

RESOLUTION 2022-03
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
APPROVAL OF PUBLIC HEALTH AND SAFETY WAIVER FOR THE BUTLER
WATER DEPARTMENT

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

WHEREAS, The Highlands Act, at N.J.S.A. 13:20-28, specifies that a project deemed to be exempt is exempt from the Highlands Act as well as from “the regional master plan, any rules or regulations adopted by the New Jersey Department of Environmental Protection (NJDEP) pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan.”; and

WHEREAS, pursuant to N.J.A.C. 7:38-1.1 et seq (Highlands Rules), NJDEP determinations regarding Exemptions 9 and 11 in the Preservation Area are made in consultation with the Highlands Council; and

WHEREAS, the Butler Water Department is seeking an Exemption #11 of the Highlands Act (“the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility”) in order to make required and necessary repairs to the water treatment system at the Butler Reservoir. Exemption #11 mandates that a Highlands Act exemption is only to be granted “provided that the activity is consistent with the goals and purposes of the Highlands Act”; and

WHEREAS, RMP Objective 1D4b requires that “Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38, which provide that all major Highlands developments are prohibited within Highlands Open Waters and its adjacent 300-foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside Highlands Open Waters or its buffer.”

WHEREAS, in accordance with RMP Policy 7G2 “[f]or both the Preservation Area and 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: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible.”

WHEREAS, the proposed improvements create impacts to the Highlands Open Water Buffers that cannot be avoided and mitigated; and

WHEREAS, the Butler Water Department is seeking a public health and safety waiver from the Highlands Council; and

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WHEREAS, the Highlands Council released the Highlands Council Staff Draft Recommendation Report dated December 3, 2021, for public comment, and

WHEREAS, the Highlands Council held a public comment period concerning the proposed Highlands Redevelopment Area Designation commencing December 3, 2021, and ending January 3, 2022; and

WHEREAS, the Highlands Council duly considered the Draft Recommendation Report and any public comments on the proposed Public Health and Safety Waiver; and

WHEREAS, after Highlands Council staff review, staff recommended that the Highlands Council approve the proposed Public Health and Safety Waiver with the following conditions set forth in the Highlands Council Staff Final Recommendation Report, dated January 6, 2022 which is incorporated by reference into this Resolution:

1. Butler Borough Water Department shall prepare and submit a plan detailing the proposed forest mitigation strategies, including specific details for implementation and maintenance. These plans should include restoration of any areas of existing development to be abandoned as part of this project; and
2. Copies of the final approved site plans (one digital copy), supporting documents, and any approving resolution shall be submitted to the Highlands Council in accordance with Highland Council Digital Submission Requirements; and

WHEREAS, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to the expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

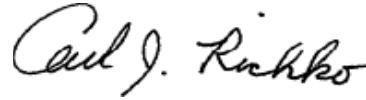
NOW, THEREFORE, BE IT RESOLVED, the Highlands Council hereby

- (1) Adopts the findings of fact and conclusions based thereon set forth in the Final Recommendation Report, dated January 6, 2022; and
- (2) Based on said findings of fact and conclusions, approves the Public Health and Safety Waiver sought by the Butler Water Department with conditions as set forth in the Final Recommendation Report and recited above and finds the project consistent with the Highlands Act and the RMP; and
- (3) Authorizes the Executive Director to prepare a document informing the NJDEP of the Public Health and Safety Waiver and findings of consistency.

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COUNCIL APPROVAL OF PUBLIC HEALTH AND SAFETY WAIVER FOR THE
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CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on 20th day of January 2022.



Carl J. Richko, Chairman

Vote on the Approval of The Resolution	Motion		Second		Yes		No		Abstain		Absent
Councilmember Alstede					√						
Councilmember Dougherty											√
Councilmember Dressler											√
Councilmember Francis					√						
Councilmember Holtaway					√						
Councilmember James			√		√						
Councilmember Sebetich					√						
Councilmember Van Abs	√				√						
Councilmember Visioli					√						
Councilmember Vohden					√						
Chairman Richko					√						