**, the Highlands Rules, at N.J.A.C. 7:38-1.1, were adopted in accordance with the Highlands Act as well as the Water Quality Management Act which specifically requires a continuing planning process to coordinate and integrate water quality management plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities; and

**WHEREAS**, a proposal has been submitted to amend the Northeast Water Quality Management Plan through the Borough of Oakland Wastewater Management Plan to allow for construction of the proposed Pinnacle Tract, a 209-unit residential development of which 28 are affordable housing on an approximately 84.5 acre plot on Block 3101, Lots 3 & 6; Block 3102, Lots 1 & 3; Block 3103, Lots 1 & 2 within Oakland Borough, Bergen County (Proposed Amendment); and

**WHEREAS**, the NJDEP has proposed adoption of the Proposed Amendment through publication of a notice in the New Jersey Register, dated October 15, 2007, and is seeking a recommendation from the Highlands Council in accordance with the Highlands Rules at N.J.A.C. 7:38-1.1; and

**WHEREAS**, on June 3, 2005, the NJDEP issued a determination that the project qualified for Exemption 17 of the Highlands Act (Affordable Housing). As such, the project is exempt from the Highlands Act but is still subject to NJDEP's Water Quality Management Planning Rules (N.J.A.C. 7:15) requiring an amendment to the WQMP; and

**WHEREAS**, consistent with NJDEP's Highlands Rules at N.J.A.C. 7:38-1.1, and the procedures adopted by the Highlands Council pursuant to Resolution 2007-18 for review of WQMP amendments for a proposed project, Highlands Council staff conducted a review of the Proposed Amendment, dated February 11, 2008, based upon the standards and policies set forth in the 2007 Final Draft Regional Master Plan (RMP); and

**WHEREAS**, the Highlands Council staff review includes an analysis of the Proposed Amendment against the RMP because the Highlands Act exemption #17 does include termination provisions and thus the full RMP review was completed in order to properly advise the applicant of potential inconsistencies should the exemption either expire or be terminated; and



**RESOLUTION 2008-7**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**RECOMMENDATION ON PROPOSED WATER QUALITY MANAGEMENT PLAN**  
**AMENDMENT FOR PINNACLE TRACT**

**WHEREAS**, the Highlands Council staff review noted that while the Proposed Amendment was fully reviewed in terms of consistency RMP, the fact that the project was deemed exempt from the Highlands Act limited the staff recommendations to those issues which may be considered by NJDEP under Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15; and

**WHEREAS**, the inconsistencies identified by the Highlands Council staff include findings that the Proposed Amendment: 1) would include land uses that would alter or be detrimental to the water quality and habitat quality in and along riparian areas and open waters; 2) would result in alteration or disturbance of critical wildlife habitat for Barred Owl; 3) is located within a HUC14 subwatershed which has been identified as having a deficit of net water availability; and 4) should only be issued in compliance with the TMDL for the Ramapo River; and

**WHEREAS**, on February 14, 2008, the Natural Resources Committee considered the Proposed Amendment and heard testimony from the applicant and the public in accordance with the Council's Resolution 2007-18 specifying that the Committee shall review exempt projects subject to Council review and the Committee directed Council staff to prepare a recommendation letter to be sent to the NJDEP and allow the Council an opportunity seek a full Council review of the Proposed Amendment;

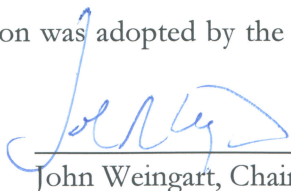
**WHEREAS**, the Committee authorized the Executive Director to draft a letter recommending that NJDEP not approve the Proposed Amendment unless it is modified to address the inconsistencies identified by Council staff and the Committee specified that given that the Proposed Amendment is exempt from the Highlands Act, the inconsistencies presented to NJDEP should be limited to those matters that may be appropriately addressed by NJDEP's jurisdiction under Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15;

**WHEREAS**, the Highlands Council duly considered the Proposed Amendment, the Highlands Council staff recommendation, and all public comments;

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council that the Executive Director is hereby authorized to issue a recommendation letter to NJDEP consistent with the staff recommendation.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 6<sup>th</sup> day of March, 2008.

  
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John Weingart, Chairman

**RESOLUTION 2008-7**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**RECOMMENDATION ON PROPOSED WATER QUALITY MANAGEMENT PLAN**  
**AMENDMENT FOR PINNACLE TRACT**

**Vote on the Approval of  
this Resolution**

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Recuse</u>	<u>Absent</u>
Councilmember Alstede	✓				
Councilmember Calabrese	✓				
Councilmember Carluccio	✓				
Councilmember Cogger	✓				
Councilmember Dillingham	✓				
Councilmember Kovach	✓				
Councilmember Letts	✓				
Councilmember Pasquarelli	✓				
Councilmember Peterson				✓	
Councilmember Schrier				✓	
Councilmember Vetrano			✓		
Councilmember Way	✓				
Councilmember Whitenack					✓
Councilmember Weingart	✓				



**State of New Jersey**  
 Highlands Water Protection and Planning Council  
 100 North Road (Route 513)  
 Chester, New Jersey 07930-2322  
 (908) 879-6737  
 (908) 879-4205 (fax)  
 www.highlands.state.nj.us



**WQMP AMENDMENT**  
**REVIEW CHECKLIST**

PROJECT INFORMATION	
<b>WQMP Name:</b> Pinnacle	<b>Date:</b> February 8, 2008
<b>Sewer Service Area/Facility:</b> Mountain View Sewage Treatment Plant	
<b>WQMP:</b> Northeast Water Quality Management Plan	
<b>WMP Agency:</b> Borough of Oakland Wastewater Management Plan	
<b>Name of Facility:</b> Pinnacle Tract <b>Name of Applicant:</b> Pinnacle Communities Ltd. <b>Sewer Service Area/Facility:</b> New <input type="checkbox"/> Existing <input checked="" type="checkbox"/> <i>If existing provide the following:</i> <b>Proposed Change in Service Area Wastewater Flow:</b> 66,555 GPD <b>NJPDES No:</b> NJ0028002 <b>Permit Discharge (MGD):</b> <b>Type of Discharge:</b> GW <input type="checkbox"/> SW <input checked="" type="checkbox"/> <b>Receiving Waterbody:</b> Preakness Creek (drains to Passaic River) <b>Total Proposed Service Area (acres):</b> ~84.5 acres <b>Lot and Block, if applicable:</b> Block 3101, Lots 3&6; Block 3102, Lots 1&3; Block 3103, Lots 1&2 <b>Description of Project:</b> 209-unit residential development of which 28 are affordable housing on an approximately 84.5 acre plot. The project site was part of a 1991 court-approved settlement of a builder's remedy lawsuit. The applicant proposes to discharge wastewater from the project site into the Township of Wayne's sanitary collection system for ultimate treatment at the Mountain View Wastewater Treatment Facility.  In June of 2005, NJDEP determined that the project qualified for Exemption 17 of the Highlands Act (Affordable Housing) because the project is a major Highlands Development located within an area designated as Planning Area 1 or Planning Area 2 as of March 29, 2004, that on or before March 29, 2004 had been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. However, the project is currently inconsistent with the Areawide WQMP, resulting in this proposed WQMP amendment.	

LAND USE CAPABILITY MAP ZONES	
<b>Sewer Service Areas Encroach Within Which LUCM Zone? (Check all that apply.):</b>	
<b>Protection Zone</b> <input checked="" type="checkbox"/>	
<b>Conservation Zone</b> <input type="checkbox"/>	<b>Conservation Constrained Zone</b> <input type="checkbox"/>
<b>Existing Community Zone</b> <input checked="" type="checkbox"/>	<b>Existing Community Constrained Zone</b> <input type="checkbox"/>
HIGHLANDS ACT AREAS	
<b>Project located in which Highlands Act Area? (Check all that apply.):</b>	
<b>Preservation Area</b> <input checked="" type="checkbox"/>	
<b>Planning Area</b> <input type="checkbox"/>	

WMP Name: Borough of Oakland Wastewater Management Plan  
Sewer Service Area/Facility: Pinnacle Tract

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TOPOGRAPHY	
Parcel Underlain by Limestone?	No
Steep Slopes >20% in Any Areas?	Yes
Steep Slopes >15% in Forested Areas?	Yes
Steep Slopes >10% in Riparian in Undeveloped Lands?	Yes
<p><b>Findings:</b> The site contains slope constraints of &gt;20%, 15% in forested areas, and 10% within riparian areas. The proposed development footprint appears to infringe on steep slopes. The applicant's EO109 Compliance Document states that steep slopes have been avoided in site planning.</p> <p><b>Policy statement:</b> To require that applications for approval through local development review and Highlands Project Review include topographic information identifying the location of any Steep Slope Protection Areas located on the parcel proposed for development (1E6).</p> <p>To require that applications for approval through local development review and Highlands Project Review involving parcels of land with slopes of 10% or greater include identification of forested lands, areas which are highly susceptible to erosion, depth to bedrock, and Soil Capability Classes (1E7).</p> <p>To prohibit through local development review and Highlands Project Review land disturbance within areas which are Severely Constrained Slopes and Moderately Constrained Slopes (1E8).</p> <p>To require through local development review and Highlands Project Review the use of low impact best development practices for any land disturbance or human development within areas which are Constrained or Limited Constrained Slopes (1E9).</p> <p><b>Recommendation:</b> Limit disturbance to areas without Severely Constrained or Moderately Constrained Slopes.</p>	

HIGHLANDS OPEN WATERS	
Parcel includes Highlands Open Waters Protection Area Buffer?	Yes
<p><i>If No, disregard remainder of Highlands Open Waters checklist.</i></p> <p><b>Highlands Open Waters description:</b>  <b>Drainage HUCs Name and Number:</b> 02030103100060 &amp; 02030103100070  <b>Name of nearest waterway:</b> Pond Brook (C1,FW2-TP) &amp; Haycock Brook (FW2-NT)</p>	
<p><b>Open Waters Protection Areas within the Service Area:</b></p> <p>Streams <input checked="" type="checkbox"/></p> <p>Lakes &amp; Ponds <input type="checkbox"/></p> <p>Wetlands <input checked="" type="checkbox"/></p>	
<p><b>Highlands Open Waters category:</b></p> <p>Highlands Waters <input checked="" type="checkbox"/></p> <p>Special Waters <input type="checkbox"/></p> <p>Exceptional Waters <input type="checkbox"/></p> <p>Intermediate Waters <input type="checkbox"/></p>	
<p><b>Watershed Value (Check one):</b></p> <p>High <input checked="" type="checkbox"/> 02030103100070</p> <p>Medium <input type="checkbox"/></p> <p>Low <input checked="" type="checkbox"/> 02030103100060</p>	
<p><b>Findings:</b> Wetlands, classified as Highlands Exceptional Waters, exist onsite. Pond Brook, a C1 tributary of the Ramapo River exists on the far northwest portion of site. Additionally, Appendix C-Fig.15 in the</p>	

WMP Name: Borough of Oakland Wastewater Management Plan  
Sewer Service Area/Facility: Pinnacle Tract

Date: 02/08/08  
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applicant's EO109 Compliance Document illustrates a stream, Haycock Brook (FW2-NT) located on the southern portion of the site. NJDEP's Public Notice Document indicates that approximately 500 feet of the Pond Brook headwaters exist onsite, but have not been mapped by USGS or the Bergen Co. Soil Survey Maps. NJDEP states that these headwaters are subject to a 150-foot riparian buffer. These waters, while not mapped under Highlands Council's current stream GIS database, would be considered a Highlands Open Water and require a 300-foot protection buffer under the RMP.

NJDEP verified the boundaries of State Open Waters in the southern and northern portion of the site. The applicant is proposing a protection buffer for Haycock Brook averaged to approximately 100 feet because of the proximity of the wetlands in the southern portion of the site. This stream is a Highlands Open Water and requires a 300-foot protection buffer under the RMP, which would also apply under NJDEP rules if the project was not exempt. The northern stream (Pond Brook) is a tributary that drains to the Ramapo River, classified as C1 trout production, and is proposed by the applicant to receive a 300-foot buffer (special resource water protection area).

The applicant has received an LOI from NJDEP verifying the jurisdictional boundaries of wetlands and State Open Waters onsite. NJDEP classified the wetlands as Exceptional Resource Value due to presence of documented habitat for Barred Owl (State threatened). The Freshwater Wetlands Protection Act Rules require a standard transition area adjacent to these wetlands of 150 feet. These wetlands are a Highlands Open Water and require a 300-foot protection buffer under the RMP. NJDEP verified the presence of a smaller isolated wetland near the center of the site. The Freshwater Wetlands Protection Act Rules do not provide a protection buffer for isolated wetlands. However, this wetland is a Highlands Open Water, and is also required to have a 300-foot protection buffer under the RMP.

The applicant's EO109 Compliance Document states that the 150-foot wetlands transition area will be reduced to accommodate the development footprint. The applicant is proposing to reduce the transition area from 150 feet to 100 feet, and then to further reduce to 75 feet in some areas and expand to 125 feet in other areas, through a Transitional Area Waiver-Averaging Plan. The applicant indicates in the EO109 Compliance Document that NJDEP was of the opinion that this transition area modification, coupled with preservation of other open space on the property would not significantly impact the function of these wetlands and their transition areas as corridors for the movement of Barred Owl.

The proposed electronic copy site plan illustrates the footprint of disturbance would encroach on the Highlands 300 foot open water protection buffers.

**Policy Statement:** Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules as N.J.A.C. 7:38 (1D4b)

Highlands Open Waters shall include a protection buffer of 300 feet from the edge of the Highlands Open Water feature. All development shall comply with buffer standards which provide for the protection of Highlands Open Waters reviewed on a site-specific basis during local development review and Highlands Project Review (1D4).

Prohibit modifications to Highlands Open Waters protection buffers except as necessary to protect public health and safety, or to provide for minimum practical use in the absence of any alternative (1D4e).

**Recommendation:** The application should exclude Highlands 300-foot open water buffer areas from the sewer service area development footprint and development activities that would alter land use. All buildings, roads, and impervious structures should be relocated outside of each Highlands 300-foot open water buffer.



WMP Name: Borough of Oakland Wastewater Management Plan  
Sewer Service Area/Facility: Pinnacle Tract

Date: 02/08/08  
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RIPARIAN AREA	
<b>Parcel includes Riparian Area?</b> <i>If No, disregard remainder of Riparian Area checklist.</i>	Yes
<b>Specific Riparian Area Features</b> (Check all that apply.): <b>Flood Prone Areas</b> <input checked="" type="checkbox"/> <b>Waters</b> <input checked="" type="checkbox"/> <b>Riparian Soils</b> <input checked="" type="checkbox"/> <b>Wetlands</b> <input checked="" type="checkbox"/> <b>Wildlife Corridor</b> <input type="checkbox"/>	
<b>Riparian Integrity Value</b> (Check one): <b>High</b> <input type="checkbox"/> <b>Medium</b> <input checked="" type="checkbox"/> <b>Low</b> <input type="checkbox"/>	
<p><b>Findings:</b> Riparian areas exists onsite. The applicant's EO109 Compliance Document indicates that NJDEP requires a 75-foot riparian buffer for Haycock Brook on the southern portion of the site.</p> <p>The proposed site plan includes roadways, building units, and stormwater infrastructure located within the riparian buffer along both Haycock Brook and upstream of the 300-foot special water resource protection area for Pond Brook. The proposed site plan includes one building located within the 150-foot riparian buffer of the headwaters of Pond Brook. The applicant states that alternative locations for this building do not exist on the project site.</p> <p>Appendix C-Fig.15 in the applicant's EO109 Compliance Document illustrates the site plan would minimally encroach on areas including Highlands riparian areas.</p> <p><b>Policy Statement:</b> Limit alterations to existing natural vegetation or increases in impervious area within high and moderate integrity riparian areas to the minimum extent feasible in areas beyond the Highlands open water buffer requirement; protect the water quality of adjacent highlands open water; and maintain or restore habitat value of the riparian area (1D5b).</p> <p>Restrict new land uses or the alteration of existing land uses that would alter or be detrimental to the water quality and habitat value of a Highlands Open Water or a Riparian Area (1D6a).</p> <p>Prohibit modifications to Highlands Open Water buffer requirements or Riparian Areas, except as necessary to protect public health and safety, or to provide for minimum practical use in the absence of any alternative (1D6b).</p> <p><b>Recommendation:</b> The application should exclude riparian areas from the sewer service area and the development footprint, including roadways, building units, and stormwater infrastructure located within Pond Brook's headwaters riparian area and the proposed buildings located within Haycock Brook's riparian area. Location of development within the riparian areas is inconsistent with RMP policies prohibiting land uses that would alter or be detrimental to the water quality of a Highlands Open Water. Increases of impervious areas should be limited to the minimum extent necessary. Alteration of natural vegetation that would alter or be detrimental to the T&amp;E habitat associated with the site's riparian corridors, or detrimental to the water quality within Haycock Brook and Pond Brook, including its headwaters, should also be prohibited as inconsistent with the RMP.</p>	
FOREST	
<b>Parcel within Forest Resource Area?</b>	No
<b>If yes to above, is there Encroachment into a Forest within Forest Resource Area?</b>	No
<b>Forest Indicators (check all that apply):</b> <b>Total Forest</b> <input checked="" type="checkbox"/>	



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<b>Core Forest</b>	<input type="checkbox"/>
<b>Forest Patch</b>	<input type="checkbox"/>
<b>Forest Integrity Value (check one):</b>	
<b>High</b>	<input checked="" type="checkbox"/>
<b>Medium</b>	<input type="checkbox"/>
<b>Low</b>	<input checked="" type="checkbox"/>
<p><b>Findings:</b> Nearly 100% of the site contains forested lands that are outside the Forest Resource Area. The northern portion of the site is classified as low integrity forested subwatershed while the southern portion of the site is classified as high integrity.</p> <p>The applicant is proposing to designate 16 acres of forest (~20% of property) as conservation areas as part of the development plan. Appendix C-Fig.15 in the applicant's EO109 Compliance Document illustrates the site plan includes Forest Conservation Areas.</p> <p><b>Policy Statement:</b> Forestry activities will be allowed within a Forest Resource Area or forested lands within a High Integrity Forest Subwatershed only in compliance with an approved Forest Management Plan (1B6a).</p> <p>To meet the goal for the Preservation Area to preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state," and to "protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests. (1A1)</p> <p>Applications for local development review and Highlands Project Review require identification of any forest area on and adjacent to a site in accordance with the Highland Council's Alternate Method for Identifying Upland Forest Areas in the Highlands Region (1B5a).</p> <p><b>Recommendation:</b> The applicant should be required to identify upland forest areas in accordance with the Highlands Council Alternate Method for Identifying Upland Forest Areas in the Highlands Region.</p> <p>Development activities should minimize removal of woody vegetation and be required to utilize low impact development best management practices and an approved forest mitigation plan.</p>	
<b>CRITICAL HABITAT</b>	
<b>Critical Habitat (Landscape 2-5)?</b>	Yes
<b>Significant Natural Area?</b>	No
<b>Vernal Habitat +1,000 ft?</b>	No
<b>Species of Concern:</b>	Barred Owl
<b>Landscape Rank:</b>	3
<p><b>Findings:</b> The entire site is mapped as habitat for Barred Owl (Landscape Rank 3, Highlands Conservation Rank 2). NJDEP's Public Notice Document indicates that the site is identified as part of the Preakness Mountain Natural Heritage Priority Macrosite. Highlands Council review does not incorporate NHP Macrosites.</p> <p>The applicant's EO109 Compliance Document states that NJDEP has agreed with a report from Maser Consulting, P.A. that the property is likely functioning as a corridor for Barred Owl, and not as breeding or nesting habitat. The applicant hired Maser Consulting to perform a Barred Owl study of the property from May-August 2002. The result of their investigation concluded that Barred Owl is not present due to lack of a response to vocalization recordings. The applicant's Barred Owl Habitat Assessment document states that <i>"Barred Owl prefers large, unfragmented blocks of forest, including swamps, riparian corridors, and upland areas."</i> The document concludes that the site contains "marginal" habitat for Barred Owl use because it</p>	

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does contain vegetative community characteristics that support Barred Owl habitat, but includes locational factors like lack of appropriate forest and wetland size, presence of human disturbance, and presence of known predators.

The applicant's EO109 Compliance Document states that NJDEP recommended that an application be submitted for a Transition Area Waiver requesting that the standard wetlands transition area be reduced from 150 feet to 100 feet. The Transition Area Waiver-Averaging Plan proposes to further reduce the transition area to 75 feet in some areas and expand to 125 feet in other areas. The applicant indicates in the EO109 Compliance Document that NJDEP was of the opinion that this transition area modification, coupled with preservation of other open space on the property would not significantly impact the function of these wetlands and their transition areas as corridors for the movement of Barred Owl.

It should be noted the NJDEP-Land Use Regulation Program (LURP) has regulatory authority over T&E habitat only as it pertains to the Freshwater Wetlands Protection Act Rules, thereby limiting their jurisdictional scope to the habitat located within and adjacent to the onsite wetlands.

The Highlands Council review has identified the entire site as Barred Owl habitat, and therefore consistency with RMP policies is addressed for all onsite habitat, not just that located within and adjacent to the onsite wetlands.

**Policy Statement:** To prohibit, through Plan Conformance, local development review, and Highlands Project Review, the direct impact of new human development or expansion or increased intensity of existing development within Critical Wildlife Habitats, Significant Natural Areas, or within 1,000 feet of Vernal Pools (1F1).

Prohibit alteration or disturbance of Critical Wildlife Habitat, Significant Natural Areas, and within 1,000 feet of Vernal Pools, except as necessary to protect public health and safety, or to provide for minimum practical use of in the absence of any alternative (1F5a).

Require that any disturbance to a critical habitat feature include mitigation for all adverse modification and provide for no net loss of habitat value (1F5b).

**Recommendation:** NJDEP-LURP has stated that the site functions as a migration corridor, but not breeding or nesting habitat for Barred Owl. NJDEP-LURP has regulatory authority over T&E habitat only as it pertains to the Freshwater Wetlands Protection Act Rules, thereby limiting their jurisdictional scope to the habitat located within and adjacent to the onsite wetlands. The Highlands Council recommends that any disturbance to the mapped habitat for Barred Owl on the entire site, not just that located within and adjacent to the onsite wetlands, will result in forest fragmentation, which would be inconsistent with the policy statement prohibiting the alteration or disturbance of critical wildlife habitat. Development activities should be required to avoid direct alteration or disturbance of critical wildlife habitat. These areas should be protected from damage or destruction resulting from indirect impact of development activities.

#### AGRICULTURE

<b>Parcel within Agricultural Resource Area?</b>	No
<b>Important Farmland Soils?</b>	Yes

**Findings:** Important farmland soils occur onsite. No agricultural activities occur onsite.

**Policy Statement:** N/A

**Recommendation:** No recommendation

#### WATER QUALITY

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<b>Parcel Prime Ground Water Recharge Area?</b>	Yes
<b>Parcel Wellhead Protection Area?</b>	No
<p><b>If yes to above, check one box below:</b></p> <p><b>Tier 1</b> <input type="checkbox"/></p> <p><b>Tier 2</b> <input type="checkbox"/></p> <p><b>Tier 3</b> <input type="checkbox"/></p>	
<p><b>Drainage HUCs Name and Number:</b> Crystal Lake/Pond Brook--02030103100060 &amp; Ramapo River (below Crystal Lake bridge)--02030103100070</p> <p><b>Name of nearest waterways:</b> Pond Brook; Haycock Brook</p> <p><b>SWQS Classification:</b> Pond Brook = FW2-TP (C1); Haycock Brook = FW2-NT</p> <p><b>Description of Impairments, or TMDL:</b> Ramapo River (below Crystal Lake bridge) subwatershed (02030103100070) is designated as non-attainment for Aquatic Life (general) and Aquatic Life (trout).</p>	
<p><b>Findings:</b> Prime recharge areas are located extensively onsite. Ramapo River (below Crystal Lake bridge) subwatershed (02030103100070) is designated as non-attainment (Sublist 5) for Aquatic Life (general) and Aquatic Life (trout), and has a proposed total phosphorus TMDL (Sublist 4A) for Primary Contact Recreation. Parameters for which the subwatershed is non-attaining include dissolved oxygen, pH, and total phosphorus.</p> <p><b>Policy Statement:</b> Restrict through local development review and Highlands Project Review development activities and other activities which result in reduction to ground water recharge volumes or will contribute to or result in water quality degradation within Prime Ground Water Recharge Area (2D3b).</p> <p>To prohibit uses of land within a Prime Ground Water Recharge Area that may reduce recharge volumes or other uses that may impair water quality within or draining to a Prime Ground Water Recharge Area (2D4).</p> <p>Prohibit the creation of impervious surfaces and other surfaces that significantly impede recharge within a Prime Ground Water Recharge Area, and restrict other land uses that may degrade water quality within or draining to a Prime Ground Water Recharge Area (2D5a).</p> <p>Allow for modifications to Prime Ground Water Recharge Area protection requirements, such as increases in impervious cover or loss of forest or other natural land cover, only upon demonstration that any relief from protection requirements will not impair or reduce ground water recharge quality or volumes and are necessary to protect public health and safety, or to provide for minimum practical use in the absence of any alternative (2D5b).</p> <p>Implement a requirement through local development review and Highlands Project Review that any development activity in a Prime Ground Water Recharge Area demonstrate that an equivalent of 125% of pre-existing recharge volumes of the site will be provided for within the same subwatershed, or by other means as determined by the Highlands Council (2D4a).</p> <p>Ensure that new land uses draining to a stream designated as impaired but lacking a TMDL (i.e., Sublist 5) avoid increased pollutant loadings for the parameter or parameters for which a TMDL is required (2G3b).</p> <p>Wastewater Management Plans or amendments shall demonstrate that the proposed service area will not directly or indirectly support development that would be in violation of an adopted TMDL (2G3c).</p> <p><b>Recommendation:</b> The creation of impervious surfaces or modification of prime ground water recharge areas are only allowed for public health and safety or for minimal practical use of the site, neither of which apply to this project. Therefore the project area must be relocated such that it does not</p>	

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alter prime ground water recharge areas, or contribute to water quality degradation. Any disturbance of prime ground water recharge areas requires recharge of 125% of pre-existing recharge volumes of the site.

Wastewater discharge to Mountain View STP and on-site stormwater BMPs shall not violate loads associated with impairments within the subwatershed in which the proposed development is located, and for proposed TMDLs for total phosphorus in the Ramapo River (below Crystal Lake bridge) subwatershed.

### WATER CAPACITY

**Site:** Pinnacle Tract

**Potable Water Supply:** YES

**Domestic?** No

*If Domestic, source HUC:*

**Public Community Water System?** Yes

**If PCWS, Name of Facility:** Oakland Water Department

**PCWS ID No.?** 242001

<u>Source Water HUC:</u>	<u>Net Availability (MGD)</u>	<u>Conditional Availability (MGD)</u>
02030103100050	-2.981080	0.0091
02030103100060	-0.335741	0.0103
02030103100070	-0.133671	0.0082

**Total Projected Water Demand (MGD):** Estimated ~43,890-50,996 GPD (by applicant)  
66,255 GPD (calculated by Highlands Council)

**HUC Constraint:**

**Current Deficit Area** ☒

**Existing Constrained Area** ☐

**Findings:** Proposed water main extension from adjacent Oxford Water Department service area. Source wells are located within three subwatersheds, including two within the project site. All subwatersheds are currently in deficit. Water use is depletive because the proposed water withdrawal is piped to a wastewater treatment facility located in a different subwatershed. Any additional depletive water use would be subject to a 125% mitigation within the source subwatersheds, which is feasible for at least two subwatersheds. Total conditional availability between the three subwatersheds for the depletive use is 27,600 GPD, which is inadequate for the project. Note that the recalculated water demand was increased to match the anticipated wastewater flows. Actual water use will be higher than wastewater flows due to outdoor uses during the growing season.

**Policy Statements:** The Highlands Act limits or prohibits the construction of new public water systems or the extension of existing public water systems into the Preservation Area except in the case of existing public health and safety and except to serve development in the Preservation Area that is exempt.

To minimize, through Plan Conformance, local development review and Highlands Project Review, the extension of public water supply systems with the Protection Zone and the Conservation Zone for the protection of water resources (2J4).

Accommodate compact development served by existing or proposed public water supply systems only where such development is within or immediately adjacent to an existing service area provides for the clustering or aggregation of development that will preserve at least 80 percent of the project area in perpetuity for environmental protection or agricultural purposes and the development impacts are otherwise consistent with the goals and requirements of the Plan (2J4b).

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Require that new residential development served by public community water systems be at a minimum density of 1/2-acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, recreational space), to ensure cost-effective utility service (2J8c).

A Current Deficit Area subwatershed that is primarily within the Protection Zone or Conservation Zone shall be assigned a Conditional New Water Availability of 1% of Ground Water Capacity, based on the Low Flow Margin Method, conditioned upon prior implementation or commitment for implementation of the 125% mitigation requirement in Objective 2B4b (2B5b).

To apply standards in the Protection Zone designed to maintain the integrity of aquatic ecosystems, recognizing the regional significance of these resources. Consumptive and depletive water uses and associated land uses shall be stringently limited (2B8).

Give highest priority for the use of Net Water Availability to Highlands Redevelopment Areas and Receiving Zones as designated by the Highlands Council (2B8d).

Prevent net increases in consumptive and depletive water uses in current water deficit areas to prevent exacerbation of and help reduce or eliminate the deficit to ensure sustainable water supply, water resource and ecological values, emphasizing techniques including, but not limited to water reuse, recycling and conservation (2B8b).

Prohibit new, expanded or extended public water systems unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a designated Highlands Redevelopment Area, or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources (2J4a).

All water users within a current deficit area or existing constrained area shall seek funding and opportunities to prevent exacerbation of and help reduce or eliminate existing deficits to ensure sustainable water supply, water resource and ecological values, emphasizing techniques including, but not limited to water reuse, recycling and conservation (2B4c).

**Recommendation:** Because the application qualifies for Exemption #17 of the Highlands Act, the extension of public water utility in the Preservation Area is allowed. However, the application is inconsistent with other water availability and water use policies in the Protection Zone. Specifically, the expansion of public water systems into the Projection Zone is prohibited unless for public health and safety, to serve a redevelopment area, for cluster development, or for minimum practical use of the site. None of these conditions applies in this instance. It is also noted that the three subwatersheds have extensive areas of Existing Community Zone within them, where the priority for capacity is TDR receiving areas. However, with a conflict between the two, the exemption rather than the RMP must drive the determination of consistency with the Act regarding extension of public water utilities.

The residential development apparently meets the requirement that an area served by water and wastewater utilities be at a minimum density of 1/2-acre per dwelling unit.

The amount of conditional water availability from the three subwatersheds is insufficient for the proposed water demand of the project, regardless of mitigation, and therefore is inconsistent with the RMP. If the applicant were permitted to the use conditional water availability from each of the three source watersheds (a decision to be decided by the Council), the 27,600 GPD conditionally available for depletive uses is less than half of what is proposed. Therefore, the projected water demand must be reduced to a maximum of 27,600 GPD. In addition, it should be noted the proposed uses would



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completely deplete all conditional water availability and prevent any additional water use in those areas until a Water Management Plan is approved by the Highlands Council.

The applicant must also provide a 125% mitigation of the conditional water availability (potentially 34,500 GPD if they use of all 3 subwatersheds' conditional water availability is granted). While this can be accomplished onsite in two subwatersheds, the applicant must find a means to provide mitigation in the third subwatershed, or the applicant must demonstrate that the three subwatersheds are hydrogeologically connected.

#### WASTEWATER CAPACITY

Name of Facility: Pinnacle

NJPDES Permit Number: NJ0028002

Projected Flow (GPD): 66,555 GPD

HDSF Facility? Mountain View STP is located outside Highlands Region No

HDSF Available Capacity (MGD):

Subject to Allocation Agreement? UNK

Allocating Capacity: N/A

Extent of HDSF Service Area Included in WMP: Full ☐ Partial ☒

Wastewater Treatment Facility:

New: ☐ Existing ☐ Proposed ☐ Wastewater Discharge Flow (MGD)

Individual Septic: Existing ☐ Proposed ☐ Existing: Future:

NJPDES-DGW: Existing ☐ Proposed ☐ Existing: Future:

NJPDES-DSW: Existing ☒ Proposed ☐ Existing: 0.4-0.5MGD Future:

**Findings:** The project will connect into Mountain View STP collection system, which is located outside of the Highlands Region.

**Policy Statement:** The Highlands Act revokes designated sewer service areas for which wastewater collection systems have not been installed on the date of enactment of the Highlands Act into the Preservation Area except if necessary to serve development in the Preservation Area that is exempt (2I1).

Prohibit new, expanded, or extended wastewater collection or treatment outside of Existing Areas Served (in the Protection and Conservation Zones) unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area, or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources (2K3b).

Prohibit expansion of a public wastewater collection and treatment systems and community on-site treatment facilities within the Preservation Area except as provided by the Highlands Act, and within Open Water buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, and Critical Habitat Areas unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, cluster development (see Objectives 2K3d and 2K3f), Highlands Redevelopment Areas, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of these sensitive environmental resources (2K5c).

Require that new residential development served by public wastewater collection and treatment systems be at a minimum density of 1/2-acre per dwelling unit for the developed part of the site (i.e., not including

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wetlands, open water buffers, and recreational space) to ensure cost-effective utility service.

**Recommendation:** Because the application qualifies for Exemption #17 of the Highlands Act, the extension of public wastewater utility in the Preservation Area is allowed. However, the application is inconsistent with other wastewater policies in the Protection Zone. Specifically, the expansion of public wastewater systems into the Projection Zone is prohibited unless for public health and safety, to serve a redevelopment area, for cluster development, or for minimum practical use of the site.

The residential development apparently meets the requirement that it must be at a minimum density of 1/2-acre per dwelling unit for the developed part of the site (i.e., not including wetlands, open water buffers, and recreational space).

### HISTORIC, ARCHAEOLOGICAL AND SCENIC

#### Presence of Absence of Resources:

Highlands Historic District Polygons	Absence
Highlands Historic Properties Polygons	Absence
Highlands Historic Property Points	Absence
Archaeological Grids	Absence
Highlands Scenic Resource Inventory	Absence

#### Description of Resources:

**Findings:** Historic, archaeological, and scenic resources are not located onsite.

**Policy Statement:** n/a

**Recommendation:** No recommendation

### CONCLUSIONS AND RECOMMENDATIONS

The review of the proposed WQMP amendment reveals several major inconsistencies with the Final Draft RMP, primarily the disturbance of steep slopes, Highlands open water protection areas and riparian areas, forests, and critical wildlife habitat. The Highlands Act prohibits the extension of water and wastewater utilities into the Preservation Area (except for exempt development) and stringently limits extension into the Protection Zone. In order to ensure consistency with resource policies of the Final Draft RMP, the applicant should be required to relocate all units from within steep slope areas and the Highlands open water protection areas and riparian areas, and provide mitigation of fragmented forest lands with provision for no net loss of critical wildlife habitat value for the entire site.

The proposed site development is located within prime ground water recharge areas and is located in a subwatershed (Ramapo River (below Crystal Lake bridge) subwatershed) identified as nonattainment for surface water pH and dissolved oxygen. A total phosphorus TMDL has been proposed for this subwatershed. To be consistent with the RMP, development activities should avoid prime ground water recharge areas in the Protection Zone, and if approved should not reduce ground water recharge volumes, and not contribute to water quality degradation. Wastewater discharge to Mountain View STP and on-site stormwater BMPs shall not violate loads associated with impairments within the subwatershed in which the proposed development is located, and for proposed TMDLs for total phosphorus in the Ramapo River (below Crystal Lake bridge) subwatershed.

The site is proposed to be served by public water and wastewater and appears adjacent to the Oxford Water Department service area. The treatment of wastewater by Mountain View Wastewater Treatment Facility in the Township of Wayne has been ordered by the Superior Court of the State of New Jersey.

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Extension of utilities in the Protection Zone normally requires a cluster development at the appropriate densities and 80% preservation of natural resource features. However, the exemption of this project from provisions of the Highlands Act nullifies the RMP policy in this case. Reduction of the depletive use to at most the total conditional water availability for the three source subwatersheds, of 27,600 gpd, should be required. Mitigation of the additional depletive water use at 125% should be required.





JON S. CORZINE  
Governor

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JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

### MEMORANDUM

To: Highlands Water Protection and Planning Council

From: Eileen Swan, Executive Director  
Dan Van Abs, Senior Director of Planning and Science  
Erin Lynam, Resource Management Specialist  
Jim Hutzelmann, Water Resource Engineer

Date: February 29, 2008

Re: Application Type:	<i>Proposed Amendment to Northeast WQMP</i>
Name:	<i>Pinnacle</i>
Municipality:	<i>Oakland</i>
County:	<i>Bergen</i>
Highlands Act Area:	<i>Preservation Area</i>
LUCM Location:	<i>2007 LANDS- Existing Community/Protection Zone</i>
Property:	<i>Block 3101, Lots 3&amp;6; Block 3102, Lots 1&amp;3; Block 3103, Lots 1&amp;2</i>
Proposed Use:	<i>Residential housing with 13% affordable housing</i>
Nearest Waterway (Name):	<i>Haycock Brook, Pond Brook</i>
Wastewater:	<i>Proposed expansion of sewer service area served by Mountain View Wastewater Treatment Facility in Wayne Township</i>
Water:	<i>Municipal Water Utility: Oakland Water Department</i>

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This supplemental memorandum augments the Highlands Council staff recommendations, dated February 11, 2008, provided to the Natural Resources Committee (see attached).

### Overview and Procedural History

The above-captioned project is a proposed amendment to the Northeast Water Quality Management Plan (WQMP) through the Borough of Oakland Wastewater Management Plan (WMP) to allow for construction of the proposed Pinnacle Tract, a 209-unit residential development of which 28 are affordable housing on an approximately 84.5 acre plot on Block 3101, Lots 3 & 6; Block 3102, Lots 1 & 3; Block 3103, Lots 1 & 2 within Oakland Borough, Bergen County (Proposed Amendment).

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On June 3, 2005, the New Jersey Department of Environmental Protection (NJDEP) issued a determination that the project qualified for Exemption 17 of the Highlands Act (Affordable Housing) because the project is a major Highlands Development located within an area designated as Planning Area 1 or Planning Area 2 as of March 29, 2004, that on or before March 29, 2004 had been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. As such, the development is exempt from the Highlands Act but is still subject to NJDEP's Water Quality Management Planning Rules (N.J.A.C. 7:15) requiring an amendment to the WQMP and WMP, which is the subject of this review.

The Proposed Amendment was reviewed by NJDEP in accordance with Executive Order No. 109 (2000) and N.J.A.C. 7:15.<sup>1</sup> On October 15, 2007, the NJDEP provided public notice of the Proposed Amendment in the New Jersey Register and then extended the public comment period in a public notice dated February 19, 2008 (see 39 N.J.R. 4451(b) and 40 N.J.R. 892(a)). The Highlands Council was asked to provide recommendations in accordance with N.J.A.C. 7:38-1.1 and N.J.A.C. 7:15.

On February 14, 2008, the Natural Resources Committee considered the Proposed Amendment and heard testimony from the applicant and the public (see attached Chair Report). In accordance with the Council's resolution on WQMP Amendments (see attached Resolution 2007-18 specifying that the Committee shall review exempt projects subject to Council review), the Committee directed Council staff to prepare a recommendation letter to be sent to the NJDEP and allow the Council an opportunity seek a full Council review of the Proposed Amendment.

Specifically, the Committee authorized the Executive Director to draft a letter recommending that NJDEP not approve the Proposed Amendment unless it is modified to address the inconsistencies identified by Council staff. The Committee specified that given that the Proposed Amendment is exempt from the Highlands Act, the inconsistencies presented to NJDEP should be limited to those matters that may be appropriately addressed by NJDEP's jurisdiction under Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15. The inconsistencies identified by the Highlands Council staff include findings that the Proposed Amendment: 1) would include land uses that would alter or be detrimental to the water quality and habitat quality in and along riparian areas and open waters; 2) would result in alteration or disturbance of critical wildlife habitat for Barred Owl; 3) is located within a HUC14 subwatershed which has been identified as having a deficit of net water availability; and 4) should only be issued in compliance with the TMDL for the Ramapo River.

As noted during the Committee meeting, the Proposed Amendment was fully reviewed in terms of

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<sup>1</sup> Executive Order 109 specifies: "[u]ntil such time that the Water Quality Management Planning rules, currently set forth at N.J.A.C. 7:15, are repealed and replaced, the Department of Environmental Protection shall determine, consistent with its existing authority, including N.J.A.C. 7:15-5.18, what, if any, alternatives analyses must be conducted prior to the Department's making a final decision on an application for approval of a wastewater management plan or amendment thereto and, where applicable and consistent with its existing authority, an application for approval of a water quality management plan or amendment thereto, including, but not limited to, an evaluation of depletive and consumptive water use, detailed land use, environmental build-out and pollutant loading."

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consistency with the Final Draft Regional Master Plan (RMP). However, due to the fact that the project was deemed exempt from the Highlands Act, the issues of inconsistency which may be considered outside of NJDEP's jurisdiction under Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15, e.g. prime ground water recharge areas, were not included in the Council staff's proposed recommendations to NJDEP.

It is important to note that the Proposed Amendment was fully reviewed against the RMP because the Highlands Act exemption #17 issued by NJDEP does include termination provisions. The Highlands Act, at N.J.S.A. 13:20-28(a)17, specifies: "[t]he exemption provided pursuant to this paragraph shall expire if construction beyond site preparation does not commence within three years after receiving all final approvals required pursuant to the 'Municipal Land Use Law,' P.L.1975, c. 291 (C.40:55D-1 et seq.)." Accordingly, the full RMP review was completed in order to properly advise the applicant of potential inconsistencies should the exemption either expire or be terminated.

The Committee also directed the Council staff to review and report on any supplemental material received on the Proposed Amendment. On February 25, 2008, an attorney representing Pinnacle Communities submitted legal and technical comments in response to the issues raised during the Natural Resources Committee. The Council staff has reviewed this supplemental information and as a result of this review does not recommend any changes to the original staff recommendation.

The primary legal argument asserted by Pinnacle Communities is that the project has received an exemption determination from NJDEP and thus the Highlands Council's recommendations are inapplicable as a matter of law and should not bind NJDEP. This argument ignores the fact that the Council staff recommendations, dated February 11, 2008, and the review by the Natural Resources Committee specifically stated that the Proposed Amendment was deemed exempt and that any recommendations would be limited to issues within NJDEP's jurisdiction under Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15.

The Highlands Act, at N.J.S.A. 13:20-28(b) specifies: "[t]he exemptions provided in subsection a. of this section shall not be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances." Accordingly, the fact that the project has been deemed exempt from the Highlands Act does not obviate the requirement to comply with other existing requirements such as the Water Quality Planning Act. The NJDEP rules implementing the Water Quality Planning Act at N.J.A.C. 7:15-5.22(a) require consultation and consent for wastewater management plans and applicants for WQMPs must "seek comments from and offer to confer with" and seek written statements of consent, under N.J.A.C. 7:15-3.4, from governmental planning entities such as the Highlands Council. The requirement for a Highlands Council recommendation is based upon the Water Quality Planning Act rather than the Highlands Act.

The Highlands Council staff review of the Proposed Amendment identified the presence of environmentally sensitive lands whose development or alteration, as presently proposed, would be inconsistent with Executive Order 109 and NJDEP's WQMP rules at N.J.A.C. 7:15. The results of the Highlands Council's analysis of environmental quality data for the Resource Assessment of the Highlands Region indicate that the site fall within the Council's environmentally sensitive Protection Zone. The Highlands Council uses the best and most current information available to provide

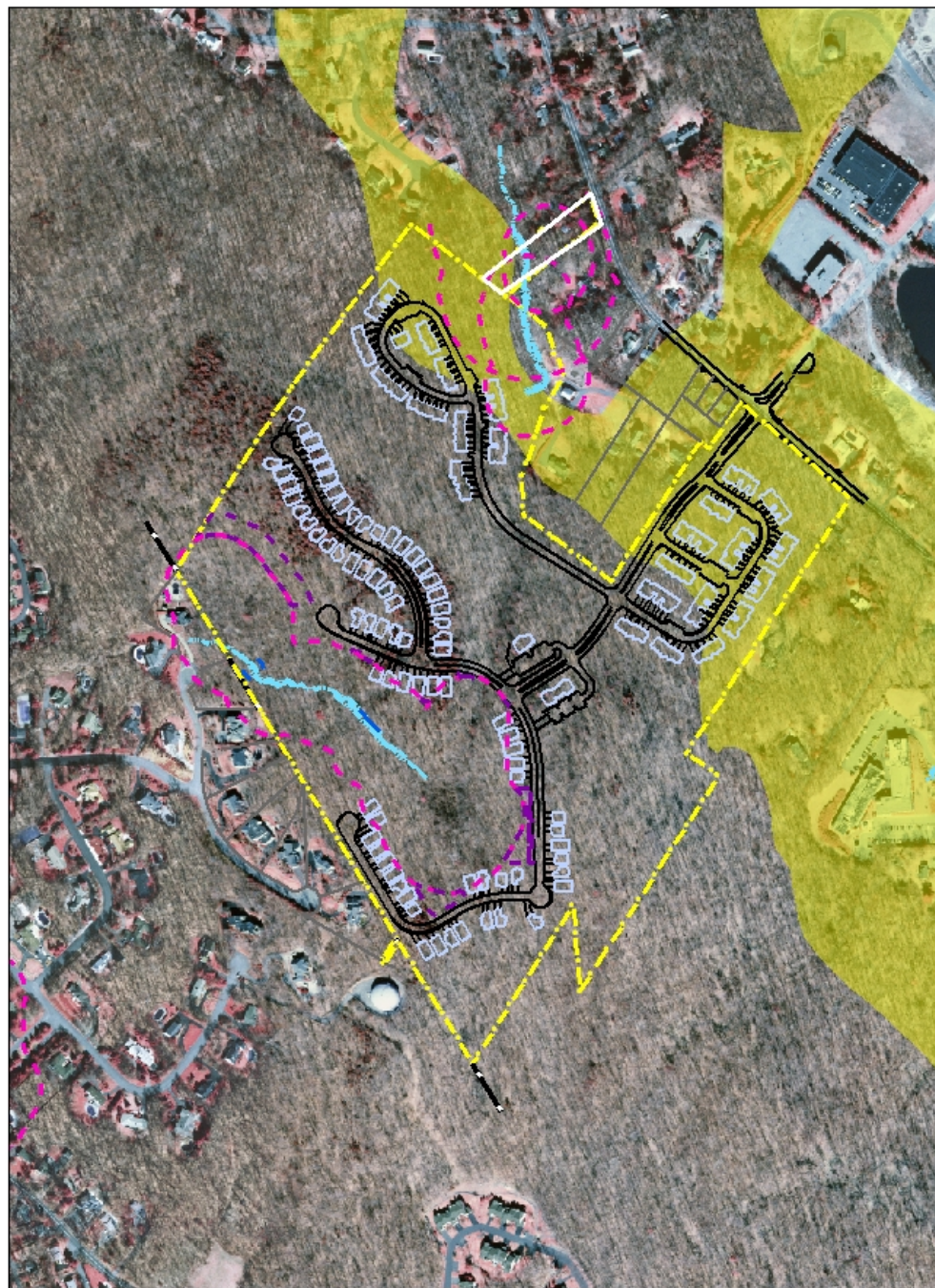


March 1, 2008

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recommendations to NJDEP on proposed WQMP amendments. While this project must be reviewed with deference as it is designed to provide affordable housing under a builder's remedy settlement, it is well settled under the *Mount Laurel* doctrine that the provision of affordable housing should not necessitate bad planning or the destruction of environmentally sensitive lands. The requirements of Executive Order 109 and the Water Quality Planning Act require proper planning to protect water quality and environmentally sensitive lands. While the Proposed Amendment is designed to provide affordable housing in accordance with the *Mount Laurel* doctrine, the present design of the project inadequately protects water quality and the site's environmentally sensitive lands. For the above reasons, the Highlands Council staff recommends that the conclusions of the Natural Resources Committee be approved by the full Highlands Council.

## Pinnacle Tract



### Legend

Important Soils

76506.666068673333330

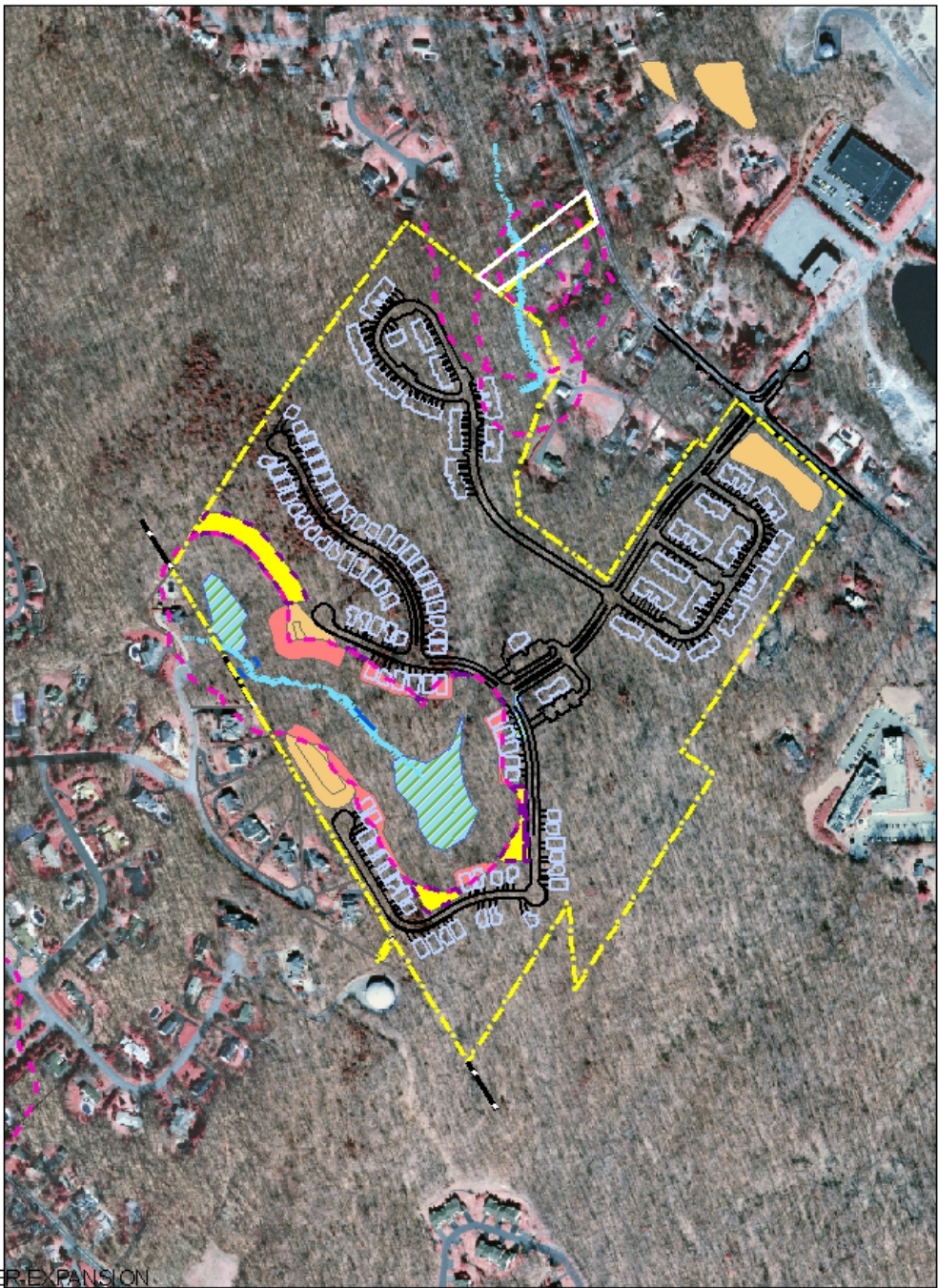
760

1,520

Feet



# Pinnacle Tract



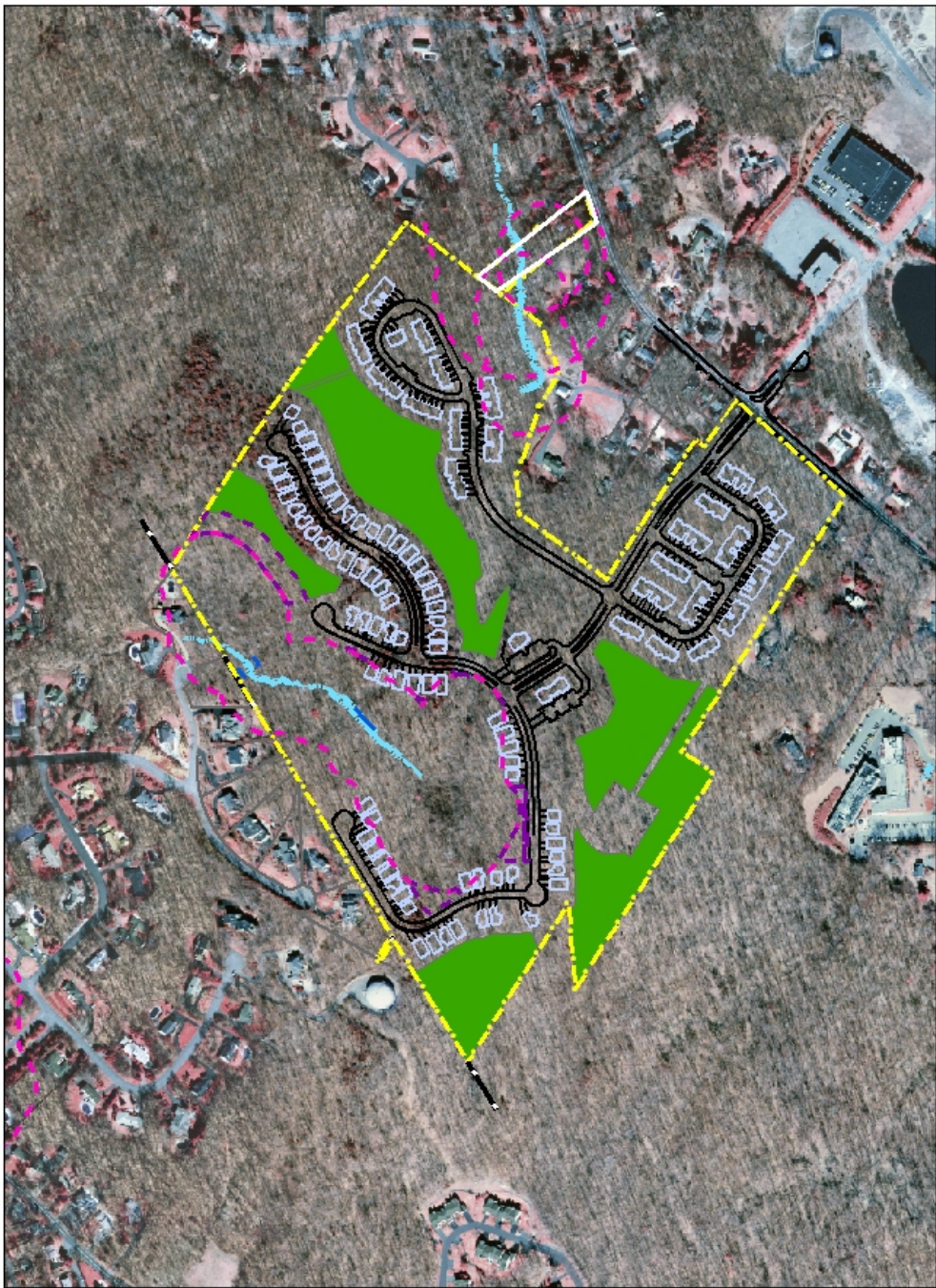
**Legend**

-  BUFFER-EXPANSION
-  BUFFER-REDUCTION
-  DETENSION-BASINS-AREA
-  WETLANDS





# Pinnacle Tract



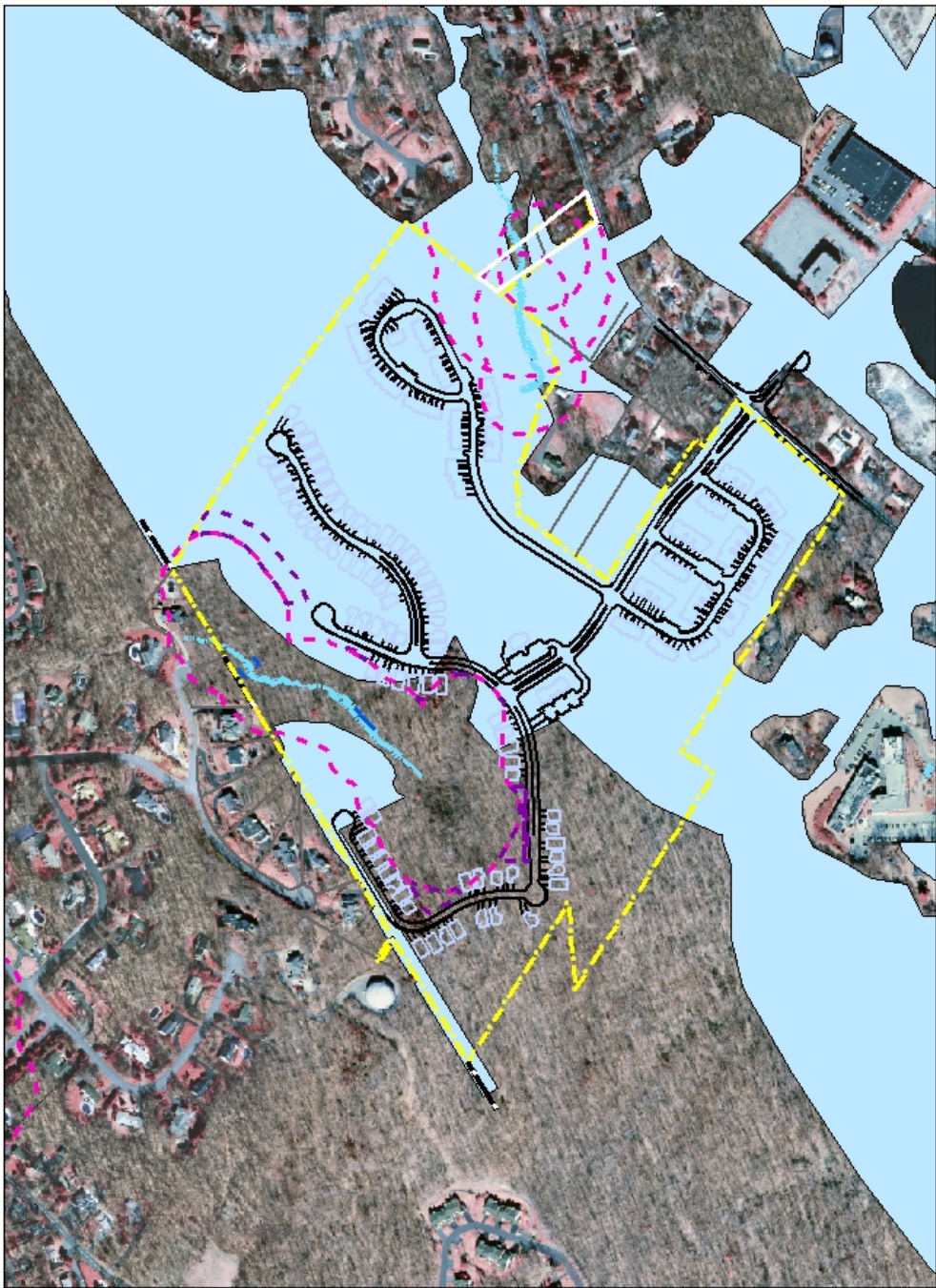
**Legend**

 CONSERVATION AREAS (A-D)






# Pinnacle Tract



**Legend**

 Ground Water Recharge





# Pinnacle Tract



**Legend**

- HighlandsClassHydrology\_300Buffer
- HighlandsClassWetlands\_300Buffer
- HighlandsClassOpenWaters\_300Buffer






# Pinnacle Tract



**Legend**

 Highlands Preservation Area



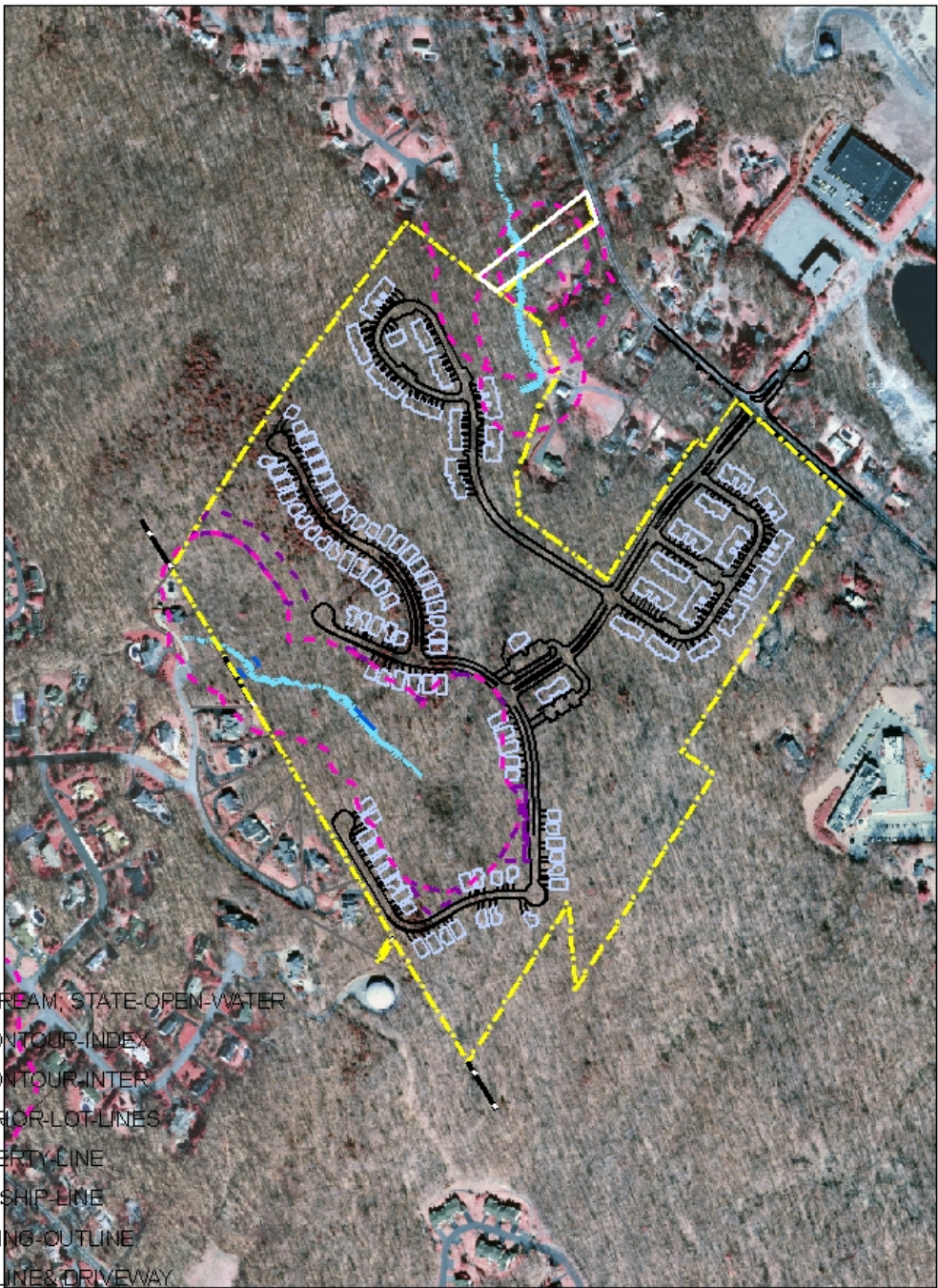


# Pinnacle Tract



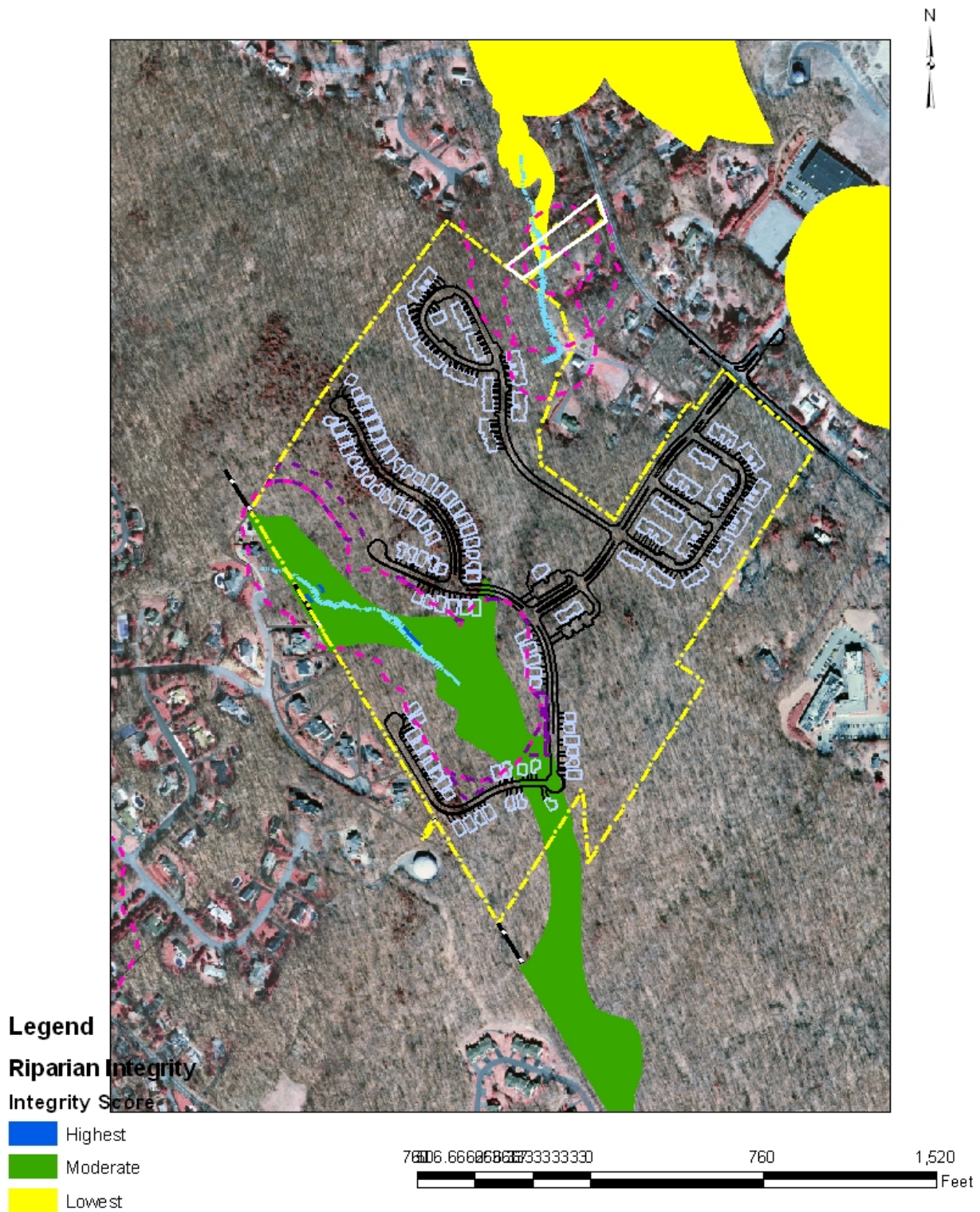
## Legend

- EX-STREAM, STATE-OPEN-WATER
- EX-CONTOUR-INDEX
- EX-CONTOUR-INTER
- EXTERIOR LOT LINES
- PROPERTY LINE
- TOWNSHIP LINE
- BUILDING-OUTLINE
- CURBLINE & DRIVEWAY
- 150FT-BUFFER
- BUFFER-EXPANSION
- STATE-OPEN-WATER-BUFFER



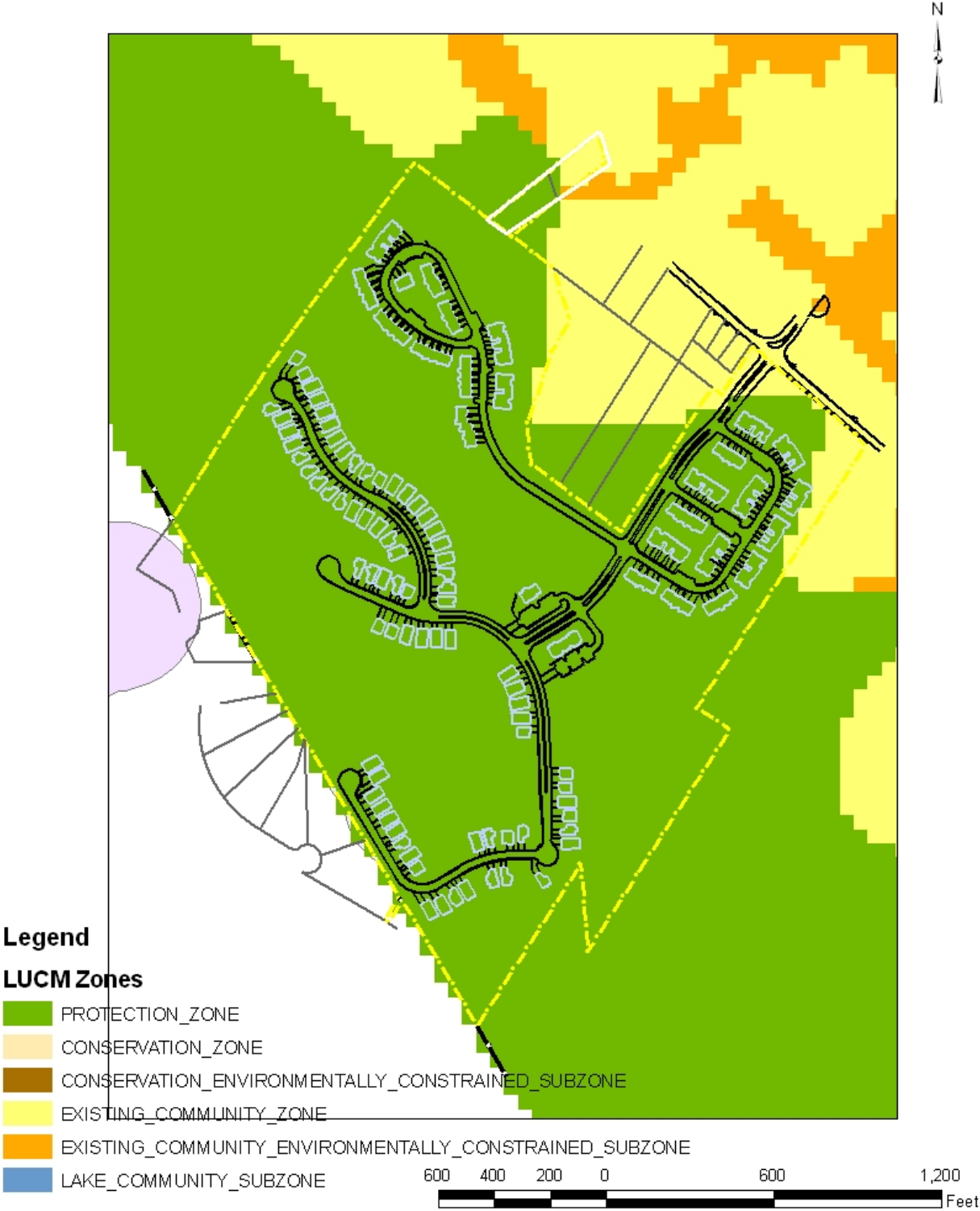


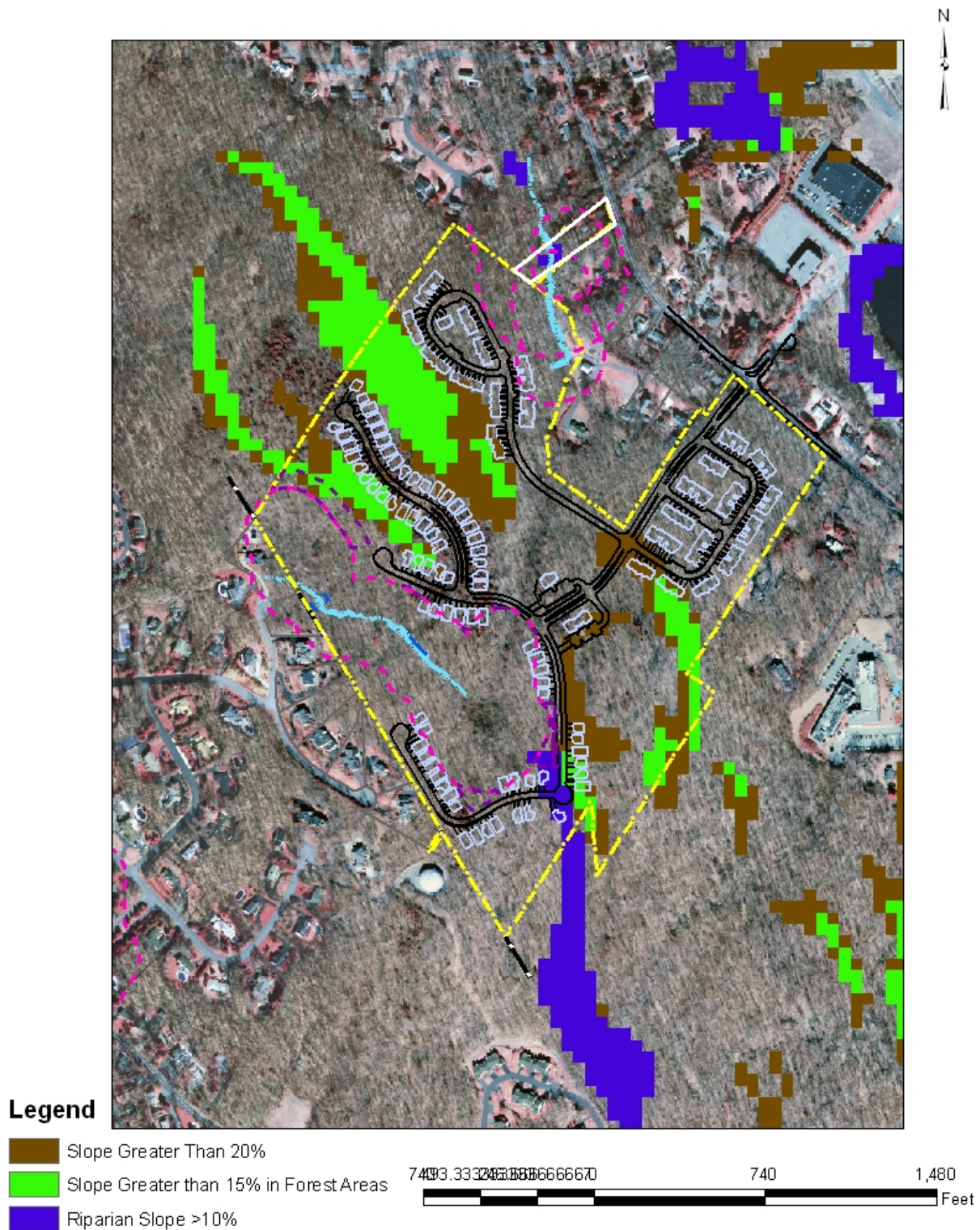
## Pinnacle Tract





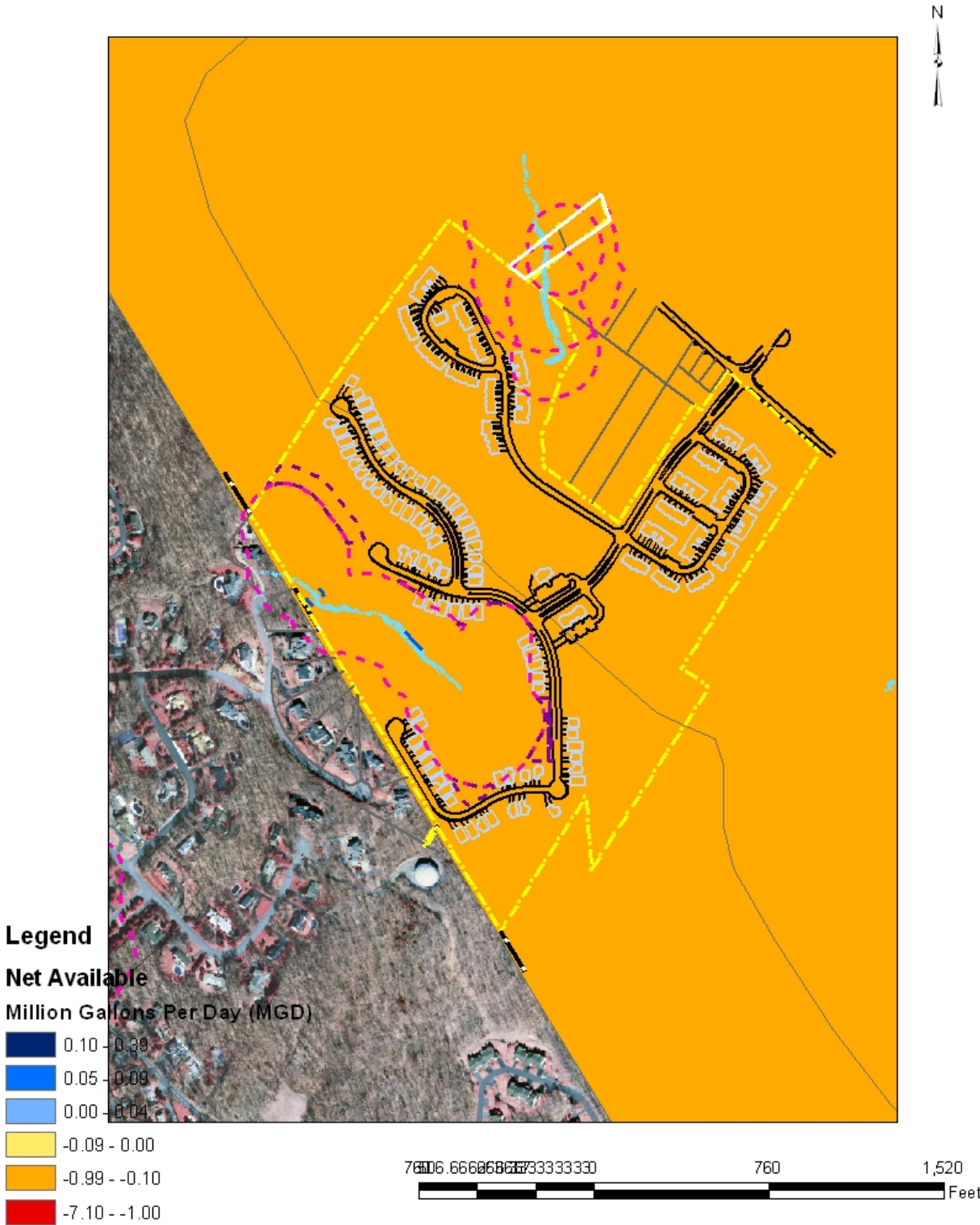
# Pinnacle Tract







# Pinnacle Tract







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 Highlands Water Protection and Planning Council  
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 Chester, New Jersey 07930-2322  
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 www.highlands.state.nj.us



**WQMP AMENDMENT**  
**REVIEW CHECKLIST**

PROJECT INFORMATION
<b>WQMP Name:</b> Parker/Circle/Southard Sanitary Sewer Improvements <b>Date:</b> March 3, 2008
<b>Sewer Service Area/Facility:</b> Musconetcong Sewerage Authority Water Pollution Control Plant
<b>WQMP:</b> Sussex County, Upper Raritan and Upper Delaware Water Quality Management Plan
<b>WMP Agency:</b> Musconetcong Sewage Authority Wastewater Management Plan
<b>Name of Facility:</b> Parker/Circle/Southard Sanitary Sewer Improvements <b>Name of Applicant:</b> Borough of Mt. Arlington <b>Sewer Service Area/Facility:</b> New <input type="checkbox"/> Existing <input checked="" type="checkbox"/> <i>If existing provide the following:</i> <b>Proposed Change in Service Area Wastewater Flow:</b> 14,325 GPD <b>NJPDES No:</b> NJ0027821 <b>Permit Discharge (MGD):</b> 4.3 MGD <b>Type of Discharge:</b> GW <input type="checkbox"/> SW <input checked="" type="checkbox"/> <b>Receiving Waterbody:</b> Musconetcong River <b>Total Proposed Service Area (acres):</b> ~2.3 acres <b>Lot and Block, if applicable:</b> 45 existing residential parcels located along Southard Road, Parker Road and Circle Drive in the Borough of Mt. Arlington and Roxbury Township <b>Description of Project:</b> The project would amend the Sussex County, Upper Raritan and Upper Delaware WQMPs to modify the Musconetcong Sewage Authority (MSA) WMP by expanding the sewer service area to include 45 existing developed residential parcels. The Borough of Mt. Arlington is requesting a recommendation from the Highlands Council to the NJDEP regarding a proposed Highlands Preservation Area Approval (HPAA) with waiver for the Parker/Circle/Southard Sanitary Sewer Improvement project on the basis that the project directly affects the protection of public health.  The Proposed Amendment would consist of the installation of roughly 3,000 linear feet of gravity and low pressure force mains. Wastewater from the existing residential area would be conveyed by new gravity collection mains and would connect to existing manholes. A low pressure force main would be utilized on a portion of Southard Street due to the fact that the closest existing sanitary sewer manhole is approximately ten feet higher in elevation than the lowest point of Southard Road. The existing sewer manholes connect to the Borough of Mt. Arlington's existing sanitary sewer collection system, which connects to the MSA sewage treatment plant (STP).  In an effort to assist in the prevention and remediation of the impaired Lake Hopatcong, the NJDEP has given a high priority to reserving/dedicating the MSA STP flow allocation to serve existing unsewered portions of the Lake Hopatcong Watershed. As a result of the findings contained in the Lake Hopatcong TMDL, the NJDEP determined that the proposed connection of the existing 45 aging septic systems would aid in the accomplishment of restoration of water quality and hence, satisfied the criteria for a waiver for the protection of public health and safety (N.J.A.C. 7:38-6.5).

WMP Name: Musconetcong Sewage Authority

Date: 03/03/08

Sewer Service Area/Facility: Parker/Circle/Southard Sanitary Improvements

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### LAND USE CAPABILITY MAP ZONES

**Sewer Service Areas Encroach Within Which LUCM Zone?** (Check all that apply.):

Protection Zone ☒

Conservation Zone ☐

Existing Community Zone ☒

Conservation Constrained Zone ☐

Existing Community Constrained Zone ☐

### HIGHLANDS ACT AREAS

**Project located in which Highlands Act Area?** (Check all that apply.):

Preservation Area ☒

Planning Area ☐

### TOPOGRAPHY

**Parcel Underlain by Limestone?** No

**Steep Slopes >20% in Any Areas?** NA

**Steep Slopes >15% in Forested Areas?** NA

**Steep Slopes >10% in Riparian in Undeveloped Lands?** NA

**Findings:** There is no new development footprint. The proposed activities would occur within existing developed residential parcels and roads.

**Policy statement:** n/a

**Recommendation:** No recommendation

### HIGHLANDS OPEN WATERS

**Parcel includes Highlands Open Waters Protection Area Buffer?** Yes

*If No, disregard remainder of Highlands Open Waters checklist.*

**Highlands Open Waters description:**

**Drainage HUCs Name and Number:** Lake Hopatcong 02040105150020

**Name of nearest waterway:** Unnamed tributary of Musconetcong River

**Open Waters Protection Areas within the Service Area:**

Streams ☒

Lakes & Ponds ☐

Wetlands ☐

**Highlands Open Waters category:**

Highlands Waters ☒

Special Waters ☐

Exceptional Waters ☐

Intermediate Waters ☐

**Watershed Value (Check one):**

High ☐

Medium ☐

Low ☒

**Findings:** Four of the developed parcels currently encroach into the Highlands Open Waters protection area buffers.

**Policy Statement:** Highlands Open Waters shall include a protection buffer of 300 feet from the edge of the Highlands Open Water feature. All development shall comply with buffer standards which provide for the protection of Highlands Open Waters reviewed on a site-specific basis during local

WMP Name: Musconetcong Sewage Authority

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development review and Highlands Project Review. (1D4)

Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38. (1D4b)

**Recommendation:** There should be no further development in the Highlands Open Waters protection area buffer. No development is proposed through this WQMP amendment.

### RIPARIAN AREA

**Parcel includes Riparian Area?**

Yes

*If No, disregard remainder of Riparian Area checklist.*

**Specific Riparian Area Features** (Check all that apply.):

Flood Prone Areas ☐ Waters ☒  
Riparian Soils ☐ Wetlands ☐  
Wildlife Corridor ☐

**Riparian Integrity Value** (Check one):

High ☐  
Medium ☒  
Low ☐

**Findings:** Four of the developed parcels currently encroach into the Riparian Area

**Policy Statement:** Limit alterations to existing natural vegetation or increases in impervious area within High and Moderate Integrity Riparian Areas to the minimum extent feasible in areas beyond the Highlands Open Water buffer requirements; protect the water quality of adjacent Highlands Open Water; and maintain or restore habitat value of the Riparian Area. (1D5b)

Implement Low Impact Development Best Management Practices for any development activity proposed within a Riparian Area, which minimize both alterations of natural vegetation and increases in impervious area, and provide for mitigation through restoration of impaired Riparian Areas in the same HUC14 subwatershed. (1D5c)

**Recommendation:** There should be no further development in the Riparian Area.

### FOREST

**Parcel within Forest Resource Area?**

Yes

**If yes to above, is there Encroachment into a Forest within Forest Resource Area?**

No

**Forest Indicators** (check all that apply):

Total Forest ☐  
Core Forest ☐  
Forest Patch ☐

**Forest Integrity Value** (check one):

High ☒  
Medium ☐  
Low ☐

**Findings:** The proposed project location is within the Forest Resource Area, but not into the forested portion of the Forest Resource Area (the project site consists of existing developed residential parcels and roads).

**Policy Statement:** n/a

**Recommendation:** No recommendation



WMP Name: Musconetcong Sewage Authority

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CRITICAL HABITAT							
Critical Habitat (Landscape 2-5)?							No
Significant Natural Area?							No
Vernal Habitat +1,000 ft?							No
Species of Concern:							
Landscape Rank:							
<p><b>Findings:</b> The proposed activities do not encroach upon sensitive environmental resources. The project location is bordered by critical habitat to the west, south and east but no disturbance is proposed.</p> <p><b>Policy Statement:</b> To prohibit, through Plan Conformance, local development review, and Highlands Project Review, the direct impact of new human development or expansion or increased intensity of existing development within Critical Wildlife Habitats, Significant Natural Areas, or within 1,000 feet of Vernal Pools (1F1).</p> <p>Prohibit alteration or disturbance of Critical Wildlife Habitat, Significant Natural Areas, and within 1,000 feet of Vernal Pools, except as necessary to protect public health and safety, or to provide for minimum practical use of in the absence of any alternative (1F5a).</p> <p>Require that any disturbance to a critical habitat feature include mitigation for all adverse modification and provide for no net loss of habitat value (1F5b).</p> <p><b>Recommendation:</b> The critical habitat area should be avoided during project construction activities.</p>							
AGRICULTURE							
Parcel within Agricultural Resource Area?							No
Important Farmland Soils?							No
<p><b>Findings:</b> n/a</p> <p><b>Policy Statement:</b> n/a</p> <p><b>Recommendation:</b> No recommendation</p>							
WATER QUALITY							
Parcel Prime Ground Water Recharge Area?							No
Parcel Wellhead Protection Area?							Yes
<p>If yes to above, check one box below:</p> <p>Tier 1 <input type="checkbox"/></p> <p>Tier 2 <input type="checkbox"/></p> <p>Tier 3 <input checked="" type="checkbox"/></p>							
<p><b>Drainage HUCs Name and Number:</b> Lake Hopatcong 02040105150020</p> <p><b>Name of nearest waterways:</b> Lake Hopatcong</p> <p><b>SWQS Classification:</b> FW2-TM</p> <p><b>Description of Impairments, or TMDL:</b> TMDLs for phosphorous and fecal coliform</p>							
<p><b>Findings:</b> In June 2003, the NJDEP established TMDLs for phosphorous for four lakes, including Lake Hopatcong. The TMDL study attributes approximately 32% of the Lake Hopatcong total phosphorous load to septic systems in the watershed areas around the lake, including Mt. Arlington.</p> <p>In September 2007, the NJDEP also established TMDLs for pathogens for eleven lakes including the Lake Hopatcong watershed (specifically, fecal coliform in Lake Hopatcong). The TMDL states that failing septic systems can be a source of fecal coliform. The construction of collection systems to</p>							

WMP Name: Musconetcong Sewage Authority

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connect the unsewered existing development within the municipalities of the TMDL study area is consistent with the TMDL reports and is recommended by NJDEP. In an effort to assist in the prevention and remediation of the impaired Lake Hopatcong, the NJDEP has given a high priority to reserving/dedicating the MSA STP flow allocation to serve existing unsewered portions of the Lake Hopatcong Watershed. As a result of the findings contained in the Lake Hopatcong TMDL, the NJDEP determined that the proposed connection of the existing 45 aging septic systems would aid in the accomplishment of restoration of water quality and hence, satisfied the criteria for a waiver for the protection of public health and safety (N.J.A.C. 7:38-6.5).

The septic systems that would be removed are within Tier 3 of a WHPA, which will reduce the pollutant loading to the affected well.

**Policy Statement:** To identify surface and ground water resources currently impaired or at risk of impairment, and in need of protection, restoration or enhancement. (2F1)

To coordinate with NJDEP and other agencies to identify impairments and implement improved regulatory actions and management practices that will also support the water quality goals of the Highlands Act. (2F5)

To remediate the pollutant sources associated with existing or historic land uses in conjunction with redevelopment. (2F6)

To determine where water quality improvements are necessary or beneficial for the improvement of water availability, develop watershed-based plans to achieve such improvements such as restoration techniques including disconnection and reduction of existing impervious surfaces, develop implementation mechanisms, and implement these plans. (2G4)

**Recommendation:** The proposed connection of the existing 45 aging septic systems would address a documented threat to public health, and would aid in the remediation of pollutant sources to Lake Hopatcong, which is consistent with the water quality goals, policies and objectives of the RMP.

#### WATER CAPACITY

**Site:** Parker/Circle/Southard Sanitary Sewer Improvements

**Potable Water Supply:** n/a

**Domestic?** Yes

**If Domestic, source HUC:** Lake Hopatcong 02040105150020

**Public Community Water System?** No

**If PCWS, Name of Facility:** n/a

**PCWS ID No.?** n/a

<u>Source Water HUC:</u>	<u>Net Availability (MGD)</u>	<u>Conditional Availability (MGD)</u>
02040105150020		0.0541

**Total Projected Water Demand (MGD):** ~0.0113 (0.008 MGD increased water loss)

**HUC Constraint:**

**Current Deficit Area** ☒

**Existing Constrained Area** ☒

**Findings:** The proposed connection of the existing 45 aging septic systems to the existing Musconetcong Sewage Authority system will result in a conversion of the water use from consumptive to depletive, as the MSA facility discharge is downstream of Lake Hopatcong but within the same HUC11 watershed. The increased impact to the source subwatershed is approximately 8000 gallons per day, or 0.008 MGD. The proposed depletive water use is within a Current Deficit Area.

WMP Name: Musconetcong Sewage Authority

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**Policy Statements:** Proposed increases in water use, including consumptive or depletive water uses, within a Current Deficit Area or an area where the proposed increase would cause the HUC14 subwatershed to become a Current Deficit Area shall provide mitigation equal to 125% of the proposed new consumptive or depletive water uses 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. (2B4b).

A Current Deficit Area subwatershed that is primarily within the Existing Community Zone shall be assigned a Conditional Net Water Availability of 2 percent of Ground Water Capacity, based on the Low Flow Margin Method, conditioned upon prior implementation or commitment for implementation of the 125% mitigation requirement in Objective 2B4b. (2B5a).

A Current Deficit Area subwatershed that is primarily within the Protection Zone or Conservation Zone shall be assigned a Conditional Net Water Availability of 1 percent of Ground Water Capacity, based on the Low Flow Margin Method, conditioned upon prior implementation or commitment for implementation of the 125% mitigation requirement in Objective 2B4b. (2B5b).

**Recommendation:** This application is eligible for a public health and safety waiver (see below), which is supported by RMP policies. While it will result in increased depletive water uses in a Current Deficit Area, this is a necessary and limited impact of the waiver and therefore is acceptable under the Highlands Act. However, Mt. Arlington, as part of mandatory Plan Conformance for the Preservation Area, will be required to develop a Water Management Plan for this subwatershed, and will at that time address deficit reduction needs including mitigation equal to 125% of the proposed new depletive water uses (10,000 gallons per day) within the same HUC14 subwatershed.

#### WASTEWATER CAPACITY

**Name of Facility:** Musconetcong Sewage Authority Water Pollution Control Plant

**NJPDES Permit Number:** NJ0027821

**Projected Flow (GPD):** 14,325 GPD

**HDSF Facility?** Yes

**HDSF Available Capacity (MGD):** 4.3 MGD

**Subject to Allocation Agreement?** UNK

**Allocating Capacity:**

**Extent of HDSF Service Area Included in WMP:** Full ☒ Partial ☐

**Wastewater Treatment Facility:**

<u>New:</u>				<u>Wastewater Discharge Flow (MGD)</u>	
Individual Septic:	Existing	<input type="checkbox"/>	Proposed	<input type="checkbox"/>	Existing: Future:
NJPDES-DGW:	Existing	<input type="checkbox"/>	Proposed	<input type="checkbox"/>	Existing: Future:
NJPDES-DSW:	Existing	<input checked="" type="checkbox"/>	Proposed	<input type="checkbox"/>	Existing: 4.3MGD Future:

**Findings:** The project will connect into the Musconetcong Sewerage Authority STP collection system, which is an existing HDSF. While the Highlands Act revokes designated sewer service areas for which wastewater collection systems have not been installed on the date of enactment of the Highlands Act into the Preservation Area, the NJDEP has determined that the proposed connection of the existing 45 aging septic systems satisfied the criteria for a waiver for the protection of public health and safety and would aid in the accomplishment of restoration of water quality. The area is immediately adjacent to the Existing Area Served for MSA.

**Policy Statement:** The Highlands Act revokes designated sewer service areas for which wastewater



WMP Name: Musconetcong Sewage Authority

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collection systems have not been installed on the date of enactment of the Highlands Act into the Preservation Area except if necessary to serve development in the Preservation Area that is exempt (2I1).

Prohibit new, expanded, or extended wastewater collection or treatment outside of Existing Areas Served (in the Protection and Conservation Zones) unless they are shown to be necessary for and are approved by the Highlands Council to address documented threat to public health and safety where no alternative is feasible, to serve a Highlands Redevelopment Area, or cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources (2K3b).

Allow the expansion or creation of wastewater collection systems beyond Existing Areas Served to serve lands which are appropriate for infill or redevelopment, or to serve areas if they are shown to be necessary for and are approved by the Highlands Council to address a documented threat to public health and safety where no alternative is feasible, to serve cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources (2K4c)/

**Recommendation:** Because the proposed project would serve existing public health and safety needs and would serve to correct existing environmental degradation (and it is not intended or designed to support future development), the proposed action is consistent with the wastewater capacity goals, policies, and objectives of the RMP.

#### HISTORIC, ARCHAEOLOGICAL AND SCENIC

##### Presence of Absence of Resources:

Highlands Historic District Polygons	Absence
Highlands Historic Properties Polygons	Absence
Highlands Historic Property Points	Absence
Archaeological Grids	Absence
Highlands Scenic Resource Inventory	Absence

##### Description of Resources:

**Findings:** Historic, archaeological, and scenic resources are not located onsite.

**Policy Statement:** n/a

**Recommendation:** No recommendation

#### CONCLUSIONS AND RECOMMENDATIONS

The staff finds that the proposed project is consistent with the goals, policies, and objectives of the Final Draft RMP. Further, because the proposed project would serve existing public health and safety needs, would serve to correct existing environmental degradation (and it is not intended or designed to support future development), and would not encroach upon sensitive environmental resources, the Council staff recommends that the Highlands Council authorize the issuance of a letter stating that the Proposed Amendment and HPAA waiver request is consistent with the Final Draft RMP.



JON S. CORZINE  
Governor

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JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

## MEMORANDUM

To: Highlands Water Protection and Planning Council

From: Eileen Swan, Executive Director  
Dan Van Abs, Senior Director of Planning and Science  
Christine Ross, Senior Resource Management Specialist

Date: February 29, 2008

Re: Application Type:	<i>Proposed Amendment the Sussex County, Upper Raritan and Upper Delaware WQMPs and HPAA with Waiver</i>
Name:	<i>Parker/ Circle/ Southard Sanitary Sewer Improvements</i>
Municipality:	<i>Borough of Mt. Arlington and Township of Roxbury</i>
County:	<i>Morris</i>
Highlands Act Area:	<i>Preservation Area</i>
LUCM Location:	<i>Existing Community Zone</i>
Property:	<i>45 existing residential parcels located along Southard Road, Parker Road and Circle Drive</i>
Proposed Project:	<i>Proposed Sanitary Sewer Improvements to Protect Public Health</i>
Nearest Waterway (Name):	<i>Lake Hopatcong</i>
Wastewater:	<i>Musconetcong Sewerage Authority Water Pollution Control Plant</i>

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### **Project Description**

The above-captioned project would amend the Sussex County, Upper Raritan and Upper Delaware Water Quality Management Plans (WQMPs) to modify the Musconetcong Sewage Authority (MSA) Wastewater Management Plan (WMP) by expanding the sewer service area to include 45 existing developed residential parcels (44 homes and two apartment buildings) located along Southard Road, Parker Road, and Circle Drive within the Borough of Mount Arlington and Roxbury Township, Morris County (Proposed Amendment). These homes are on very small lots, of roughly 1/8 acre. The Mount Arlington portion of the project, with 38 homes, is 2.294 acres. The Borough of Mt. Arlington is requesting a recommendation from the Highlands Council to the NJDEP regarding a proposed Highlands Preservation Area Approval (HPAA) with waiver for the Parker/Circle/Southard Sanitary Sewer Improvement project on the basis that the project directly

affects the protection of public health (Highlands Act Rules at N.J.A.C. 7:38-6.5, waiver for the protection of public health and safety).

The Proposed Amendment would consist of the installation of 2,169 linear feet of 8-inch diameter polyvinyl chloride (PVC) pipe gravity main, 276 linear feet of 8-inch diameter ductile iron pipe (DIP) gravity main and 502 linear feet of 2-inch diameter PVC low pressure force main. Wastewater from the existing residential area would be conveyed by 8-inch gravity collection mains proposed at each street and would connect to existing manholes. A 2-inch diameter PVC low pressure force main would be utilized on a portion of Southard Street due to the fact that the closest existing sanitary sewer manhole is approximately ten feet higher in elevation than the lowest point of Southard Road. The existing sewer manholes connect via 8-inch diameter PVC pipes in each manhole to the Borough of Mt. Arlington's existing sanitary sewer collection system, which connects to the MSA sewage treatment plant (STP).

The project site is located in the Preservation Area and within the Existing Community Zone (ECZ) of the Land Use Capability Zone Map. The total projected wastewater flow due to the expansion of the sewer service area is 14,325 gallons per day (gpd). No expansion to the MSA STP is proposed to accommodate the projected increase from the expanded service area. The expanded sewer service area only would include the existing developed lots.

## **Overview and Procedural History**

The location of the 45 existing developed residential parcels was previously in an approved proposed sewer service area that had been rescinded as a result of the Highlands Act, which immediately withdrew previously approved sewer service areas in the Preservation Area where wastewater collection systems had not been installed as of August 10, 2004. On March 7, 2006, the NJDEP issued a Highlands Applicability Determination (HAD) and Water Quality Management Plan Consistency Determination for the project. At that time, the NJDEP determined that the proposed activity for the connection of existing single family dwellings to municipal potable water supply and sewer by means of conveyance infrastructure to be installed during the reconstruction and improvements to existing roadways to be *Not Exempt* from the Highlands Act and *Inconsistent* with the areawide WQMPs.

As a result of the NJDEP determination, the applicant (the Borough of Mt. Arlington) pursued approvals for the proposed project activity through the HPAA and waiver process through a formal request dated September 18, 2006. The application indicated that the basis for the waiver was that the proposed improvements, which at that time include water main extensions, were necessary to protect public health and safety pursuant to N.J.A.C. 7:38-6.5 of the NJDEP's Highlands Rules. The NJDEP concluded that the project did not satisfy the criteria for grant of a health and safety waiver due largely to the fact that it was not verified by the Mt. Arlington Borough Health Department that existing wells were contaminated. However, Mt. Arlington did submit information to the NJDEP indicating that the individual subsurface sewage disposal systems serving the existing residential dwellings posed a high potential for failure. Further, in June 2003, the NJDEP established Total Maximum Daily Loads (TMDLs) for phosphorous for four lakes, including Lake Hopatcong. The TMDL study attributes approximately 32% of the Lake Hopatcong total phosphorous load to septic systems in the watershed areas around the lake, including Mt. Arlington.



In September 2007, the NJDEP also established TMDLs for pathogens for eleven lakes including the Lake Hopatcong watershed (specifically, fecal coliform in Lake Hopatcong). The TMDL states that failing septic systems can be a source of fecal coliform. The construction of collection systems to connect the unsewered existing development within the municipalities of the TMDL study area is consistent with the TMDL reports and is recommended by NJDEP. In an effort to assist in the prevention and remediation of the impaired Lake Hopatcong, the NJDEP has given a high priority to reserving/dedicating the MSA STP flow allocation to serve existing unsewered portions of the Lake Hopatcong Watershed. As a result of the findings contained in the Lake Hopatcong TMDL, the NJDEP determined that the proposed connection of the existing 45 aging septic systems would aid in the accomplishment of restoration of water quality and hence, satisfied the criteria for a waiver for the protection of public health and safety (N.J.A.C. 7:38-6.5). Public notice of the Proposed Amendment was published in the New Jersey Register on February 4, 2008 (See 40 N.J. Reg. 811(a)).

### **Findings and Recommendation**

The proposed project was reviewed against the Existing Community Zone policies of the Final Draft Regional Master Plan (RMP). The proposed project is consistent with Policy 2K4, Objective 2K4c (pg. 139) "Allow the expansion or creation of wastewater collection systems beyond Existing Areas Served to serve lands which are appropriate for infill or redevelopment, or to serve areas if they are shown to be necessary for and are approved by the Highlands Council to address a documented threat to public health and safety where no alternative is feasible, to serve cluster development, or to provide for minimum practical use in the absence of any alternative through issuance of a waiver by NJDEP or the Highlands Council, and will maximize the protection of sensitive environmental resources."

With respect to sensitive environment resources, the proposed project location encroaches into the Forest Resource Area, but not into the forested portion of the Forest Resource Area (the project site consists of existing developed residential parcels and roads). The proposed activities do not encroach upon sensitive environmental resources. The project location is bordered by critical habitat to the west, south and east. The critical habitat area should be avoided during project construction activities.

The staff finds that the proposed project is consistent with the goals, policies, and objectives of the Final Draft RMP. Further, because the proposed project would serve existing public health and safety needs, would serve to correct existing environmental degradation (and it is not intended or designed to support future development), and would not encroach upon sensitive environmental resources, the Council staff recommends that the Highlands Council authorize the issuance of a letter stating that the Proposed Amendment and HPAA waiver request is consistent with the Final Draft RMP.

# Mount Arlington- LUCM



## Legend

- Roads
- Highland's Parcel
- LUCM\_V2b\_FINAL\_GRID
- LUCM\_COMPOSITE
- PROTECTION\_20\_NE
- CONSERVATION\_20\_NE
- CONSERVATION\_ENVIRONMENTALLY\_RESTRAINED\_20\_NE
- EXISTING\_COMMUNITY\_20\_NE
- EXISTING\_COMMUNITY\_ENVIRONMENTALLY\_RESTRAINED\_20\_NE
- LAKE\_COMMUNITY\_20\_NE

250 0 250 500 Feet



# Mount Arlington- Preservation Area



## Legend

- Roads
- HighlandsParcel
- HighlandsPreservationArea



# Mount Arlington- Open Water Buffers



240 0 240 480 Feet

## Legend

- Roads
- Highlands Parcel
- Streams
- Wetlands
- Highlands ClassHydrology\_300 Buffer
- Highlands ClassWetlands\_300 Buffer
- Highlands ClassOpenWaters\_300 Buffer



# Mount Arlington- Wastewater Service Area



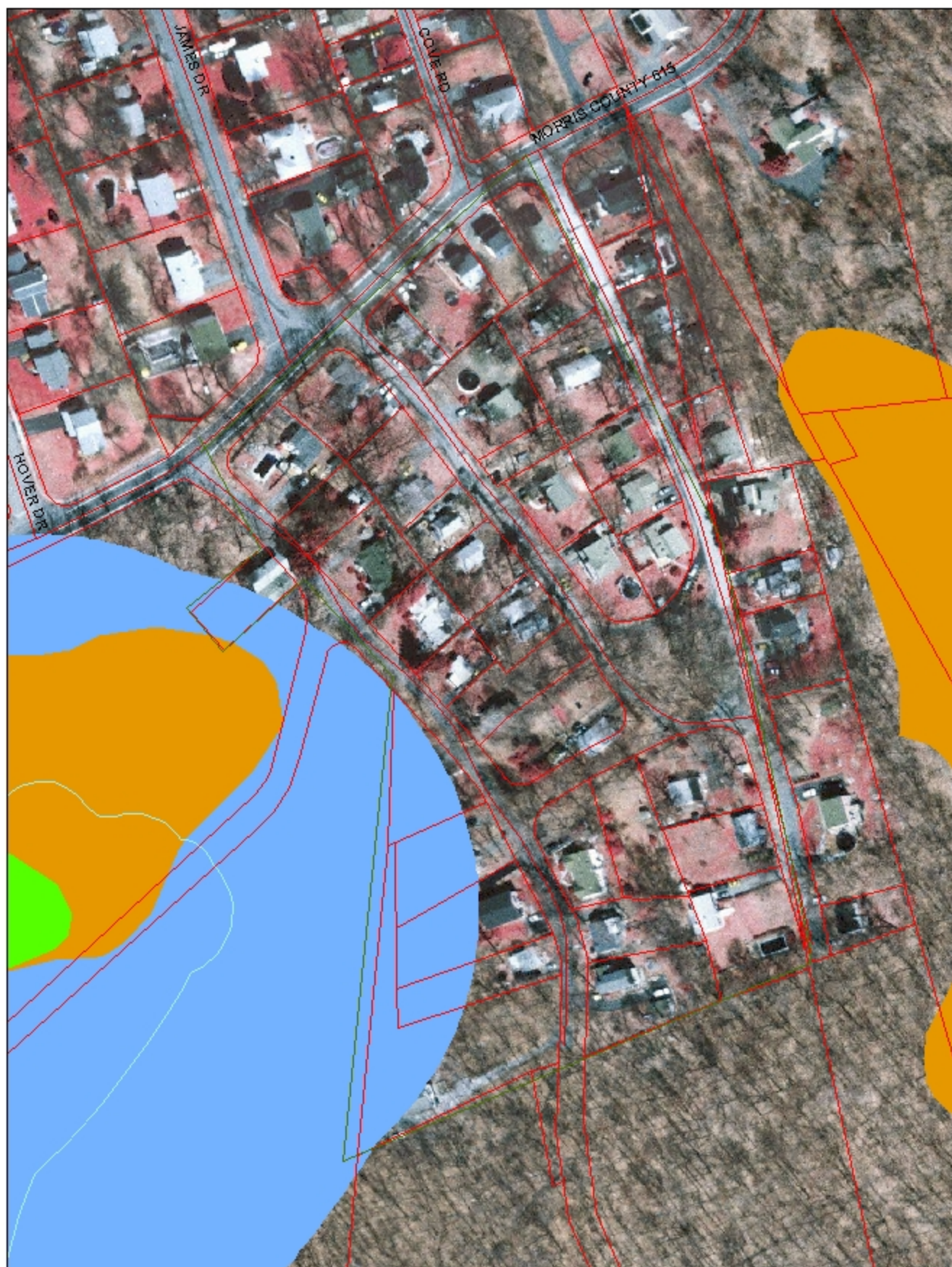
230 0 230 460  
Feet

## Legend

- Roads
- Highlands Parcel
- Existing Service Area - All Facilities



# Mount Arlington- Riparian Features



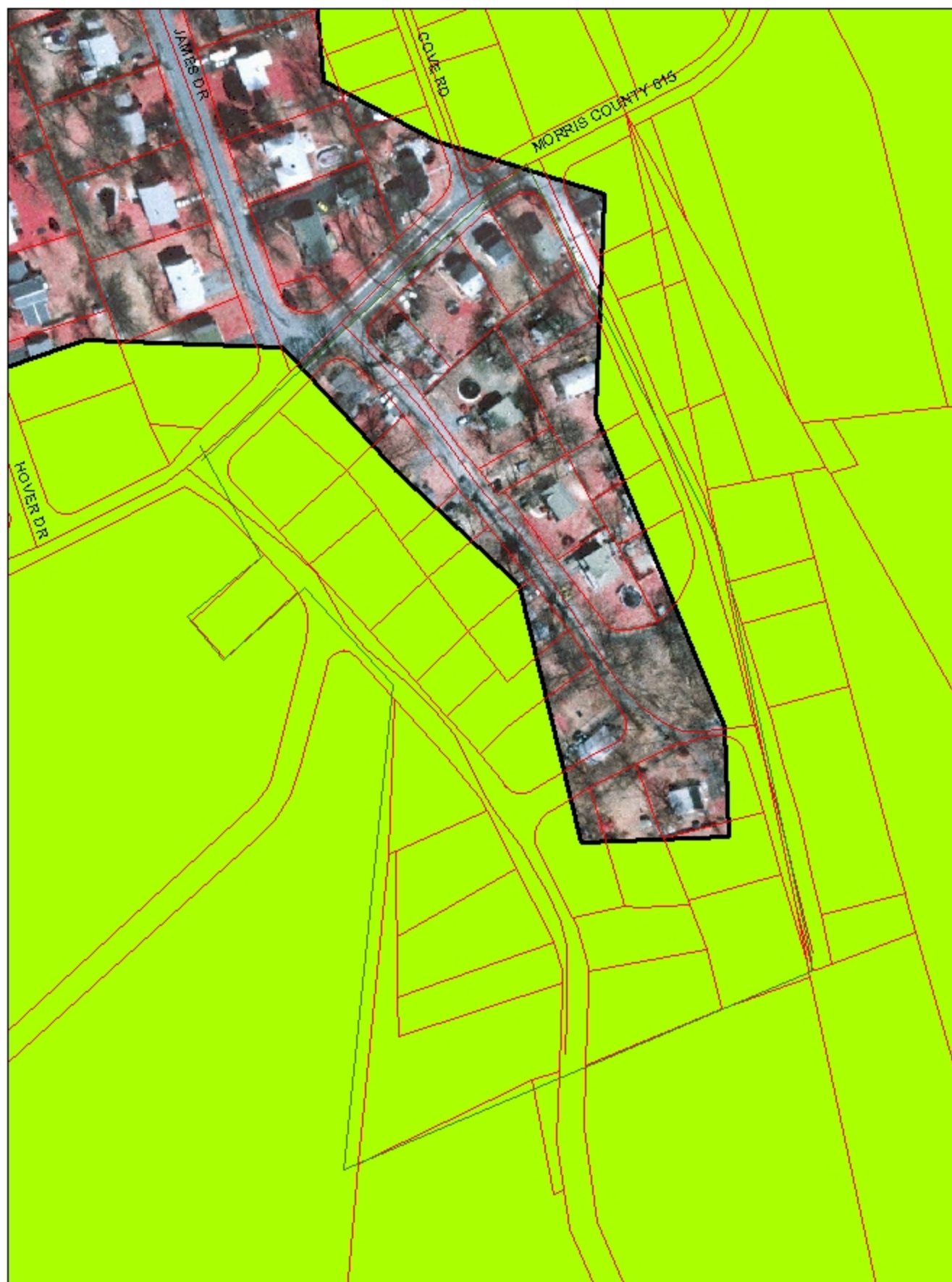
## Legend

- Roads
- Highlands Phase I
- Streams
- Wetlands
- Hydroic
- Streams

220 0 220 440 Feet



# Mount Arlington- Forest Resource Area



## Legend

- Roads
- Highlands Parcel
- Forest Resource Area

# Mount Arlington- Groundwater Recharge Areas



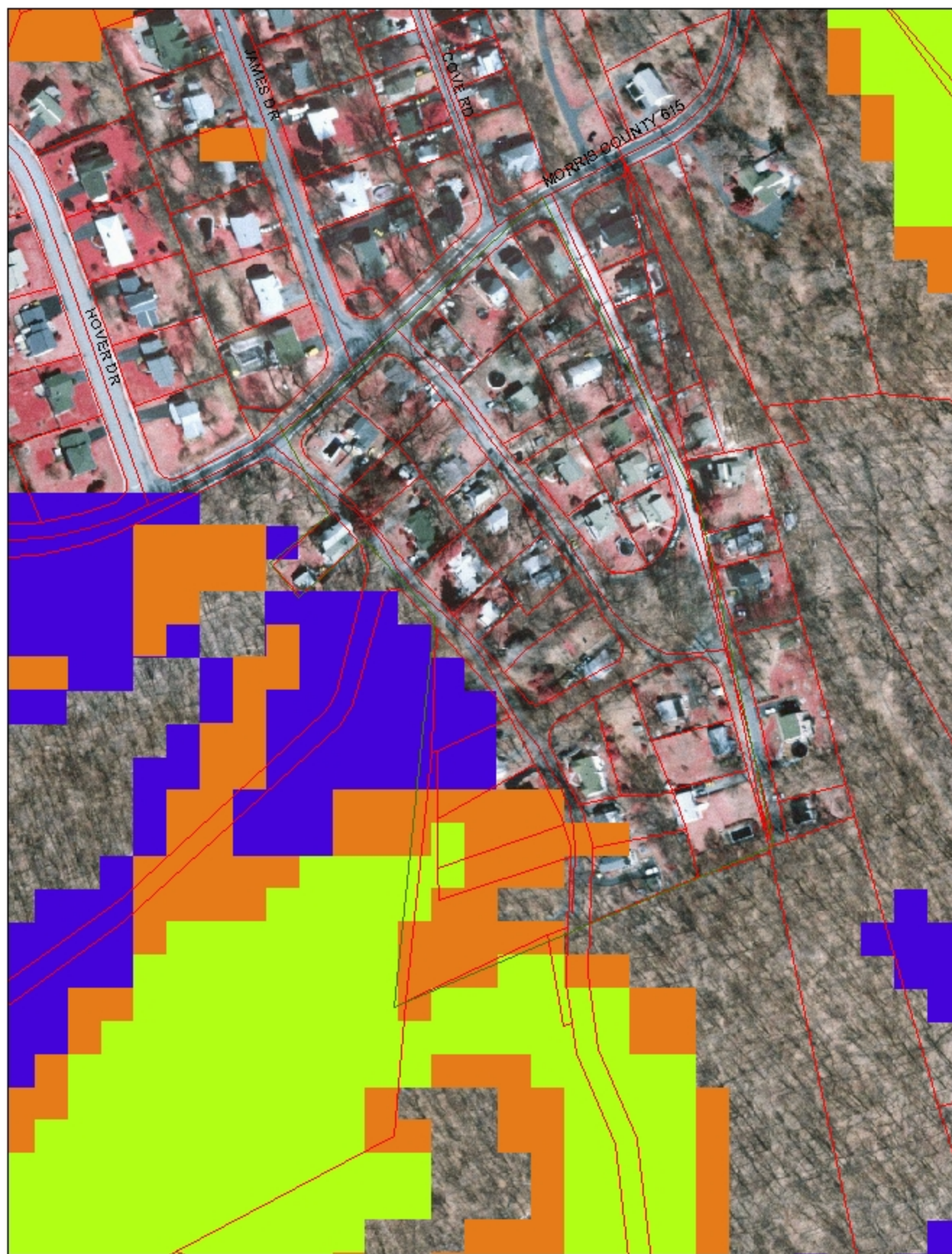
230 0 230 460 Feet

## Legend

- Roads
- HighlandsParcel
- RECHARGE



# Mount Arlington- Steep Slopes



## Legend

- Roads
- Highlands Parcel
- Slope Greater Than 20 %
- Slope Greater Than 15 %
- 0
- 1

250 0 250 500 Feet

# Mount Arlington- Well Head Protection Area



240 0 240 480 Feet

## Legend

- Roads
- HighlandsParcel
- tier1
- tier2
- tier3



# Mount Arlington- Water Availability



## Legend

- Roads
- Highlands Parcel
- Next Gen Avail
- Million Gallons Per Day (MG D)
- 0.10 - 0.39
- 0.05 - 0.09
- 0.00 - 0.04
- 0.09 - 0.00
- 0.99 - -0.10
- 7.10 - -1.00