

Highlands Affordable Housing RMP Amendment – Public Comment & Response

The following comments have been partially summarized for the purpose of providing responses.

Comment 1:

Comment 1a: Water Use and Conservation - Objective 2B8f: The Water Use and Conservation Management Plan (WUCMP) lacks clarity regarding its quantitative objectives. It's recommended that the plan ensures a 100% offset of new water demand from new development, extending beyond just affordable housing. Additionally, the term "implementation" needs clarification, tying it to the actual achievement of the plan's objectives before approving new developments.

Response: Additional details on the WUCMP program are in the Regional Master Plan (RMP) (2008). The RMP Amendment proposes requiring WUCMPs in deficit subwatersheds for all development, not just affordable housing.

Comment 1b: It is not clear what the legal and scientific and policy bases are for the 5 unit threshold for application of these requirements. If the Council has authority and discretion under the Highlands Act, there should be no threshold - it should apply to a single unit.

"Undeveloped land in the Preservation Area shall be considered as inappropriate for development of affordable housing of 5 units or more and should not be considered as available vacant land." I support this policy, but again urge that the 5 unit threshold be eliminated if legally permissible.

Response: The 5-unit threshold is based on the standard found in Fair Housing Act (C.52:27D-310.1(c)) and only relates to the analysis of vacant developable land under that section of the Fair Housing Act. At five units per acre and a 20% set aside, one affordable unit is produced, which is presumably why the FHA is expressed with the described threshold.

Comment 1c: Wastewater generation – The amendment states "This equates to an average of 9.9 acres per individual subsurface sewage disposal system, based on a maximum flow of 300 gallons of wastewater per day." Does that 300 gallons apply per unit of development? (I assume based on per capita and per unit occupancy assumptions). For example, could a 10 unit cluster on 9.9 acres be approved if wastewater were estimated at 30 gallons per day per unit? (e.g. single occupancy units with aggressive water conservation).

Response: 300 gallons per day (gpd) is the standard used in the RMP for the calculation of the density for individual septic disposal systems. A reduction of that standard based on theoretical flows is not permitted or advisable

Comment 1d: The "in place and operational standard" throughout should be clarified to state "operating in compliance with all applicable requirements and standards".

Response: A system in place but out of compliance could be repaired and would still be within a designated sewer service area and therefore potentially available for affordable housing development. However, if the system was abandoned it would no longer be operational.

Comment 1e: It is not clear how the term "previously disturbed" is defined as it relates to Highlands Open Water Buffers. It appears to be limited to agricultural disturbance. For agricultural

disturbance, there should be a requirement that the prior agricultural use that created the disturbance is actively still in operation (not in terms of agricultural production in the buffer zone, but in terms of the farm). There needs to be a buffer restoration policy established. Previously disturbed buffers should be restored.

Response: The standards for the disturbance of Highlands Open Water Buffers and the restoration of same may be found in the RMP (2008), Goal 1D and are not proposed to be modified by this Amendment.

Comment 1f: There also needs to be a forest restoration policy established. Previously disturbed forests should be restored.

Response: This is outside the scope of this Amendment.

Comment 1g: The proposed policy lacks any consideration of energy demand, energy efficiency, renewable energy, electrification, carbon emissions, or consideration of current and projected climate impacts. Proposed new and existing developments must consider energy and climate issues.

Response: This is a valid concern. However it is outside the scope of this RMP Amendment, but a section of energy conservation will be added to the companion document “Highlands Affordable Housing Implementation Report” proposed for later release, which will supply additional details on best practices for the location and design of affordable housing in the region.

Comment 2: The commenter strongly opposes the idea of introducing affordable housing into the Highlands region due to concerns about its impact on the region's water supply and the preservation of land. They argue that the objectives of affordable housing and land preservation are incompatible, with developers benefiting at the expense of the environment. Instead, they advocate for preserving farmland and existing residential areas, suggesting alternative approaches such as converting single-family homes into multiple units or allowing backyard extensions for family members. Additionally, they emphasize the need to better support the senior population, proposing temporary housing solutions on family land as one potential avenue.

Response: While the commenter may oppose “introducing affordable housing into the Highlands region” the Highlands recognizes that innovative methods for the provision of affordable housing, as opposed to traditional inclusionary development, are necessary in much of the Highlands region to protect important water and environmental resources. This is because many areas within the Highlands region are too environmentally sensitive for expansion of infrastructure and traditional, high density inclusionary development. However, less impactful methods of producing affordable housing, like converting existing single-family homes into special needs housing, for example, are encouraged.

Affordable housing must be provided in accordance with sound planning and this is particularly important in the Highlands. The Highlands Council intends to provide guidance on the identification of areas and methods compatible with the reuse, redevelopment and adaptation of areas with existing development to limit the development of green spaces for affordable housing. These will be provided in a companion guidance document to be released in September of 2024.

Comment 3: The discourse on affordable housing has deviated from its original purpose, now entangled in political polarization and corporate interests. While the focus should be on providing affordable units, market-driven approaches dominate, perpetuating the threat of further construction. Instead of building more, efforts should be directed towards making existing vacant spaces affordable. There's a disconnect between local and regional housing needs, and the concept of affordability lacks a concrete link to economic realities. Housing should be considered a fundamental right, necessitating government intervention and subsidies to ensure affordability. Environmental considerations, such as water and waste management, must also be prioritized in housing development. The indiscriminate pursuit of economic interests without regard for life and ecological sustainability is unsustainable. Certain areas, like Parsippany, have been excessively developed, warranting a shift towards prioritizing affordable housing. However, imposing affordable housing developments on every town without considering ecological sensitivity is impractical. The Highlands region should assert its influence to counteract the sway of real estate interests and promote ecological consciousness in housing policies.

Response: The Highlands recognizes that innovative methods for the provision of affordable housing, as opposed to traditional inclusionary development, are necessary in much of the Highlands region to protect important water and environmental resources. This is because many areas within the Highlands region are too environmentally sensitive for expansion of infrastructure and traditional, high density inclusionary development. However, less impactful methods of producing affordable housing, like converting existing single-family homes into special needs housing, for example, are encouraged.

Affordable housing must be provided in accordance with sound planning. In this context, the Legislature sought to limit and control new development in environmentally sensitive areas, which is why the region and its individual municipalities must produce a capacity based analysis pursuant to N.J.S.A. 13:20-11.

The Highlands Council intends to provide guidance on the identification of areas and methods compatible with the reuse, redevelopment and adaptation of areas with existing development to limit the development of green spaces for affordable housing. These will be provided in a companion guidance document to be released in September of 2024.

Comment 4: In New York City, 50% of Affordable Housing Units are currently required to be allocated to residents with affordable incomes, based on their actual income levels. Mayor Adams is now considering reducing this requirement to either 40% or 20%. Some argue that New Jersey should support the 50% requirement or push for federal subsidies instead. How can an allowance of market rents be in the interest of the collective or common good, and especially with landscapes scene as property without inherit characteristic, of ecological value, especially involving water?

Response: The Highlands recognizes that innovative methods for the provision of affordable housing, as opposed to traditional inclusionary development, are necessary in much of the Highlands region to protect important water and environmental resources. This is because many

areas within the Highlands region are too environmentally sensitive for expansion of infrastructure and traditional, high density inclusionary development. However, less impactful methods of producing affordable housing, like converting existing single-family homes into special needs housing, for example, are encouraged.

Affordable housing must be provided in accordance with sound planning. In this context, the Legislature sought to limit and control new development in environmentally sensitive areas, which is why its individual municipalities must produce a Highlands Municipal Build Out analysis. Where inclusionary development is appropriate, on a suitable site within the Highlands, the Highlands does not oppose enhanced set asides, but notes that such compliance techniques typically require outside subsidies.

The Highlands Council intends to provide guidance on the identification of areas and methods compatible with the reuse, redevelopment and adaptation of areas with existing development to limit the development of green spaces for affordable housing. These will be provided in a companion guidance document to be released in September of 2024.

Comment 5: The commenter states that affordable housing should be addressed by reducing housing costs such as rent, not through additional development. In addition, the commenter recommends that Highlands resources should be protected by the Highlands Council in all municipalities irrespective of plan conformance status and that the goal should be for minimum disturbance and climate mitigation.

Response: The enforcement of Highlands resource protections in all municipalities, irrespective of plan conformance status, is governed by the Highlands Act.

Comment 6: The commenter is a person who cares about protecting our natural resources and supports safeguarding the Highlands Region, and preserving clean air, water and biodiversity for wildlife and human enjoyment. They ask that the Council prioritize strong ecological protection measures when considering any future developments. They wish to ensure that Affordable Housing units remain consistent with the goals and policies set forth in the Regional Master Plan, which include protecting water and other natural resources in the Highlands Region.

Response: It is the Highlands Council's intent that this Amendment and associated guidance safeguards the goal of the Highlands Act to protect the health and safety of the drinking water of our State while facilitating the production of affordable housing within those critically important limitations.

Comment 7: The commenter states that the proposed waiver for the construction of 100% affordable housing developments in 100% Preservation Area municipalities should be extended to include municipalities that are not 100% Preservation Area, but whose vacant land is entirely within the Preservation Area.

Response: The waiver language is taken directly from the NJDEP Highlands Rules (N.J.A.C. 7:38-6.9). Municipalities whose vacant land is entirely in the Preservation Area would also be able to conduct a vacant land analysis, as those lands would likely not be considered as developable for the purposes of affordable housing.

Comment 8: The commenter states that in the Highlands Region, whether preservation or planning, no affordable housing should be allowed to be built on preexisting farmland or woodlands. Affordable housing should only be allowed as redevelopment not on virgin land.

Response: The Highlands Council encourages the reuse and redevelopment of land for affordable housing and will be issuing additional guidance in the fall of 2024. In addition, Highlands Council policies direct development away from undeveloped land and toward areas of existing development and infrastructure, which are otherwise, independently, appropriate for the proposed use pursuant to sound land use planning.

Comment 9: The commenter states that they support the New Jersey Highlands Council’s efforts to make the Highlands region a more affordable place to live. We believe this is crucial for the long-term sustainability and vibrancy of our communities. They offer support during the build out process.

Response: The Highlands Council appreciates the comment and offer of support. We support the production of affordable housing subject to our primary obligation to protect the health and safety of our drinking water and other limitations discussed in these responses to comments.

Comment 10:

Comment 10a: The commenter believes the goals of protecting water resources and providing for the construction of affordable housing can be met at the same time and are not in conflict with one another. The commenter provided 2 examples of such development, the Beaverbrook Homestead in Clinton Township (100% affordable) and the redevelopment of the Lanidex Plaza Office Park in Parsippany-Troy Hills (an inclusionary mixed use redevelopment of an existing office park). The commenter provides the additional comments on the amendment, they also plan to provide comments on any additional affordable housing guidance issued by the Highlands Council.

Response 10a: The Highlands recognizes that innovative methods for the provision of affordable housing, as opposed to traditional inclusionary development, are necessary in much of the Highlands region to protect important water and environmental resources. This is because many areas within the Highlands region are too environmentally sensitive for expansion of infrastructure and traditional, high density inclusionary development. However, less impactful methods of producing affordable housing, like converting existing single-family homes into special needs housing, for example, are encouraged. Such a use would be 100% affordable, as opposed to 20% affordable units.

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Affordable housing must be provided in accordance with sound planning. In this context, the Legislature sought to limit and control new development in environmentally sensitive areas, which is why the region and its individual municipalities must produce a “capacity based analysis” pursuant to N.J.S.A. 13:20-11.

The Highlands Council intends to provide guidance on the identification of areas and methods compatible with the reuse, redevelopment and adaptation of areas with existing development to limit the development of green spaces for affordable housing. These will be provided in a companion guidance document to be released in September of 2024.

Comment 10b: Section 1.2 (Affordable Housing Set Aside Requirement) – The commenter is supportive of the Highlands Council’s interpretation of the Fair Housing Act’s 20% set aside requirement and encourages the Highlands Council to require all development to abide by the requirement.

Response 10b: The Highlands Council intends to require developments and municipalities to abide by the requirement, however its authority is limited. For example, the Highlands Council does not have authority over non-conforming Planning Area municipalities. Responsibility also lies with other state agencies, municipalities, and interested parties.

Comment 10c: Section 1.3 (Build Out Update) – The commenter is supportive of the Highlands Council’s requirement to prepare a Highlands Municipal Build-Out Analysis and Report prior to the preparation of the Fair Share Plan. The proposed amendment requires an analysis of "developed lands," which is unclear in its meaning. The commenter advocates for identifying redevelopment opportunities, particularly crucial in the Highlands region. They believe past Build-Out analyses focused on undeveloped lands and applied potential build-out assuming Highlands restrictions. They suggest revising the amendment to explicitly require municipalities to identify and prioritize redevelopment opportunities in their Build-Out Analysis and Report, especially when claiming insufficient land, water, or sewer for affordable housing obligations. They stress the importance of maximizing development on underutilized lands with access to infrastructure while protecting undeveloped lands. The commenter also suggests that the Highlands Council should require that municipalities actively seek out the creation of Highlands Centers and sites for Highlands Redevelopment areas.

Response 10c: The Highlands Council intends to include redevelopment opportunities as a component of the Highlands Municipal Build Out Analysis and will include such in the Build Out guidance to be issued separately. However, the Council does not find it necessary to modify the amendment to facilitate this consideration. Finally, the Highlands Act does not provide the Highlands Council with the statutory authority to mandate towns seek Highlands Center Designation or Highlands Redevelopment Designation.

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Comment 10d: The commenter is supportive of the requirement for municipalities to prepare Housing Elements and Fair Share Plans but thinks the requirement should be for the municipality to seek approval of those plans through the process set forth in the Fair Housing Act.

Response 10d: The Highlands Council has always required conforming municipalities to plan for their fair share of affordable housing. However, it is beyond the scope of the Highlands Council's authority to require municipalities to follow the process outlined in the Fair Housing Act.

Comment 10e: The commenter is supportive of the 100% waiver for affordable housing developments but proposes the following change:

Policy 7G4: For the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP, for the construction of a 100% affordable housing development, where said development is consistent with the resource protection standards found in the Goals, Policies and Objectives of the RMP to the maximum extent possible and/or where the approval of the development would in the Council's judgment be preferable to the development of other potential sites, and is included in the municipality's adopted Fair Share Plan that has been deemed consistent with the RMP by the Highlands Council

Response 10e: The Highlands Council cannot mandate that municipalities rely solely on 100 % affordable housing projects because the Council cannot compel a municipality to expend its own money on compliance. However, we recognize that 100 % affordable projects may generally be preferable to traditional inclusionary projects to the extent more affordable housing is created with less environmental impact. Therefore, by granting waivers, the Highlands Council may eliminate an obstacle to a municipality that seeks to provide affordable housing via a 100 % affordable housing development.

Comment 10f: The commenter recommends adjusting the language in Policy 7G1 to permit a few more municipalities to receive the waiver to construct 100% affordable housing. The current policy is to allow the waiver only in the several towns that are entirely within the Preservation Area. The commenter believes this could be expanded slightly to include towns with at least 90% of their land in the Preservation Area and/or in one of the restricted sub-zones in the Planning Area.

Response 10f: For Preservation Area municipalities, the Highlands Council included this waiver with the same language as used in the NJDEP's Highland Rules (N.J.A.C. 7:78-1.1 et. seq.). Any change would require an equal change to those rules to be effective. In addition, the Highlands Council is not aware of any waivers that have been granted (or applied for) under this provision. The other waivers and exemptions available in the Preservation Area, particularly Exemption 4 and Highlands Redevelopment Areas are more effective as they also pertain to inclusionary developments. For the Planning Area, the Highlands Council does not believe any modification is

necessary as there is a separate waiver for the Planning Area that does not contain the same municipal limitations.

Comment 10g: The commenter supports the Council's amendments to RMP Objectives 2B4a, 2B4b, 2J4c, and 2K3e to require at least a 20% affordable housing set-aside. This is consistent with the Fair Housing Act and will of course maximize the water resources that are utilized for affordable housing.

Response 10g: The Highlands Council appreciates the comment.

Comment 10h: The commenter supports the Council's amendment to add Objective 2B8f to require at least a 20% affordable housing set-aside. This is consistent with the Fair Housing Act and will of course maximize the water resources that are utilized for affordable housing.

Response 10h: The Highlands Council appreciates the comment.

Comment 10i: The commenter is generally strongly supportive of this amendment and the intent to not let scarce resources be used for other development in a municipality that has not met its affordable housing requirements. The commenter requests consideration of exemption of a development includes at least 20 percent affordable housing from triggering the analyses required in paragraphs (1) and (2) of proposed Objective 2B8f as there is a concern that such a limitation could actually delay affordable housing from being produced in some cases.

Response 10i: To prevent potential delays the Highlands Council will make grant funding immediately available to prepare and implement Water Use and Conservation Management Plans. Any municipality that is noted as being in a deficit of net water availability may apply at any time for this grant funding and is encouraged to do so.

Comment 10j: 1.5 Affordable Housing Land Availability Analysis

The commenter asserts that the Highlands Council should take a more proactive stance in requiring municipalities to actively seek redevelopment opportunities, particularly in Highlands Centers and Redevelopment Areas. They criticize the current amendment for focusing extensively on areas deemed unsuitable for development, potentially limiting affordable housing opportunities. Fair Share Housing Center (FSHC) argues that if stringent restrictions are placed on development in certain areas, there should be equally stringent requirements for municipalities to analyze and create opportunities for redevelopment elsewhere.

They emphasize the constitutional obligation to analyze redevelopment potential, as mandated by legal precedents like Mount Laurel II and the Fair Housing Act. FSHC suggests that the Council should mandate municipalities to thoroughly assess properties within Existing Community Zones and Environmentally Constrained Subzones for redevelopment potential. They advocate for

expanding the criteria for Highlands Redevelopment Area designation to include more sites suitable for affordable housing, such as those meeting DEP brownfields criteria or having high impervious cover.

Additionally, FSHC urges municipalities claiming insufficient land, water, or sewer for affordable housing obligations to conduct comprehensive analyses of redevelopment and center opportunities. They criticize the current amendment for being passive and merely referencing already designated redevelopment areas, instead of actively promoting the identification of new sites.

Overall, FSHC contends that maximizing development on appropriate lands while preserving environmentally sensitive areas is crucial to meeting housing needs in the Highlands region while fulfilling legal obligations.

Response 10j: The Highlands Council supports redevelopment in the region, so long as the proposed new use does not adversely impact the goals of the RMP, as redevelopment protects existing undeveloped land, reuses existing water and wastewater resources and improves the state of existing development lands, while providing for potential affordable housing in the region. The Highlands Council intends to issue additional guidance to municipalities on how to identify areas appropriate for redevelopment, identify sites that are underutilized, and how to use Highlands exemptions and waivers to permit redevelopment. The guidance will include information on how to identify sites that are appropriate for redevelopment and reuse in all the Highlands Land Use Capability Zones and the Preservation Area, not just the Existing Community Zone. That same guidance will emphasize that the Fair Housing Act provides incentives for redevelopment in the form of bonus credits.

The Highlands Council has had to bifurcate the release time table for these affordable housing documents due to the swift passage of the legislation, the strict timelines provided for therein, and the length of time it takes for an RMP Amendment to go from being introduced to being finally effective (approximately 5 months). It is the intention of the Highlands Council to issue the guidance on redevelopment and the guidance on the Highlands Municipal Build Out Report at approximately the same time as the expected effective date of this RMP amendment.