

CLIENT ALERT: Adoption of Highlands Regional Master Plan Nears

Recent conversations with a representative of the New Jersey Highlands Council indicate that a revised draft of the Highlands Master Plan is anticipated to be available in November of 2007, with adoption to follow after a public comment period. Property owners located within both the Preservation Areas (which are strictly regulated) and the Planning Areas (which are not currently regulated) created by the Highlands Act should be aware that the draft Master Plan features the development of a Land Use Capability Map that contains new overlay zones throughout the Highlands Region. These overlay zones will have an impact on the ability to develop many of the properties located within the Highlands Region.

As described in the draft Highlands Regional Master Plan, the Highlands Council has developed three primary overlay zones with their own purpose, application and minimum standards. The overlay zones are described by the Highlands Council as follows:

**The Protection Zone** consists of high resource value lands that are important to maintaining water quality, quantity, and other significant ecological processes. Land acquisition is a priority in the Protection Zone. Any development activities will be subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands, and may only occur via redevelopment of existing developed areas. The Highlands Council uses 640 acres or 1 square mile as the minimum mapping threshold for identification of a Protection Zone.

**The Conservation Zone** consists of areas with significant agricultural lands and interspersed environmental features that should be preserved when possible. Development potential is limited in area and intensity due to infrastructure constraints and resource protection goals, although opportunities exist for low impact, clustered development. The Highlands Council used 640 acres or 1 square mile as the minimum threshold for mapping a Conservation Zone.

**The Planned Community Zone** consists of areas with concentrated development signifying existing communities. These areas tend to have less environmental constraints, and have existing infrastructure that may support development provided that it is compatible with the protection and character of the Highlands environment, at levels that are appropriate to maintain the character of established communities. Areas exhibiting development patterns characteristic of the Planned Community Zone, but ranging in size from 100 acres through 640 acres or located in the Preservation Area are given Specially Planned Area designation. The Specially Planned Area shares similar characteristics with the Planned Community Zone, but occurs in a smaller, more discrete manner.

It is important to note that the above overlay zone designations to be contained in the Highlands Regional Master Plan will not have any impact on properties in the Highlands Region unless the municipality where the property is located “opts-in” to conformance with the Master Plan and makes appropriate revisions to its land use ordinances. Benefits and incentives for municipalities conforming to the Highlands Regional Master Plan include the following:

- An enhanced presumption of validity for master plans, land use ordinances and local decisions
- An opportunity for direct legal representation when needed.

- Grants for reasonable expenses associated with preparing master plans and land use ordinances.
- Automatic qualification for State aid, planning assistance and technical assistance for smart growth projects offered by the Office of Smart Growth.
- Consideration by COAH of the Regional Master Plan prior to making third round determinations.
- Tax Stabilization Funding for decline in the aggregate true value of vacant land caused by the Highlands Act.
- Financial incentives for the creation of development receiving zones.
- Priority funding opportunities for Green Acres and Farmland Funding.
- Enforcement Action by the Highlands Council to address violations of the Master Plan.
- Municipalities that opt-in are permitted to adopt master plans and land use regulations that are stricter than needed to achieve conformity.
- Municipal master plans and ordinances approved by the Highlands Council are deemed the equivalent of having the plans endorsed by the State Planning Commission.

The significance of the new overlay zones in the Highlands Regional Master Plan must be analyzed on a case by case basis. In some instances, properties located in the Preservation Area and severely restricted in their development may now be located in a Planned Community Zone designated for future development. Properties currently located in the Planning Area and unregulated may soon be subject to new development restrictions. It is incumbent upon property owners in the Highlands Region to determine immediately (i) what overlay zone is proposed for their property and (ii) whether or not their municipality intends to “opt-in” to conformance with the Master Plan and adopt land use ordinances that will conform to the overlay zones. The Land Use Capability Map available on the NJDEP website allows property owners to determine the overlay zone in which their property is proposed to be located. If the mapping indicates that an owner’s property lies in more than one overlay zone, it is recommended that the Highlands Council be contacted with a request that the property be placed in a single (and the more favorable) overlay zone. The municipality where the property is located should also be contacted regarding whether or not it intends to “opt-in” to the Highlands Regional Master Plan. If the municipality does not opt-in to conformance with the Master Plan, and the property in question is located in the Planning Area, the overlay zones will have no effect and existing zoning will continue to apply. Similarly, properties in the Preservation Area slated for location in a Planned Community Zone will not realize the benefit of that overlay zone and will remain subject to severe development restrictions.

Questions or requests for assistance regarding the forthcoming Highlands Regional Master Plan should be directed to the Real Estate/Environmental Practice Group.