

MEMORANDUM

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To: Gail McKane, Township Administrator
From: Susan C. Kimball, PP
Date: 12/13/07

Re: Revised Draft Highlands Regional Master Plan – Implications for Harding Township

As you requested, this memorandum is a follow-up to the Township Committee's discussion about the recently released revised Draft Highlands Regional Master Plan (RMP). The comment period expires on February 28, 2008. Three public hearings have been scheduled, including one to be held on February 6 in Morristown at 4:00 PM at the Morris County Haggerty Education Center, 53 East Hanover Avenue.

Overview

The Highlands legislation designated Harding Township within the *Planning Area*, as opposed to the *Preservation Area*. Under the Act, compliance with the plan and implementing regulations is voluntary for communities in the Planning Area, often referred to as "opting in" to the plan. The *Planning Area* is also envisioned as the voluntary "receiving area" for the transfer of development rights from the *Preservation Area*.

The Highlands Act requires the RMP to provide for the preservation of water quality and quantity, the protection of environmentally sensitive lands and other lands necessary for recreation and conservation, and the protection and maintenance of lands essential to the character of the region while supporting new growth opportunities in the *Planning Area* that:

- Promote the continuation/expansion of agricultural, horticultural, recreational and cultural uses;
- Promote Brownfield remediation and redevelopment;
- Encourage, consistent with the State Plan and smart growth strategies, appropriate patterns of compatible residential, commercial and industrial development, redevelopment and economic growth while discouraging sprawl; and
- Promote a sound and balanced transportation system consistent with smart growth strategies.
(Draft Highlands Regional Master Plan, pp. 104-105)

Similar to municipal master plans, which emphasize broad policies for local zoning districts, the Highlands Regional Master Plan contains goals and policies for each zone within the 88-community region. After adopting the plan, the Highlands Council will develop regulations and model ordinances to implement its policies. The overall objective of the implementing regulations will be to protect water quality and availability and environmental resources such as open waters, steep slopes, forested areas, agricultural resources, etc. They can be expected to include "stringent"¹ density and intensity limitations for the Protection/Conservation zones, as well as requirements to protect forested and habitat areas, steep slopes, and special requirements applicable to areas surrounding water bodies, etc. There is significant emphasis on capacity-based, sustainable development and specifically, the use of nitrate targets, varying by zone, in areas served by septic systems, which for the most part are lower than that utilized by Maser Consulting in its carrying capacity analysis of Harding Township.

¹ The term "stringent" is used in the RMP.

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Key Points

Following are the key points relative to the draft revised Highlands Regional Master Plan pertinent to Harding Township.

1. Compliance with the RMP and any implementing regulations is voluntary since the entire township is within the *Planning Area*. It is possible, however, that agencies other than the Highlands Council may, in the future, require compliance with the RMP and implementing regulations as a condition of agency approvals. This has occurred between the State Planning Commission and COAH, where each agency is requiring approval of the other as a condition of their approvals.
2. The RMP's zone classifications for Harding have been changed in the revised RMP. The original RMP placed almost the entire township within the Protection Zone (high value natural resource areas) with several small areas near the borders designated in the Planned Community Zone (see the 2006 map on page 5). The revised plan (see the 2007 map on page 6) still places the majority of the township within the Protection Zone, but now displays significant areas within the Conservation Zone (agricultural lands, some with environmental constraints). Both zones seek to limit development to protect environmental resources and, in the Conservation Zone, agricultural activities. The original Planned Community zoned areas have been modified slightly and now encompass additional neighborhoods. It has been renamed "Existing Community Zone" and is supposed to reflect existing development patterns and/or where there may be infrastructure. These are the areas (if infrastructure permits) that, according to the RMP, may accommodate higher density development and serve as voluntary receiving zones under a Transfer of Development Rights (TDR) Program.
3. Three new sub-zones have been established in the revised RMP to recognize that there are areas that have special environmental constraints within the Conservation Zone and Existing Community Zone. Some portions of the Conservation Zone and the Existing Community Zone in Harding fall within these sub-zones. A new Lake Community Sub-Zone (a sub-zone of the Existing Community Zone) has been established, but is not designated for either Mt. Kemble Lake or Silver Lake; I can find no explanation for this, except that it is possible that the amount of development is low in comparison to many other lake communities.
4. There is consistency between the overall environmental goals of the RMP and Harding's Master Plan. Both seek to protect water quality and availability, and environmental resources. Harding's approach may achieve these shared goals due to the significant amount of preserved open space (almost 50% of the township) and existing state and local environmental regulations. The RMP's approach is a "one-size fits all" plan that breaks the township into essentially two types of areas: those that should be protected with "stringent" restrictions on development (Protection and Conservation zones) and areas where relatively concentrated development has or could take place (Existing Community Zone). In the latter areas designated in Harding (Existing Community Zone), little development is possible under current zoning. However, where infrastructure exists or could be extended, it is possible that at some future time (if compliance is required), a higher, Highlands-imposed density could be supported where redevelopment is possible.
5. The RMP is fundamentally different from Harding's planning approach. Although both plans have shared overall environmental goals, they fundamentally differ as to how they are to be achieved. Harding's Master Plan is a finely-tuned plan that seeks to perpetuate long-established and varied land use patterns (i.e. villages, rural countryside, etc.). Future development is permitted in accordance with the established pattern in each zone, whether high or low density. In contrast, the RMP is a broad-based plan that seeks to severely limit development (to a much greater degree than Harding's plan) within the expansive areas designated as Protection and Conservation zones. According to the RMP future development should be accommodated in the Existing Community Zone, which includes areas that have already been settled, may have infrastructure, and where additional development potential may exist. The density and intensity of development in all zones will be based upon average nitrate dilution targets (see shaded section below), although exactly how this will be achieved is not stated in the plan.

Discussion of Changes in the Zone Boundaries Affecting Harding

The first draft of the RMP released a year ago was prepared by Highlands Council staff and it designated three primary zones throughout the entire region based on 51 indicators (numerous environmental resources, existing land uses, and infrastructure, etc.). They were the Protection Zone, the Conservation Zone, and the Planned Community Zone. Almost all of Harding was included within the Protection Zone and several small areas near the township borders were included in the Planned Community Zone. The superseded map is displayed on page 5 for your review.

The revised final draft RMP was prepared by outside consultants. It continues the designation of three primary zones, but within two of them (Conservation and Existing Community) three sub-zones have been established. They are envisioned as “overlay” zones over local zoning districts with criteria and standards that will be applied (where compliance is required) to achieve the goals of the RMP. The consultants utilized 21 indicators (versus the original 51) to designate the zones, including the location, extent, intensity and integrity of geographic features, infrastructure, land uses, etc. According to Morris County Planning Department’s expert on the Highlands Plan, mapping changes were made due to the availability of updated and corrected data (some of which was supplied by the counties) applied on a more refined scale, the application of new methodology (fewer indicators applied differently) and the establishment of the three new sub-zones. According to the RMP, the three new sub-zones were established to be responsive to the varying characteristics within the region. The new zone designations are as follows:

- **Protection Zone** (high resource value lands)
- **Conservation Zone** (agricultural lands w/ woodlands, environmental features)
 - **Conservation – Environmentally Constrained Sub-Zone**
- **Existing Community Zone** (developed areas with limited environmental constraints)
 - **Existing Community – Environmentally Constrained Sub-Zone**
 - **Lake Community Sub-Zone** (developed areas within 1,000 feet of certain lakes – not designated in Harding)

The revised zone designations for Harding are displayed on the map on page 6. Most of Harding is still included in the Protection Zone. However, for the first time, a significant portion of the township, previously designated in the Protection Zone, is designated within the Conservation Zone (agricultural resources) including a large portion of the southwestern part of the Great Swamp NWR, which is included within the Conservation-Environmentally Constrained Sub-Zone (the balance of the GSNWR is in the Protection Zone). The Conservation Zone is based upon the presence of agricultural resources, which are encouraged to be continued by limiting development, and by utilizing design techniques such as clustering (mandated for complying towns), with 80% open space to allow farming to continue.

The Planned Community Zone has been renamed the “Existing Community Zone” and the areas previously designated in Harding have been retained, with slight modifications, despite the township’s request for their elimination. Moreover, two areas, the Anthony Wayne neighborhood and the southern portion of the Rt. 202 commercial corridor, have been included in this zone. A few small areas are designated within the environmentally constrained sub-zone. Following is the acreage breakdown.

2007 Revised Draft Highlands Regional Master Plan Zone Designations – Harding Township	Acres
Protection Zone	8,939.58
Conservation Zone	1,480.26
• Conservation-Environmentally Constrained Sub-Zone	2,052.30
Existing Community Zone	653.14
• Existing Community-Environmentally Constrained Sub-Zone	31.21
Total Acres	13,156.49

Source: Harding Township GIS.

Following are descriptions of each zone applicable in Harding, their underlying policies and the average nitrate targets upon which development density is to be based in each zone.

The **Protection Zone** consists of high natural resource value lands important to maintaining water quality, water quantity and sensitive ecological resources. Land acquisition is a high priority and development activities will be extremely limited and subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands. **(Nitrate target: 0.72 mg/L)**²

The **Conservation Zone** consists of areas with significant agricultural lands interspersed with associated woodlands and environmental features that should be preserved when possible. Non-agricultural development activities will be limited in area and intensity due to infrastructure constraints and resource protection goals. **(Nitrate target: 1.87 mg/L)**

The **Conservation Zone – Environmentally Constrained Sub-Zone** consists of significant environmental features within the Conservation Zone that should be preserved and protected from non-agricultural development. Development activities will be limited and subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands. **(Nitrate target: 1.87 mg/L)**

The **Existing Community Zone** consists of areas with regionally significant concentrated development signifying existing communities. These areas tend to have limited environmental constraints due to previous development patterns, and may have existing infrastructure that can support development and redevelopment provided that it is compatible with the protection and character of the Highlands, at levels appropriate to maintaining the character of established communities. **(Nitrate target: 2.0 mg/L)**

The **Existing Community Zone – Environmentally Constrained Sub-Zone** consists of significant areas of contiguous critical habitat, steep slopes and forested lands within the Existing Community Zone that should be protected from further fragmentation. They serve as regional habitat “stepping stones” to larger contiguous critical habitat and forested areas. They are not appropriate for significant development and are best served by land preservation and protection. Development is subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands. **(Nitrate target: 2.0 mg/L)**

Recommendations

Harding may want to consider the following actions with respect to its participation in the public comment period, which expires on February 28, 2008.

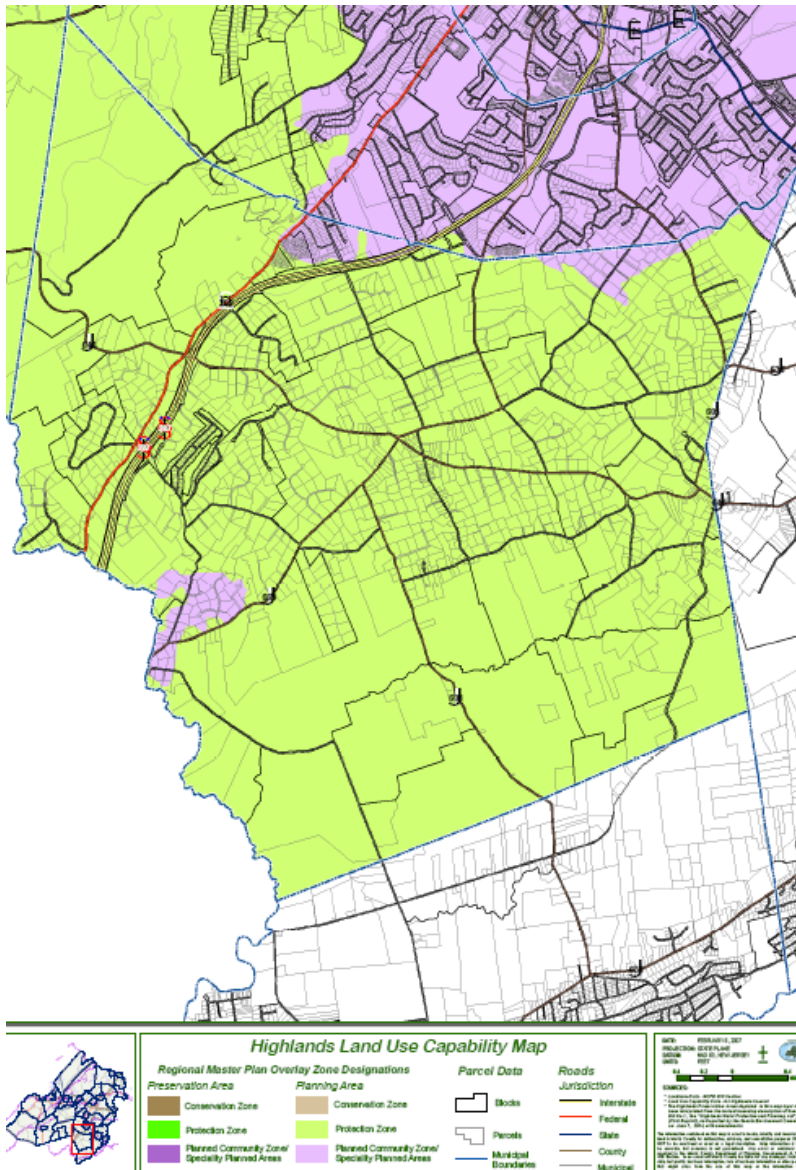
- **Request a Meeting with Highlands Council Staff:** The Executive Director of the Highlands Council is apparently prepared to meet with municipalities to discuss the plan and its implications. Harding could request a meeting, which could take place during a Township Committee meeting or other agreed upon time (contact Eileen Swan, Executive Director at 908-879-6737).
- **Request Corrections to the Land Use Capability Map:** The township could consider requesting corrections to the map based on a review of some of the mapped indicators, such as the presence or absence of infrastructure and farmland. The Environmental Commission and Health Department have expertise that could assist in this regard.
- **Recommend a Performance Based Planning Approach:** The township could consider making a recommendation to the Highlands Council that a “performance based approach” to compliance be permitted for towns located wholly within the Planning Area. This would allow Harding and similarly situated communities to retain and/or adopt their own strategies for achieving the shared environmental protection goals. Harding should have the flexibility to demonstrate that through

² The nitrate target used by Maser Consulting in its analysis of Harding Township was 2.0 mg/L.

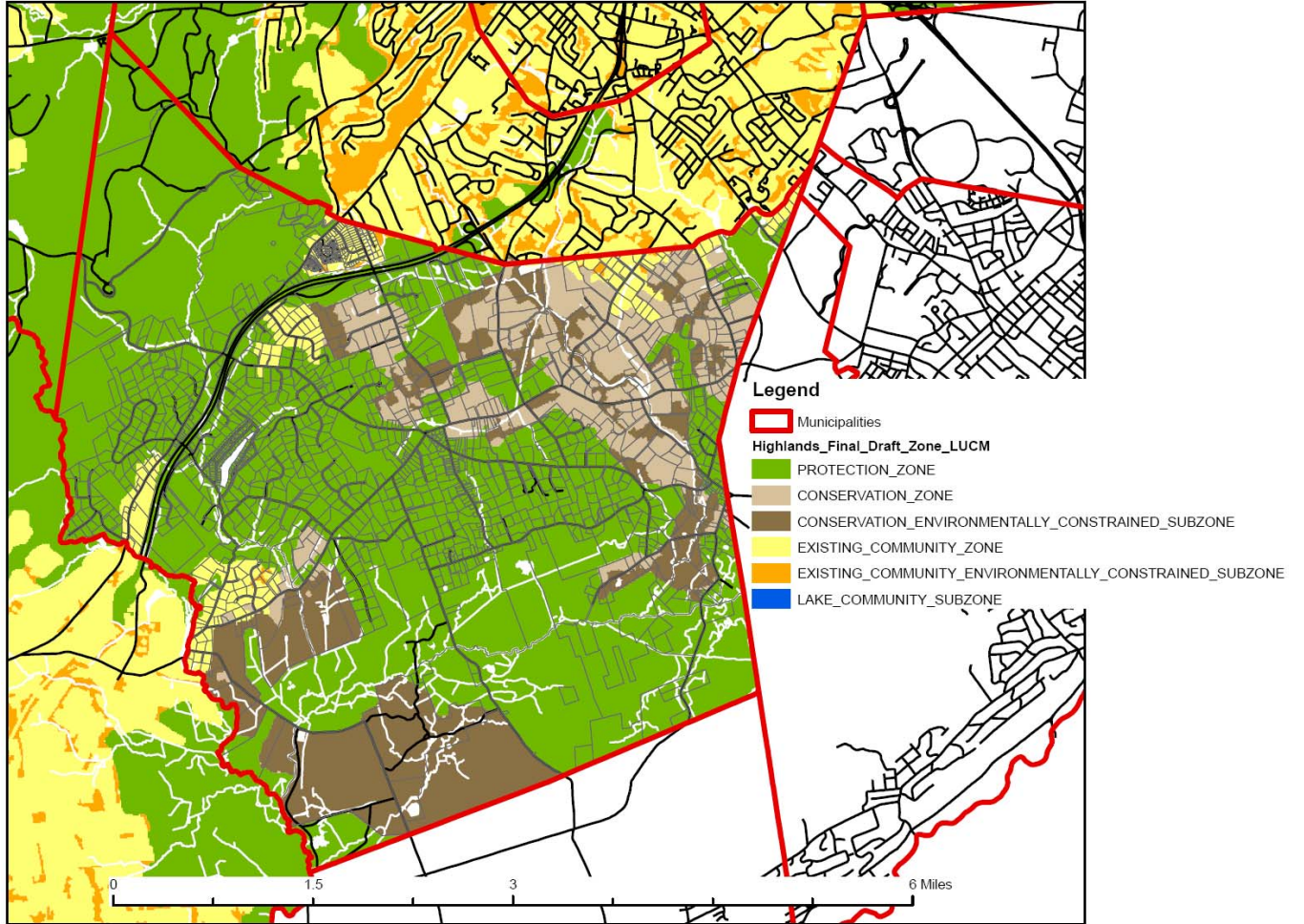
the combination of its high percentage of preserved open space, required low density land uses, and existing environmental regulations, that it will achieve the shared environmental goals. Under this approach any changes to Harding's land use regulations might be relatively modest compared to a wholesale change to the zoning framework implicit in the RMP.

- **Seek Legislative Changes to Ensure Voluntary Compliance:** The township could consider urging its representatives in the Legislature to amend the Highlands Act to bar other state agencies from mandating future regulatory compliance by communities located wholly within the Planning Area.

2006 Draft Highlands Plan
(Superseded)



2007 Revised Draft Highlands Plan



Maps prepared by Chris Allyn, Harding Township