

§ 230-6.2.1. Findings.

- A. Highlands Open Waters (Exhibit 3)¹ include all springs, streams (including intermittent streams), wetlands and bodies of surface water, whether natural or artificial (excluding swimming pools), located wholly or partially within the boundaries of the Highlands Area. Highlands Open Waters contribute to the water resources of the Highlands Region, and ultimately to the water supply of millions of New Jersey citizens. They are essential to the ecologic function of the plant and animal communities of the Highlands Area that depend upon them for survival. Highlands Open Waters are also an important physical feature of the Township, contributing to its character, aesthetics, history and development, and to its recreational opportunities.
- B. Protection of Highlands Open Waters is vital not only to the municipality, but to the Highlands Region and the State of New Jersey. The provision or preservation/enhancement of buffer areas adjacent to Highlands Open Waters is an integral component to ensuring such protection. Key functional values that buffers provide or contribute to include but are not limited to: habitat for flora and fauna, stormwater and flood water retention and filtration, water quality protection, temperature moderation, aquatic ecosystem integrity and channel integrity. Highlands Riparian Areas (Exhibit 4)² are lands associated with and bordering on Highlands Open Waters, often extending beyond Highlands Open Water buffers. These lands are likewise essential to providing critical hydrologic, ecologic and pollutant attenuation functions for Highlands Open Waters. Riparian areas moderate fluctuations in water temperature, help maintain groundwater recharge and stream base flow, stabilize stream banks, and provide flood storage areas. During high flow or overland runoff events, riparian areas reduce erosion and sediment loads to surface water and remove excess nutrients and contaminants from floodwater. Riparian areas also provide habitat for a variety of animal species and support terrestrial and aquatic food webs through deposition of woody debris.
- C. It is in the interest of the local community, the Highlands Region, and the State of New Jersey that the Highlands Open Waters of the Township Highlands Area, including associated buffers and Riparian Areas, receive the highest level of protection possible. The map of Highlands Riparian Areas (Exhibit 4)³ includes all

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Highlands Open Waters and associated flood-prone areas, riparian soils and wildlife corridors.

§ 230-6.2.2. Highlands Open Waters protection buffer.

All Highlands Open Waters shall include a minimum three-hundred-foot-wide protection buffer, as measured from the edge of the discernible bank of the Highlands Open Waters feature, or from the center line where no discernible bank exists. These buffers are included in the map of Highlands Open Waters at Exhibit 3⁴ with respect to streams, rivers, ponds, lakes and reservoirs. With respect to wetlands and other Highlands Open Waters features not mapped in Exhibit 3 (e.g., seeps, springs), each shall include a three-hundred-foot-wide protection buffer measured from: for the Planning Area, a delineated wetlands line described in a Letter of Interpretation (LOI), or from a field-delineated boundary line for other features; or for the Preservation Area, the delineated limits of the feature, as indicated by a Highlands Resource Area Determination issued by the NJDEP.

§ 230-6.2.3. Highlands Open Waters buffer standards.

Highlands Open Waters buffers shall be maintained in their undisturbed or preexisting condition, unless a disturbance is approved in accordance with the provisions of this section.

- A. Preexisting structures or improvements. Any lawfully preexisting structure or improvement located within a Highlands Open Waters protection buffer area as of the effective date of this part may remain and be maintained or rehabilitated, provided that the existing area of disturbance attributed to or associated with such structure or improvement shall not be increased.
- B. Agricultural and horticultural land uses. For purposes of this section, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be included in any assessment of "previously disturbed" buffer areas with regard to proposals for nonagricultural development.
- C. Approvals subject to outside agency approvals. Approval of any application involving the disturbance of a Highlands Open Waters buffer pursuant to this section shall not be construed to relieve the applicant from the applicable rules, regulations or legal requirements of any other agency having jurisdiction over such buffers, including but not limited to: the NJDEP (e.g., Freshwater

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Wetland Rules, N.J.A.C. 7:7, Stormwater Management Rules, N.J.A.C. 7:8, Flood Hazard Area Rules, N.J.A.C. 7:13, NJPDES Rules, N.J.A.C. 7:14A); a Soil Conservation District pursuant to its authority under New Jersey Soil Erosion and Sediment Control Act Rules, N.J.A.C. 2:90; or any county or other regional entity having authority pursuant to a Regional Stormwater Plan adopted by NJDEP under N.J.A.C. 7:8 and 7:15.

- D. Municipal stormwater management requirements. Where the provisions of this section are in conflict with the provisions of the Township's Stormwater Management Ordinance § 330-49 of the Township Code) the more restrictive of the two shall apply.
- E. Stream Corridor Protection/Restoration Plan. Where the provisions of this section are in conflict with the provisions of an adopted Stream Corridor Protection/Restoration Plan, the provisions of the adopted Plan shall override.
- F. Protection buffer expansion. The provisions of this section shall not be construed to preclude the imposition of a wider protection buffer requirement where site-specific analysis and evaluation by a qualified professional indicates that such expansion is essential to the protection of Highlands Open Waters, associated Riparian Areas, or the habitat of water or wetlands-dependent species (particularly in the case of rare, threatened or endangered species) located therein.
- G. Preservation Area standards. Any disturbance of a Highlands Open Water buffer proposed in connection with a Major Highlands Development shall be authorized and regulated only by the NJDEP in accordance with NJDEP Preservation Area Rules (N.J.A.C. 7:38) and all other applicable requirements.
- H. Planning Area standards. Disturbance is prohibited within all Highlands Open Waters and adjacent three-hundred-foot buffers except for linear development, which shall be permitted only provided that there is no feasible alternative for the linear development outside the Highlands Open Waters or Highlands Open Water buffer. The provisions of this subsection shall apply until and unless overridden by ordinance provisions adopted pursuant to a Highlands Council-approved Stream Corridor Protection and Mitigation Plan.
 - (1) To address the "no feasible alternative for linear development" standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate

the disturbance. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall, in addition, show that:

- (a) The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
 - (b) Shared driveways are used to the maximum extent possible to access multiple lots.
- (2) An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed linear development.
- (3) The reviewing municipal authority shall not approve any application pursuant to this subsection if, after review of the information provided to support an approval, it finds that there is a reasonable alternative to the proposed linear development.

§ 230-6.2.4. Riparian Area standards.

Disturbance of any portion of a Highlands Riparian Area is prohibited except for linear development, which shall be permitted only provided that there is no feasible alternative for the linear development outside of the Riparian Area. All provisions of § 230-6.2.3H above shall apply with regard to the "no feasible alternative" standard. These provisions shall apply until and unless Riparian Area disturbances are otherwise authorized under implementing ordinance provisions adopted pursuant to a Highlands Council-approved Stream Corridor Protection and Mitigation Plan.