BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY
ORDINANCE 13-2026

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 215, "ZONING," OF THE CODE OF THE BOROUGH OF MENDHAM TO ADD A NEW ARTICLE XXII ENTITLED "HIGHLANDS PLANNING AREA CONFORMANCE"; AMENDING CHAPTER 124, "LAND USE PROCEDURES," TO ADD HIGHLANDS REVIEW PROCEDURES; AND ADOPTING RELATED HIGHLANDS RESOURCE EXHIBITS

WHEREAS, the Highlands Water Protection and Planning Act ("Highlands Act," N.J.S.A. 13:20-1 et seq.) was enacted on August 10, 2004, for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, particularly the water resources that provide drinking water to millions of New Jersey residents; and

WHEREAS, the Highlands Act created the New Jersey Highlands Water Protection and Planning Council ("Highlands Council") and charged it with preparing and implementing a comprehensive master plan for the Highlands Region; and

WHEREAS, the Highlands Regional Master Plan ("RMP") was adopted by the Highlands Council through Resolution 2008-27 on July 17, 2008, and became effective on September 8, 2008; and

WHEREAS, Section 15 of the Highlands Act authorizes a municipality located wholly or partially in the Highlands Planning Area to voluntarily revise and conform its master plan, development regulations, and other regulations relating to the development and use of land to the goals, requirements, and provisions of the RMP; and

WHEREAS, the Borough of Mendham ("Borough") is located entirely within the Highlands Planning Area, as defined by Section 7 of the Highlands Act; and

WHEREAS, the Borough submitted a Petition for Plan Conformance to the Highlands Council on October 22, 2025, for all lands within the Borough; and

WHEREAS, on January 15, 2026, the Highlands Council adopted Resolution 2026-03 approving the Borough's Petition for Plan Conformance with conditions set forth in the Final Consistency Review and Recommendations Report; and

WHEREAS, the conditions of approval require the Borough to adopt a Highlands Conformance Ordinance implementing the Highlands Land Use Capability Zones and other Highlands resource-protection standards, and provide that adoption of the Conformance Ordinance will also satisfy the requirement for a Planning Area Petition Ordinance under Section 15 of the Highlands Act; and

WHEREAS, following Highlands Council review, the Borough Joint Land Use Board held a public hearing and adopted the Highlands Planning Area Master Plan Element and related Master Plan Reexamination Report on August 18, 2026, to align the Borough's planning program with the RMP; and

WHEREAS, the Mayor and Council find that the amendments set forth herein are vital to protecting the Highlands resources of the Borough, provide a clear and coordinated process for review of development applications, and advance the public health, safety, and general welfare;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

SECTION 1. AMENDMENT TO CHAPTER 215, ZONING

Chapter 215, "Zoning," of the Code of the Borough of Mendham is hereby amended and supplemented by adding a new Article XXII, "Highlands Planning Area Conformance," to read as follows:

ARTICLE XXII — HIGHLANDS PLANNING AREA CONFORMANCE

§ 215-103. Purpose and authority.

A. The Borough is located entirely within the Planning Area of the New Jersey Highlands Region. This Article is enacted pursuant to Section 15.a of the Highlands Act and implements the Borough's voluntary Plan Conformance with the RMP for the whole municipality.

B. The Borough shall conform its Master Plan, development regulations, and other regulations applicable to the use and development of land within the Borough Highlands Area to the goals, requirements, and provisions of the RMP, in accordance with Highlands Council Resolution 2026-03 and the Final Consistency Review and Recommendations Report.

C. The Borough expressly reserves all rights afforded by the Highlands Act with respect to the voluntary nature of Planning Area conformance, subject to the procedures and consequences established by applicable law.

D. This Article shall apply in conjunction with all other provisions of the Borough Code. Where this Article and another applicable provision regulate the same subject, the provision affording the greater protection to Highlands resources shall govern, except where applicable State or federal law provides otherwise.

§ 215-104. Definitions.

For purposes of this Article, the following terms shall have the meanings stated below. Terms not defined herein shall have the meanings assigned in § 215-1 of the Borough Code, the Municipal Land Use Law, the Highlands Act, the RMP, the current Highlands Council Project Review Standards, or applicable NJDEP rules, as the context requires.

Agricultural or horticultural development. Construction for the purpose of supporting common farm-site activities, including production, harvesting, storage, grading, packaging, processing, and wholesale or retail marketing of crops, plants, animals, and related commodities, and associated soil preparation and management, fertilization, pest control, farm-waste disposal, irrigation, drainage, water management, and grazing.

Agricultural or horticultural use. The use of land for common farm-site activities described in the definition of agricultural or horticultural development.

Agricultural impervious cover. Agricultural or horticultural buildings, structures, or facilities, with or without flooring, residential buildings, and paved areas, but not temporary coverings. Solar panels shall not be included in the calculation of agricultural impervious cover.

Application for development. The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction for issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

Borough Highlands Area. All lands located within the Borough of Mendham, which is entirely within the Highlands Planning Area and for which the Borough's land-use planning and regulation conform to the RMP.

Carbonate Rock Area. A portion of the Highlands Area underlain by carbonate rock, such as limestone or dolomite, as identified by current Highlands Council or NJDEP data or an accepted site-specific determination. Inclusion within such an area indicates potential for solution of underlying rock and development of karst features but does not establish that karst features occur throughout the area.

Clear-cutting. A forestry or logging practice in which most or all trees in a harvest area are cut down.

Conditional Water Availability. The amount of water availability allowed by the Highlands Council in a Current Deficit Area, subject to applicable mitigation requirements.

Confirmed Forest Area. An area determined to constitute Forest through a site-specific analysis conducted in accordance with N.J.A.C. 7:38-3.9, Appendix A of the current Highlands Council Project Review Standards, or successor standards accepted by the Highlands Council.

Consumptive water use. A use of water that results in evaporation, transpiration, incorporation into products or crops, consumption by humans or animals, or removal by another means from the source watershed or subwatershed, other than conveyance as untreated water supply, potable water, or wastewater.

Critical Wildlife Habitat. Within the Planning Area, those areas in the most current NJDEP Landscape Project or successor dataset that are ranked 3 through 5, together with areas ranked 2 that have a Highlands Conservation Rank of Critically Significant or Significant, as identified by the Highlands Council or confirmed through an accepted site-specific determination.

Current Deficit Area. A HUC14 subwatershed having negative Net Water Availability, meaning that existing consumptive and depletive water uses exceed the capacity of the ground-water supply to sustain them.

Deficit Mitigation Plan. A plan submitted for Highlands Council approval that identifies the source and amount of Conditional Water Availability requested, the applicable mitigation obligation, the proposed conservation, recharge, or offset measures, implementation schedule, responsible entity, operation, maintenance, monitoring, guarantees, and reporting necessary to satisfy current Highlands Council requirements.

Deforestation. The conversion of a forested area to a nonforest land use or condition, including disturbance of an area determined to be Forest where the extent or effect of disturbance disqualifies the area from that designation.

Depletive water use. A use of water withdrawn from a HUC14 subwatershed and transported outside that subwatershed through utility conveyances as untreated water supply, potable water, or wastewater, resulting in a net loss to the source subwatershed.

Development. The division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of a building or other structure; a mining excavation or landfill; or any use, change in use, or extension of use of land or a building for which permission may be required under the Municipal Land Use Law.

Disturbance. The placement of impervious surface; exposure or movement of soil or bedrock; or clearing, cutting, or removal of vegetation.

Disturbance, ultimate. The total existing and proposed area of disturbance on a lot, parcel, tract, or subdivision in connection with any human activity, property improvement, or development, including buildings, structures, impervious surfaces, excavated, filled, and graded areas, lawns, and landscaped areas. Ultimate disturbance shall not include prior disturbance that contains no known man-made structures other than such features as old stone rows or farm fencing and that, through natural processes or ecological restoration secured by permanent restriction, is no longer impervious, visually evident, or functionally disturbed.

Farm Management Unit. A parcel or group of parcels managed as a single agricultural operation and subject to a farm conservation plan or resource management systems plan, as applicable.

Forest. A biological community determined by the methodology in N.J.A.C. 7:38-3.9, Appendix A of the current Highlands Council Project Review Standards, or successor standards accepted by the Highlands Council.

Forest Area. Lands shown as Core Forest, Forest Resource Area, or forest land cover on Exhibit 6, together with upland Forest confirmed through a site-specific analysis under this Article.

Highlands Act. The Highlands Water Protection and Planning Act, P.L. 2004, c. 120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

Highlands Council. The New Jersey Highlands Water Protection and Planning Council.

Highlands Exemption Determination. A written determination by the Highlands Council, or by the Borough when expressly authorized by a Highlands Council-approved municipal exemption-determination ordinance, that a proposed activity qualifies for an exemption under N.J.S.A. 13:20-28.

Highlands Open Waters. All springs, seeps, streams, including intermittent streams, wetlands, lakes, ponds, vernal pools, and other natural or artificial bodies of surface water located wholly or partially within the Highlands Region, excluding swimming pools.

Highlands Open Waters Buffer. Within the Planning Area, a 300-foot protection buffer measured from the edge of the discernible bank of a Highlands Open Waters feature, or from its centerline where no discernible bank exists.

For wetlands, the buffer is measured from the wetland line delineated in an NJDEP Letter of Interpretation; for other unmapped features, it is measured from an accepted field-delineated boundary.

Highlands Region. The area within the boundaries of the municipalities identified in Section 7.a of the Highlands Act.

HUC14 subwatershed. A hydrologic unit delineated at the fourteen-digit level and used by the Highlands Council for water-availability and resource planning.

Impervious surface. A structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and similar improvements.

Impervious surface, cumulative increase. The aggregate increase in impervious surface on a lot, parcel, tract, or other legally recognized land area occurring after the effective date of this Article, calculated cumulatively for purposes of the Planning Area thresholds herein.

Land Use Capability Zone or LUCZ. A primary zone or sub-zone established by the RMP, including the Protection Zone, Conservation Zone, Existing Community Zone, Wildlife Management Sub-Zone, Conservation Zone–Environmentally Constrained Sub-Zone, Existing Community Zone–Environmentally Constrained Sub-Zone, and Lake Community Sub-Zone.

Linear development. A development or improvement having a predominantly linear configuration, including a roadway, driveway, utility line, pipeline, sewer, water main, stormwater conveyance, or similar infrastructure.

Low Impact Development or LID. A site-design and stormwater-management approach that uses conservation, minimization, natural systems, and decentralized practices to maintain or restore hydrologic and ecological functions.

Major Potential Contaminant Source or Major PCS. A land use or activity determined by the Highlands Council to pose a major risk of ground-water contamination, as listed in Appendix A.

Minor Potential Contaminant Source or Minor PCS. A land use or activity determined by the Highlands Council to pose a minor risk of ground-water contamination, as listed in Appendix B.

Natural Heritage Priority Site. A site identified by NJDEP as containing habitat for documented threatened or endangered plant species, a unique or regionally significant ecological community, or another significant natural feature.

Net Water Availability. The amount of water, expressed by HUC14 subwatershed, determined by the Highlands Council to be available for additional consumptive or depletive use after accounting for ecological needs and existing uses.

NJDEP. The New Jersey Department of Environmental Protection.

Operations and Contingency Plan. A management plan submitted in support of an existing or proposed Major or Minor PCS that documents the sources and substances involved, methods to prevent, contain, remedy, and report a spill, leak, discharge, or migration, facility-personnel training, emergency contacts, and the best management practices incorporated into facility design and operation.

Planning Area. Lands within the Highlands Region that are not within the Preservation Area, as defined at N.J.S.A. 13:20-7.

Plan Conformance. The process by which a municipality revises its master plan, development regulations, and other regulations relating to land use and development to conform them to the goals, requirements, and provisions of the RMP.

Prime Ground Water Recharge Area or PGWRA. Lands designated by the Highlands Council as those within a HUC14 subwatershed that most efficiently provide, in the aggregate, forty percent of total drought recharge volume for the subwatershed.

Qualified Environmental Professional. A person possessing the specific education, training, licensure where applicable, and experience necessary to exercise professional judgment and develop reliable opinions and conclusions concerning the resource at issue.

Regional Master Plan or RMP. The Highlands Regional Master Plan and any revision or amendment adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

Residential development. Development creating new dwelling units or improving or expanding existing dwelling units, whether through new construction or conversion, and associated improvements customarily required for or accessory to residential use.

Reviewing authority. The Joint Land Use Board, Zoning Officer, Borough Engineer, Construction Official, or other Borough official or body having jurisdiction over an application, permit, approval, or determination subject to this Article.

Riparian Area. Lands adjacent to and hydrologically interconnected with Highlands Open Waters rivers and streams, including flood-prone areas, wetlands, hydric and alluvial soils, shallow-ground-water areas, and wildlife-passage corridors within 300 feet of surface Highlands Open Waters features.

Slopes, Constrained. Non-riparian Area lands having a slope of fifteen percent to less than twenty percent that are nonforested and exhibit one or more of the following: high susceptibility to erosion, shallow depth to bedrock, or a Soil Capability Class indicative of wet or stony soils.

Slopes, Limited Constrained. Non-riparian Area lands having a slope of fifteen percent to less than twenty percent that are nonforested, are not highly susceptible to erosion, and do not have shallow depth to bedrock or a Soil Capability Class indicative of wet or stony soils.

Slopes, Moderately Constrained. Forested, Non-riparian Area lands having a slope of fifteen percent to less than twenty percent.

Slopes, Severely Constrained. Lands having slopes of twenty percent or greater and lands within Riparian Areas having slopes of ten percent or greater.

Steep Slope Protection Area. The area identified by the Highlands Council as Severely Constrained, Moderately Constrained, Constrained, or Limited Constrained Slopes, together with any other area determined under § 215-113 to contain 5,000 square feet or more of contiguous steep slopes.

Structure. A combination of materials forming a construction for occupancy, use, or ornamentation, whether installed on, above, or below the surface of land.

Vernal Pool. A confined, ephemeral wet depression certified by NJDEP that supports species specially adapted to periodic extremes in water levels.

Vernal Pool Protection Buffer. The 300-meter terrestrial habitat protection buffer measured from the perimeter of an NJDEP-certified Vernal Pool.

Water Use and Conservation Management Plan or WUCMP. A Highlands Council-approved plan addressing water availability, deficits, conservation, demand management, mitigation, and implementation within one or more HUC14 subwatersheds.

§ 215-105. Highlands Council review of land-development-regulation amendments.

A. Any amendment to Chapter 124, Chapter 195, Chapter 215, this Article, or any other Borough development regulation affecting the use or development of land within the Borough Highlands Area shall be transmitted to the Highlands Council for review in accordance with the Plan Conformance Procedures.

B. An amendment subject to Subsection A shall not become effective until the Highlands Council has determined that it is consistent with the RMP or has determined that it is not subject to Highlands Council review.

C. The Borough Clerk shall coordinate the required transmission and maintain the Highlands Council determination with the permanent municipal record of the amendment.

§ 215-106. Establishment of Highlands Area, Land Use Capability Zones, and exhibits.

A. The Borough hereby establishes the whole municipality as the Borough Highlands Area, consisting entirely of Highlands Planning Area lands.

B. The following RMP Land Use Capability Zones and Sub-Zones are established as an overlay to the Borough's underlying zoning districts: the Protection Zone, Conservation Zone, Existing Community Zone, Wildlife Management Sub-Zone, Conservation Zone–Environmentally Constrained Sub-Zone, Existing Community Zone–Environmentally Constrained Sub-Zone, and Lake Community Sub-Zone. A zone or sub-zone not presently mapped in the Borough remains included so that this Article will apply if official mapping is subsequently revised.

C. The following exhibits, appended to and incorporated in this Ordinance, are adopted:

(1) Exhibit 1 — Highlands Region and Land Use Capability Zones.

(2) Exhibit 2 — Wellhead Protection Areas (Community and Non-Community).

(3) Exhibit 3 — Highlands Open Water and Open Water Protection Areas.

(4) Exhibit 4 — Highlands Riparian Areas.

(5) Exhibit 5 — Net Water Availability.

(6) Exhibit 6 — Forest Resources.

(7) Exhibit 7 — Prime Groundwater Recharge Areas.

(8) Exhibit 8 — Steep Slope Protection Areas.

(9) Exhibit 9 — Critical Wildlife Habitat.

D. The exhibits provide municipal-scale screening information and do not substitute for field delineation, survey, NJDEP Letter of Interpretation, Highlands Council determination, site-specific steep-slope mapping, Habitat Suitability Analysis, or other site-specific information required by this Article. Where an accepted site-specific determination differs from generalized mapping, the accepted site-specific determination shall govern. The same resource exhibits are incorporated into the Highlands Planning Area Master Plan Element for planning purposes and into this Ordinance for regulatory screening purposes; in all cases, current official Highlands Council and NJDEP data and accepted site-specific information shall govern over generalized municipal-scale exhibit mapping.

E. The most current official Highlands Council and NJDEP digital data shall be used to resolve a mapping ambiguity, including a zone assignment for a right-of-way or other area not assigned a LUCZ on Exhibit 1. Where uncertainty remains, the reviewing authority shall obtain a written determination from the Highlands Council.

F. Underlying Borough zoning remains in effect except where this Article establishes a more protective standard or requires a Highlands Council determination, approval, or waiver.

§ 215-107. Applicability and cumulative thresholds.

The following applications for development involving land located wholly or partially within the Borough Highlands Area shall comply with this Article:

A. Residential development that creates three (3) or more new dwelling units or three (3) or more new lots.

B. Nonresidential development that:

(1) Results in ultimate disturbance of one (1) acre or more of land; or

(2) Produces a cumulative increase of impervious surface of one-quarter (0.25) acre or more.

C. Any development that introduces or expands any of the following uses or facilities:

(1) A landfill;

(2) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge, or radioactive materials, including a solid-waste landfill;

(3) A collection or transfer facility for hazardous waste, solid waste containing hazardous materials, or radioactive materials;

(4) An industrial treatment-facility lagoon; or

(5) A Major or Minor PCS on land located within 200 feet of the wellhead of a public community or public non-community water-supply well.

D. The thresholds in Subsections A and B shall be applied cumulatively over time to the lot or tract as it existed on the effective date of this Article. Once a threshold is reached, this Article shall apply to the development that reaches or exceeds the threshold and to subsequent development on the lot or tract.

E. For a mixed-use development, the nonresidential thresholds in Subsection B shall apply to the entire project, and the residential threshold in Subsection A shall apply to the residential component.

F. A project shall not be segmented, phased, subdivided, or otherwise structured for the purpose of avoiding applicability. Related phases or components under common ownership, control, or a common plan of development shall be evaluated cumulatively.

G. Applicability shall be determined in accordance with Part 3 of Chapter 124. Nothing herein exempts an application from any otherwise applicable Borough, county, State, or federal requirement.

H. Every application governed by this Article shall incorporate conservation-design planning and Low Impact Development, including:

(1) Preparation of an existing-features and site-analysis plan identifying Highlands resources and resource areas;

(2) Evaluation of the physical and community context of the surrounding area;

(3) Selection of open-space conservation areas, where applicable, that maximize retention of resource values, connect to existing trails, open spaces, or greenways, and incorporate natural features as site amenities;

(4) Establishment of development yield and apportionment of septic-system yield, Net Water Availability or Conditional Water Availability, and public-water and wastewater capacity, as applicable and consistent with this Article;

(5) Layout of building lots, if applicable, and incorporation of LID techniques for site design, stormwater management, and resource protection; and

(6) Incorporation of applicable Highlands resource standards and smart-growth guidelines.

I. Development shall achieve stormwater management in accordance with the Borough stormwater-management ordinance, the municipal NJPDES permit, N.J.A.C. 7:8 and 7:14A, and all applicable NJDEP and Highlands requirements.

J. To the extent authorized by law, relief from otherwise applicable Borough site-design standards shall be considered where necessary to incorporate smart-growth principles or LID techniques, including shared parking or driveways, biofiltration swales, rainwater capture and reuse, or reduced road or driveway widths. Resource-protection benefits shall be given significant weight in evaluating such relief, but no local relief shall waive a substantive Highlands standard or required agency approval.

K. Site preparation shall limit clearing, grading, and soil compaction to the minimum required to construct the approved project, including necessary equipment-maneuvering areas, while protecting mature trees and habitat outside the approved development area.

L. Landscaping shall use native and disease-resistant plants and, except where used in rain gardens, biofiltration swales, or other stormwater-management facilities, drought-tolerant plants; shall allow natural landscaping where feasible; and shall not include invasive species.

M. Building orientation and design shall, to the maximum extent feasible, respond to microclimate conditions, maximize useful winter solar gain, minimize unwanted summer solar gain, accommodate solar-energy systems, and incorporate other appropriate energy-efficient features.

N. Where development involves demolition, building materials shall be reused or recycled to the maximum extent practicable.

O. All LID features shall be maintained through an enforceable monitoring and maintenance plan that includes procedures for repair or replacement when necessary.

§ 215-108. Highlands Council call-up.

A. Every approval, denial, applicability determination, exemption determination, or other municipal decision made pursuant to this Article shall be transmitted to the Highlands Council in accordance with § 124-49.

B. No decision subject to this section shall become effective until the Highlands Council call-up period in § 124-49 has expired without call-up, or, if the Highlands Council exercises call-up authority, until the Highlands Council issues the required approval or determination.

C. Every approval shall include an express condition stating that it is subject to Highlands Council call-up and shall not authorize construction, issuance of a permit, recording of a plat, or commencement of disturbance before the decision becomes effective under this section.

§ 215-109. Exclusions and Highlands Act exemptions.

A. The following activities are excluded from the standards of this Article, but remain subject to all other applicable laws and ordinances:

(1) Reconstruction, within the same footprint, of a building or structure lawfully existing on the effective date of this Article following destruction or partial destruction by fire, storm, natural disaster, or other unintended circumstance.

(2) An improvement or alteration to a lawfully existing building or structure that is necessary to comply with the Americans with Disabilities Act or otherwise provide accessibility to persons with disabilities.

(3) An agricultural or horticultural use or development that does not:

(a) Increase, since August 10, 2004, either individually or cumulatively, new agricultural impervious cover beyond three percent of the total land area of a Farm Management Unit operating under an approved farm conservation plan, or beyond nine percent under an approved resource management systems plan; and

(b) Construct three or more new residential dwelling units, including accessory dwelling units, served by individual on-site septic systems.

B. A development qualifying for an exemption under N.J.S.A. 13:20-28 shall be exempt from this Article, except § 215-119, Affordable Housing. The applicant bears the burden of demonstrating the exemption through one of the following:

(1) A Highlands Exemption Determination issued by the Highlands Council; or

(2) For Highlands Act Exemptions 1, 2, 4, 5, 6, 7, or 8, a municipal exemption determination issued only after the Borough has adopted, and the Highlands Council has approved, a municipal Highlands exemption-determination ordinance authorizing such determinations.

C. An exclusion or exemption shall be construed narrowly and shall not waive any requirement imposed by another applicable provision of law.

§ 215-110. Prohibited Uses and Potential Contaminant Sources.

A. The following principal or accessory uses and structures related or devoted to such uses are prohibited within any Prime Ground Water Recharge Area, Tier 1 or Tier 2 Wellhead Protection Area, portion of a Carbonate Rock Area determined to contain karst features, or land identified as discharging surface water into such a Carbonate Rock Area, unless expressly authorized by a written Highlands Council or NJDEP waiver or consistency determination issued under applicable law:

(1) Landfills;

(2) Facilities for permanent storage or disposal of hazardous wastes, industrial or municipal sludge, or radioactive materials, including solid-waste landfills;

(3) Collection and transfer facilities for hazardous wastes, solid wastes containing hazardous materials, or radioactive materials; and

(4) Industrial treatment-facility lagoons.

B. Any principal or accessory use or structure designated as a Major or Minor PCS is prohibited within the portion of a Tier 1 Wellhead Protection Area lying within 200 feet of the wellhead, as shown on Exhibit 2 or confirmed by current NJDEP mapping.

C. A Major PCS proposed to be established or expanded within a Tier 1 Wellhead Protection Area, a PGWRA, a Carbonate Rock Area determined to contain or have potential to develop karst features, or an area discharging surface water thereto shall comply with the current Highlands Council best-management-practice and Operations and Contingency Plan requirements. No municipal approval shall become effective until all required Highlands Council findings or conditions have been issued or satisfied.

D. Best management practices. Every facility subject to Subsection C shall be designed and operated to prevent the unintentional discharge of toxic or hazardous pollutants to ground water, surface water, or the land surface, including from loading, storage, processing, manufacturing, and transfer areas. At a minimum:

(1) Outdoor storage, processing, manufacturing, and transfer areas shall prevent overflow, drainage, or leaching;

(2) Containers shall be clearly labeled, closed, and sealed when material is not being transferred;

(3) Outdoor areas shall provide secondary containment or diversionary structures, which may include impermeable containers, dikes, berms, retaining walls, curbing, drainage controls, barriers, lined collection systems, holding tanks, sumps, or drip pans;

(4) Containment shall block all expected migration routes, contain the largest probable single discharge plus anticipated rainfall, and remain impermeable for the duration of a spill event;

(5) Regulated areas shall not drain directly or indirectly to a watercourse or disposal area unless spilled material will be intercepted and treated in an NJDEP-approved facility;

(6) Outdoor regulated-substance storage and containment shall be covered to minimize precipitation contact and water accumulation;

(7) Catchment basins, lagoons, and containment areas shall not be located where subject to flooding by natural waterways;

(8) Stormwater shall be managed to prevent contamination and comply with applicable law; and

(9) Transfers of petroleum from delivery trucks and storage containers greater than five gallons shall occur over an impervious surface having a positive limiting barrier.

E. Equivalent compliance mechanisms. An applicant may demonstrate equivalent compliance through an applicable, current approval consisting of:

(1) An NJPDES permit under N.J.A.C. 7:14A;

(2) An NJDEP-approved underground storage tank under N.J.A.C. 7:14B;

(3) An NJDEP-approved Discharge Prevention, Containment and Countermeasure Plan under N.J.A.C. 7:1E;

(4) An NJDEP- or USEPA-approved hazardous-waste remedial action under applicable State law, RCRA, or CERCLA;

(5) An NJDEP-approved hazardous-waste facility;

(6) A Soil Conservation District-approved Farm Conservation Plan or Resource Management System Plan;

(7) An NJDEP-approved solid-waste facility; or

(8) An applicable Animal Waste Management Plan or Comprehensive Nutrient Management Plan under N.J.A.C. 2:91.

F. Unless an equivalent approval listed in Subsection E is provided, or the applicant certifies that no potential contaminants will be stored, discharged, manufactured, or used on site, an application involving a Major PCS shall include an approved Operations and Contingency Plan. No certificate of occupancy or other final authorization shall be issued until the designated municipal professional verifies that the approved plan is on file with the appropriate entities.

G. An Operations and Contingency Plan shall demonstrate that the potential for a significant discharge is the lowest technologically feasible and shall include:

(1) Identification of each existing and proposed Major PCS;

(2) Types and quantities of hazardous substances or wastes used, discharged, or stored;

(3) Measures to prevent spillage, leakage, or discharge;

(4) Measures to contain and remedy accidental spillage, leakage, discharge, or migration to ground water, surface water, or recharge lands;

(5) Applicable best management practices and regulatory controls;

(6) Facility-personnel training;

(7) Emergency-notification procedures and current contacts for NJDEP, the Fire Department, Police Department, Office of Emergency Management, Board of Health, and other appropriate authorities; and

(8) A demonstration that facility design and operations employ best management practices to the maximum extent feasible.

H. The proposed Operations and Contingency Plan shall be submitted to the Board of Health, Fire Department, Police Department, Office of Emergency Management, designated municipal professional, and other applicable agencies for review. Required revisions shall be incorporated before final approval. Information protected from disclosure under applicable law shall be maintained confidentially, subject to the limitations of such law.

I. Future identification of Carbonate Rock Areas. No Carbonate Rock Area is presently mapped in the Borough. If a Carbonate Rock Area is subsequently mapped or confirmed, an application within that area, or within a subwatershed that drains directly to it, shall comply with the then-current Highlands Council carbonate-rock standards, including any required geotechnical investigation and Highlands Council review, approval, or determination, in addition to the requirements of this section.

§ 215-111. Highlands Open Waters and Riparian Areas.

A. Highlands Open Waters and buffers.

(1) Every Highlands Open Waters feature shall include a minimum 300-foot protection buffer measured from the edge of the discernible bank of the feature, or from its centerline where no discernible bank exists.

(2) For wetlands, the buffer shall be measured from the wetland line delineated in an NJDEP Letter of Interpretation. For an unmapped seep, spring, wetland, or other feature, the buffer shall be measured from an accepted field-delineated boundary.

(3) Disturbance of Highlands Open Waters is prohibited except where expressly authorized by NJDEP and the Highlands Council.

B. General buffer standards.

(1) Highlands Open Waters buffers shall be maintained in an undisturbed or lawful pre-existing condition except as specifically permitted by this section.

(2) A lawfully pre-existing structure or improvement within a buffer may remain and may be maintained or rehabilitated, provided the associated area of disturbance is not increased.

(3) Except as provided in Subsection D(3), existing agricultural or horticultural uses, whether active or inactive, shall not be counted as previously disturbed buffer area for conversion to nonagricultural development.

(4) Municipal approval does not relieve an applicant from NJDEP, Soil Conservation District, county, regional, or other approvals.

(5) A wider buffer may be required where a site-specific analysis by a Qualified Environmental Professional demonstrates that additional width is essential to protect Highlands Open Waters, associated Riparian Areas, or water- or wetland-dependent habitat.

C. Protection Zone, Conservation Zone and Environmentally Constrained Sub-Zone standards.

(1) Within the Protection Zone, Conservation Zone, Conservation Zone–Environmentally Constrained Sub-Zone, and Existing Community Zone–Environmentally Constrained Sub-Zone, disturbance of Highlands Open Waters and the adjacent 300-foot buffer is prohibited except for Linear Development for which no feasible alternative exists outside the feature and buffer.

(2) The applicant shall demonstrate that no other location, design, or configuration would reduce or eliminate disturbance. For Linear Development providing access to an otherwise developable lot, the applicant shall also demonstrate that the alignment is the only feasible point of access for roadways or utilities and that shared driveways and utilities are used to the maximum extent feasible.

(3) An alternative shall not be excluded merely because it involves land not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the Linear Development.

D. Existing Community Zone buffer standards.

(1) In the Existing Community Zone, excluding the Existing Community Zone–Environmentally Constrained Sub-Zone, buffer disturbance may occur only in previously disturbed areas.

(2) The proposal shall incorporate LID best management practices and mitigation sufficient to ensure no net loss of buffer functional value. Restoration may be required.

(3) For a project providing at least twenty percent affordable housing, existing agricultural disturbance in the unconstrained Existing Community Zone shall be treated as previously disturbed for purposes of this subsection, subject to Highlands Council review under the Highlands Affordable Housing RMP Amendment.

E. Riparian Area standards in the Protection Zone, Conservation Zone, and Environmentally Constrained Sub-Zones.

(1) Disturbance of a Highlands Riparian Area is prohibited except for Linear Development for which no feasible alternative exists outside the Riparian Area.

(2) The no-feasible-alternative demonstrations in Subsection C(2) and (3) shall apply.

F. Existing Community Zone Riparian Area standards. In the Existing Community Zone, excluding the Existing Community Zone–Environmentally Constrained Sub-Zone, disturbance or an increase in impervious surface in a Highlands Riparian Area shall be limited to the minimum feasible alteration in areas beyond Highlands Open Waters and their buffers.

G. All authorized disturbance shall be limited to the minimum feasible area and shall comply with applicable avoidance, minimization, LID, restoration, stabilization, monitoring, conservation-restriction, and maintenance requirements imposed by the Reviewing Authority, NJDEP, or the Highlands Council. The standards of this section shall apply unless superseded by a Highlands Council-approved Stream Corridor Protection and Mitigation Plan and implementing ordinance.

§ 215-112. Critical Habitat, Vernal Pools, and Natural Heritage Priority Sites.

A. The location and extent of Critical Wildlife Habitat, Vernal Pools, Vernal Pool Protection Buffers, and Natural Heritage Priority Sites shall be determined using the most current NJDEP and Highlands Council data, Exhibit 9 for screening, and accepted site-specific information. No NJDEP Natural Heritage Priority Sites are currently mapped within Mendham Borough; this section shall apply to any such site mapped or identified in the future.

B. Critical Wildlife Habitat and Natural Heritage Priority Sites. Disturbance may be permitted only where a Habitat Suitability Analysis prepared by a Qualified Environmental Professional demonstrates one or more of the following:

(1) The site does not provide habitat for a species of concern;

(2) The species of concern is not present during any critical part of its life cycle, does not depend upon the site for food, shelter, or breeding, and the site is unsuitable or not critical to recovery of the species in the Highlands Region;

(3) Existing land uses present a substantial human, natural, or developed barrier to use of the site by the species of concern; or

(4) Disturbance to a species of concern can be avoided through commonly accepted species-specific timing restrictions, including restrictions on tree clearing, site disturbance, and construction.

C. Where the Joint Land Use Board cannot confirm compliance with Subsection B, disturbance shall not be authorized without prior written approval of the Highlands Council.

D. Vernal Pools. No disturbance is permitted within a Vernal Pool Protection Buffer except where the applicant demonstrates, and the Highlands Council confirms, that the reduction is the minimum feasible and that:

(1) In an undisturbed wetland, documented and field-determined vernal-pool-breeding wildlife require a smaller buffer, as supported by scientific literature; or

(2) Existing land uses create a significant, insurmountable, and permanent barrier to migration or viability of vernal-pool-breeding wildlife that is infeasible to mitigate.

E. Any approval shall incorporate avoidance, minimization, and mitigation and shall ensure no net loss of habitat value, considering habitat quantity, quality, type, function, connectivity, and the life-cycle needs of affected species.

§ 215-113. Steep slopes.

A. Applicability and delineation.

(1) This section applies to the mapped Steep Slope Protection Area and to any other portion of the Borough Highlands Area determined to contain 5,000 square feet or more of contiguous steep slopes.

(2) Slopes shall be calculated for every two-foot contour interval over the full extent of the existing slope feature, regardless of property or jurisdictional boundaries, and shall be delineated on a site-specific map prepared by an appropriately licensed professional for every application subject to this Article.

(3) Exhibit 8 may be used for screening but shall not replace site-specific delineation of Severely Constrained, Moderately Constrained, Constrained, and Limited Constrained Slopes.

B. Severely and Moderately Constrained Slopes. Disturbance is prohibited except for Linear Development for which no feasible alternative exists outside the constrained slopes.

C. No-feasible-alternative standard.

(1) The applicant shall demonstrate that no other location, design, or configuration would reduce or eliminate disturbance of Severely or Moderately Constrained Slopes.

(2) For Linear Development providing access to an otherwise developable lot, the applicant shall demonstrate that the alignment is the only feasible point of access for roadways or utilities and that shared driveways and utilities are used to the maximum extent feasible.

(3) An alternative shall not be excluded merely because it involves land not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed Linear Development.

(4) Disturbance shall not be approved if a reasonable alternative exists.

D. Constrained Slopes or Limited Constrained Slopes. Disturbance may be permitted only upon a written Highlands Council finding that the application satisfactorily addresses all of the following:

(1) The disturbance cannot be avoided or further reduced while reasonably accommodating the proposed use;

(2) LID techniques appropriate to the activity and steep-slope environment reduce disturbance, stabilize disturbed areas, manage stormwater, and protect adjacent lands during construction;

(3) The layout minimizes grading and retaining structures, uses a cluster format where feasible, and places unavoidable disturbance on slopes having the least potential for instability; and

(4) Site design uses bioengineering stabilization, steep-slope-appropriate erosion controls, prevents direct stormwater discharge to Highlands Open Waters, controls stormwater velocity and volume so that no net increase in runoff rate occurs, and maximizes protection of trees, woodlands, and surrounding natural vegetation.

E. The requirements of § 215-12.4 and any other Borough steep-slope or overlay provision remain applicable. Where standards differ, the more protective standard shall govern. A municipal variance, waiver, alternate standard, or overlay-zone exemption shall not constitute relief from this section or from any required Highlands Council approval.

§ 215-114. Prime Ground Water Recharge Areas.

A. Disturbance of a PGWRA shown on Exhibit 7 or confirmed by current Highlands Council data may be permitted only upon a written Highlands Council finding that the proposal complies with every applicable requirement of this section.

B. Avoidance. Development shall not disturb a PGWRA unless:

(1) The entire subject property is located within a PGWRA and total avoidance is infeasible; or

(2) The disturbance is the only viable means of avoiding Critical Habitat, Highlands Open Waters buffers, Moderately Constrained Slopes, or Severely Constrained Slopes present on the property.

C. Minimization. Where total avoidance is infeasible, disruption of natural recharge patterns or volumes shall not exceed fifteen percent of the PGWRA within the affected parcel or parcels. Disturbance shall be located, to the maximum extent feasible, in portions having the lowest relative recharge rates and least aquifer-recharge potential, based on site analysis.

D. LID. LID practices shall reduce recharge disruption to the minimum feasible within the fifteen-percent cap.

E. Mitigation. An application proposing PGWRA disturbance shall include a recharge-mitigation plan providing not less than 125 percent of the preconstruction recharge volume attributable to the disturbed PGWRA. Mitigation shall occur in the following order of priority:

(1) On the development site, to the maximum extent feasible;

(2) Within the same HUC14 subwatershed; or

(3) If no feasible option exists in the same HUC14 subwatershed, within an interrelated HUC14 subwatershed approved by the Highlands Council.

F. Unavoidable disturbance exceeding fifteen percent. The Highlands Council may grant a waiver only upon a showing that the development cannot avoid or minimize the impact and that the additional disturbance will be mitigated through permanent protection or preservation of land having equal or greater recharge value in the same HUC14 subwatershed.

G. A Major PCS proposed to be established or expanded in a PGWRA shall also comply with § 215-110.

H. The mitigation plan shall identify baseline and postdevelopment recharge volumes, methods, locations, long-term maintenance, monitoring, enforceable implementation responsibilities, and any conservation restriction or guarantee required by the Highlands Council or Reviewing Authority.

§ 215-115. Septic-system density.

A. This section does not apply to repair or replacement of an existing septic system that does not create new or increased wastewater demand.

B. Development proposing new or increased septic-system capacity shall comply with the following gross-density standards. These standards do not modify Borough minimum-lot-area requirements; the more restrictive requirement shall govern.

Highlands Land Use Capability Zone or Sub-Zone	Minimum Gross Acres per 300 Gallons per Day of Wastewater Flow
Existing Community Zone and Sub-Zones	8 acres
Conservation Zone and Sub-Zones	9 acres
Protection Zone and Sub-Zones	23 acres

C. The acreage standard shall be applied as the minimum average gross acreage necessary to support every 300 gallons per day of wastewater flow. The following equivalents shall apply:

(1) Residential uses, except as provided below: one dwelling unit equals 300 gallons per day.

(2) Office and commercial uses: 2,400 square feet of floor area equals 300 gallons per day.

(3) Industrial uses, including warehousing and distribution, excluding process wastewater: 18,182 square feet of floor area equals 300 gallons per day.

(4) For a specific nonresidential use, 300-gallon-per-day equivalents may be calculated using the average sewage volumes in N.J.A.C. 7:9A-7.4 or a successor standard accepted by the Highlands Council.

(5) A deed-restricted senior-citizen dwelling unit or mobile-home unit containing less than 500 square feet shall be assigned 200 gallons per day, with the required acreage prorated accordingly.

(6) For purposes of this section, floor area comprises the area of each floor of a building within the inside perimeter of its exterior walls, excluding vent shafts, courts, and unfinished basements or attics having ceiling heights below the minimum required for habitable space under the applicable building code.

D. The applicable zone shall be determined from Exhibit 1 and current Highlands Council mapping. Where a development spans more than one zone, the density calculation shall be performed by zone, and the resulting wastewater yield shall be aggregated only where the Highlands Council confirms that aggregation is consistent with the RMP.

E. No approval shall be issued unless the applicant demonstrates adequate lot area, suitable soils, compliance with Chapter 232 of the Borough Code, NJDEP requirements, and consistency with the RMP.

§ 215-116. New or extended water and wastewater infrastructure.

A. Protection Zone, Conservation Zone, and Environmentally Constrained Sub-Zones. New, expanded, or extended public water-supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are prohibited unless the Highlands Council approves a waiver to address a documented threat to public health and safety, a Highlands Redevelopment Area, a Takings Waiver under RMP Policies 7G1 or 7G2, a cluster development satisfying RMP Objective 2J4b, or a 100-percent affordable housing development for which the Highlands Council grants a case-by-case waiver under RMP Policy 7G4, provided that the development is consistent with the resource-protection standards in the goals, policies, and objectives of the RMP to the maximum extent possible and is included in the Borough's adopted Fair Share Plan that has been deemed consistent with the RMP by the Highlands Council.

B. Existing Community Zone, excluding the Existing Community Zone–Environmentally Constrained Sub-Zone. Expansion or creation of public water-supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities may be permitted to serve an appropriate TDR Receiving Zone, infill development, redevelopment, an affordable-housing project in which at least twenty percent of the units are affordable or such alternative set-aside is approved in a compliance certification or court order, a documented public-health-and-safety need, or a new development area satisfying all RMP requirements. TDR Receiving Zones, qualifying affordable-housing projects, infill, and redevelopment shall receive the capacity priority required by the RMP.

C. Any proposed infrastructure shall be consistent with Net Water Availability or Conditional Water Availability, the applicable Areawide Water Quality Management Plan, wastewater-management planning, authorized service areas, available treatment and supply capacity, resource-protection standards, and all conditions imposed by NJDEP and the Highlands Council.

D. Development water-supply demand shall be calculated in accordance with applicable NJDEP Safe Drinking Water Regulations, and wastewater demand shall be calculated in accordance with N.J.A.C. 7:14A or N.J.A.C. 7:9A, as applicable.

E. An applicant shall demonstrate that no new or increased transfer of water between HUC14 subwatersheds will occur, or that no viable alternative exists to meet public-health, safety, and welfare objectives and that any transfer complies with § 215-117.

F. Nothing in this section authorizes service outside an approved service area or substitutes for a permit, allocation, approval, WQMP amendment, or consistency determination required by another agency.

§ 215-117. Net Water Availability and water conservation.

A. Water conservation. Every development subject to this Article shall incorporate, as applicable:

(1) Water-conserving fixtures and appliances required by the applicable building code;

(2) Automatic rain-sensor or soil-moisture controls for new and replacement lawn-irrigation systems in accordance with N.J.A.C. 5:23-3.16;

(3) Nonpotable irrigation designed to use only the amount of water necessary for appropriate plant establishment and growth;

(4) Internal recycling or beneficial reuse of reclaimed water in new commercial development to the maximum extent practicable;

(5) Use of stormwater for irrigation and other appropriate nonpotable purposes to the maximum extent practicable;

(6) Reduction of water losses in rehabilitation of on-site water infrastructure using accepted water-loss-analysis methods, including the current AWWA Manual M36 or successor guidance; and

(7) Landscaping that minimizes irrigation; uses native and disease-resistant plants and, except where used in rain gardens, biofiltration swales, or other stormwater-management facilities, drought-tolerant plants; allows natural landscaping where feasible; and excludes invasive species.

B. The requirements in Subsections C through F apply to an application proposing a new or increased average use of potable or nonpotable water of 6,000 gallons per day or more derived from:

(1) A ground-water source in a Highlands HUC14 subwatershed, whether through a public community or non-community system, nonpublic well, or individual private well; or

(2) A surface-water source in a Highlands HUC14 subwatershed that is not associated with a safe yield established by an NJDEP water-allocation permit.

C. Where a Highlands Council-approved WUCMP has been adopted for the municipality or affected HUC14 subwatershed, the application shall comply fully with that plan. Compliance with an approved WUCMP shall constitute compliance with the Net Water Availability and Conditional Water Availability requirements addressed by the plan.

D. Net Water Availability. In the absence of an applicable WUCMP, no application proposing use of positive Net Water Availability shall be approved unless the Highlands Council determines in writing that the proposed consumptive or depletive water use will not exceed the remaining Net Water Availability of the source HUC14 subwatershed.

E. Conditional Water Availability. Jurisdiction over use of Conditional Water Availability in a Current Deficit Area lies solely with the Highlands Council until an applicable WUCMP is adopted and effective. No application shall be approved unless the Highlands Council finds in writing that:

(1) The proposed consumptive or depletive water use will not exceed the remaining Conditional Water Availability of the source HUC14 subwatershed;

(2) The applicable mitigation requirement has been correctly calculated;

(3) The proposed development will provide acceptable deficit-mitigation methods; and

(4) The proposed measures can reasonably be anticipated to achieve the required mitigation.

F. Deficit mitigation.

(1) Mitigation shall be provided at the percentage required by the current Highlands Council Scaled Mitigation Requirements and within the same source HUC14 subwatershed. If the project and water source are in different subwatersheds, only measures benefiting the source subwatershed may be credited.

(2) Off-site measures require Highlands Council approval and all other approvals having jurisdiction. On-site water-conservation credits may be applied only to existing consumptive or depletive uses and shall be implemented before issuance of a certificate of occupancy or approval. Recharge measures shall be incorporated into the stormwater-management plan, operation and maintenance manual, and site design.

(3) The applicant shall submit a Deficit Mitigation Plan documenting the need and minimized amount of water use, mitigation engineering, feasibility, achievement of the required amount, implementation schedule, operation, maintenance, and monitoring.

(4) Approval shall require a qualified responsible entity, written acceptance of implementation responsibilities, a cost estimate including contingency, performance and maintenance guarantees or an equivalent binding public commitment, and reporting to the Highlands Council and Borough until the plan is fully implemented or incorporated into an approved WUCMP.

(5) An application that cannot achieve the required deficit mitigation shall not be approved.

§ 215-118. Forest resources.

A. Clear-cutting is prohibited in every forested portion of the Borough Highlands Area, whether mapped as Core Forest, Forest Resource Area, or other Forest Area, or identified through an accepted site-specific determination.

B. Any Forest disturbance subject to this Article may be permitted only upon findings that:

(1) The proposed disturbance cannot be avoided or further reduced while reasonably accommodating a use otherwise permitted under this Article; and

(2) The proposal incorporates LID techniques appropriate to the activity and Forest resource.

C. Forest Mitigation Plan triggers. A Forest Mitigation Plan shall be submitted, approved, and secured for implementation for:

(1) Disturbance of one-half acre or more, other than maintenance of a lawfully pre-existing use or structure and excluding expansion thereof; or

(2) Any disturbance constituting deforestation.

D. Forest Impact Report. Every application requiring a Forest Mitigation Plan shall include a Forest Impact Report prepared by a State of New Jersey Approved Forester or other Qualified Environmental Professional and containing, at minimum:

(1) A map of upland Forest on the property and within 500 feet, together with mapped Forest Resource Area and Total Forest information;

(2) A description of the nature, density, and intensity of the proposed use;

(3) A tree-removal and disturbance plan identifying the number, location, species, and, for trees greater than six inches in caliper measured 4.5 feet above grade, the caliper of trees proposed for removal;

(4) An alternatives analysis demonstrating, in order, avoidance, minimization, and selection of the least-impact disturbance;

(5) The LID practices incorporated into the plans;

(6) Any site-specific forest information that differs from mapped resources, in a format suitable for Highlands Council verification as an RMP Update; and

(7) An analysis of direct and indirect effects on Forest, including adjacent and proximate Forest.

E. Additional deforestation analysis. Where the proposal constitutes deforestation, the Forest Impact Report shall also include:

(1) A description and map of Forest resources within one-half (0.5) mile of the property;

(2) A field survey of local ecological community types and description of the surrounding macro-scale ecological community;

(3) An inventory of Forest community composition and stand structure, including species richness and composition, stand density and basal area, connectivity, and survey methods; and

(4) An analysis of fragmentation, creation of Forest edge, disruption of Forest on steep slopes or Riparian Areas, and disruption of Core Forest.

F. Forest Mitigation Plan. The plan shall be prepared by a State of New Jersey Approved Forester or other Qualified Environmental Professional and shall include:

(1) A mitigation-priority map identifying the highest ecological-value areas, including Highlands Open Waters and buffers, Riparian Areas, flood-prone areas, Critical Habitat, steep slopes and ridgelines, Core Forest, and contiguous Forest patches;

(2) A protection plan describing how mitigation-priority areas will be protected during and after disturbance;

(3) A Forest Protection Plan showing field-marked limits of disturbance, protective fencing at tree drip lines, prohibitions on equipment encroachment, and inspection and maintenance requirements during construction;

(4) A description of restoration, reforestation, tree planting, or other mitigation providing equivalent or enhanced Forest-ecosystem benefit;

(5) A planting plan identifying species, size, quantity, location, spacing, installation, deer and pest protection, and maintenance; and

(6) A maintenance agreement of not less than five years, including monitoring, protection devices maintained in working order for three years, and at least a seventy-five-percent survival rate after three years.

G. Chapter 202 and other Borough tree-protection provisions remain applicable. Where those provisions and this section overlap, the more protective standard shall govern.

§ 215-119. Affordable housing.

A. Notwithstanding § 215-107 and any Highlands Act exemption, this section applies to every development consisting of five (5) units or moreof newly constructed residential units in the Borough Highlands Area, including related phases or components of a common plan.

B. In accordance with N.J.S.A. 52:27D-329.9 and applicable Highlands requirements, such development shall reserve for occupancy by low- or moderate-income households at least twenty percent of the residential units constructed, with affordability controls established in accordance with applicable law and the rules of the agency having jurisdiction.

C. Development exempt from the Highlands Act is not exempt from the twenty-percent reservation requirement.

D. Unless otherwise specified in the Borough Housing Element and Fair Share Plan, each residential inclusionary project shall provide at least a thirteen-percent very-low-income set-aside as part of its twenty percent set-aside.

E. No density bonus or presumptive density increase over otherwise applicable zoning is required solely by this section. Density bonuses or other zoning incentives may be provided through the Borough's Housing Element and Fair Share Plan and implementing ordinances where an inclusionary project is selected as a compliance mechanism.

F. The applicant shall demonstrate how the requirement of this section will be satisfied. Where one or more affordable units are proposed or required, an Affordable Housing Production Plan shall be submitted with the application and shall be a condition of completeness for an application requiring Joint Land Use Board review. The plan shall include, at a minimum:

(1) The total number of market-rate and affordable units, bedroom distribution, income distribution, tenure, and anticipated administrative entity;

(2) Proposed phasing and the anticipated schedule for construction and occupancy of affordable units;

(3) Affordability controls, affirmative-marketing responsibilities, estimated rents or sales prices, maintenance obligations, and other information necessary for long-term administration;

(4) The proposed method for addressing any fractional-unit obligation or other implementation issue under applicable law; and

(5) A demonstration of consistency with the RMP, the Borough's adopted Housing Element and Fair Share Plan, Chapter 60, applicable overlay-zone standards, the Uniform Housing Affordability Controls, and any applicable compliance certification or court order.

G. The Joint Land Use Board shall review the Affordable Housing Production Plan for consistency with applicable law, the RMP, and the Borough's affordable-housing planning documents. Compliance shall be a condition of approval.

H. Where on-site provision of some or all affordable units would be inconsistent with the RMP, off-site provision within the Borough may be permitted only where authorized by the Borough's approved Housing Element and Fair Share Plan, an implementing ordinance, a compliance certification, or a court order, and where consistent with Highlands requirements.

I. Every approval providing affordable units shall require a development agreement between the applicant and the Borough addressing the responsibilities of the parties; phasing, construction, and occupancy; administration and long-term controls; and any performance or maintenance guarantees authorized by law.

J. Where another Borough provision imposes a greater affordable-housing obligation or more protective affordability control, the greater obligation or protection shall govern. Nothing in this section creates an entitlement to rezoning, variance relief, redevelopment designation, density increase, utility extension, or development approval.

§ 215-120. Waivers, variances, conflicts, and enforcement.

A. In addition to any variance or other relief required under the Municipal Land Use Law, no municipal variance, design waiver, checklist waiver, alternate standard, overlay-zone exemption, or other local relief shall constitute or substitute for any Highlands Council or NJDEP waiver, approval, finding, or determination required by this Article, the Highlands Act, the RMP, or current Highlands Council standards.

B. A Highlands waiver or approval may be issued only by the agency having jurisdiction and does not alter or eliminate any requirement of another applicable State, county, federal, or Borough law, regulation, or ordinance.

C. Where the Highlands Council or NJDEP issues a site-specific waiver or approval, the standards and conditions of that decision may be applied in lieu of this Article only to the subject and extent expressly authorized. All remaining provisions continue to apply.

D. No municipal official or Reviewing Authority may approve an application or issue a permit that is inconsistent with a required Highlands Council or NJDEP decision, or that would circumvent this Article or the Highlands Council call-up process.

E. Where this Article conflicts with another Borough standard, the standard that provides greater protection to Highlands resources shall govern, except where applicable law or a site-specific Highlands Council or NJDEP approval expressly provides otherwise.

F. This Article shall be administered and enforced by the Zoning Officer, Construction Official, Borough Engineer, Joint Land Use Board, and other officials within their respective jurisdictions. Violations are subject to the penalties and remedies in § 215-46 and all other remedies available by law.

G. Nothing herein requires removal of a lawfully existing use or structure solely because it does not conform to this Article. Any enlargement, intensification, reconstruction, or new disturbance shall comply to the extent this Article is applicable.

SECTION 2. AMENDMENT TO CHAPTER 124, LAND USE PROCEDURES

Chapter 124, "Land Use Procedures," is hereby amended and supplemented by adding a new Part 3 and Article VIII to read as follows:

PART 3 — HIGHLANDS PLANNING AREA REVIEW PROCEDURES

ARTICLE VIII — GENERAL PROVISIONS

§ 124-45. Applicability determination.

A. Before an application subject to municipal land-use review is certified complete, and before issuance of a zoning permit or other municipal authorization for development not requiring Joint Land Use Board approval, the Administrative Officer or other Reviewing Authority shall determine whether Chapter 215, Article XXII applies.

B. The applicant shall submit a Highlands applicability certification identifying the proposed number of dwelling units or lots, ultimate disturbance, cumulative impervious-surface increase, proposed use, water demand, wastewater demand, and any claimed exclusion or exemption.

C. The Administrative Officer may refer an applicability question to the Borough Engineer, Borough Planner, or Highlands Council. An application shall not be segmented or phased to avoid the thresholds in § 215-107.

D. A determination that Article XXII does not apply shall not waive another applicable environmental, land-use, stormwater, steep-slope, tree, soil-erosion, flood-hazard, or affordable-housing requirement.

§ 124-46. Highlands supplemental submission requirements.

The requirements in this section constitute the Highlands supplemental application checklist for purposes of N.J.S.A. 40:55D-10.3. The Administrative Officer shall make a checklist form available. An application governed by Chapter 215, Article XXII shall include the following information, as applicable to the proposal and affected resources:

A. A completed Highlands applicability and resource checklist identifying the applicable LUCZ and every mapped or field-identified Highlands resource.

B. A Highlands constraints plan, at the same scale as the site plan or subdivision plat, showing property boundaries; existing and proposed disturbance and impervious surface; LUCZ boundaries; Highlands Open Waters and buffers; Riparian Areas; Wellhead Protection Areas; PGWRAs; Carbonate Rock Areas, if present; Forest Area; Critical Habitat; Vernal Pool Protection Buffers; Natural Heritage Priority Sites, if any; Severely, Moderately, Constrained, and Limited Constrained Slopes; HUC14 boundaries; water and wastewater sources and service areas; and preserved lands.

C. Calculations of existing and proposed dwelling units and lots, ultimate disturbance, cumulative impervious-surface increase, Forest disturbance, PGWRA disturbance, each category of steep-slope disturbance, water demand, wastewater flow, and septic equivalents.

D. A copy of every Highlands Exemption Determination, Highlands Council finding, NJDEP approval, or other agency determination relied upon by the applicant.

E. Site-specific delineations, surveys, reports, plans, and mitigation documents required by Article XXII, including, where applicable:

(1) An NJDEP wetland Letter of Interpretation or other accepted resource delineation;

(2) A conservation-design and LID narrative and maintenance plan;

(3) A Habitat Suitability Analysis or vernal-pool scientific analysis;

(4) A site-specific steep-slope map and analysis;

(5) A recharge-mitigation plan;

(6) A Forest Impact Report and Forest Mitigation Plan;

(7) A Net Water Availability or Conditional Water Availability determination and, where applicable, a Deficit Mitigation Plan;

(8) An Operations and Contingency Plan; and

(9) An Affordable Housing Production Plan.

F. A list and status of all required State, county, Highlands Council, utility, water-allocation, wastewater-management, WQMP, flood-hazard, wetland, soil-conservation, and other approvals.

G. Digital copies of plans, reports, and mapping in a format acceptable to the Borough and, where Highlands Council review is required, in full compliance with the current Highlands Council Digital Submission Standards, including georeferenced GIS layers and other digital data required therein.

H. The number of paper copies required by the Administrative Officer.

§ 124-47. Completeness and professional review.

A. The supplemental information required by § 124-46 is mandatory for an application governed by Article XXII and shall be included in the completeness review notwithstanding any omission from an existing application checklist attachment.

B. The Administrative Officer shall not certify an application complete until all submission items applicable to the proposal have been provided, except where the Reviewing Authority issues a written determination that a particular item is not applicable.

C. The Borough may retain qualified planning, engineering, environmental, forestry, habitat, hydrogeologic, affordable-housing, or legal professionals to review the submission. Fees and escrow shall be governed by § 124-28 and Chapter 102.

D. Information submitted under Article XXII may be incorporated into an ecological impact statement required by Part 2 of this chapter, and information in an ecological impact statement may satisfy an equivalent Article XXII submission requirement. No such coordination shall waive a substantive standard or required finding.

E. A waiver from a local application checklist or ecological-impact-statement item shall not waive an Article XXII requirement unless the Reviewing Authority determines in writing that equivalent information has been submitted or that the item is inapplicable.

§ 124-48. Required findings and conditions of approval.

A. A decision on an application governed by Article XXII shall identify each applicable Highlands standard and include findings of fact and conclusions demonstrating compliance.

B. The decision shall include a specific finding concerning conservation-design planning and LID compliance under § 215-107H and all other applicable LID provisions.

C. An approval shall incorporate all required avoidance, minimization, mitigation, restoration, conservation-restriction, monitoring, maintenance, affordable-housing, and agency-approval conditions.

D. Where another governmental approval or Highlands Council finding is required, the municipal approval shall be expressly conditioned on receipt of that decision and compliance with every condition imposed.

E. The Reviewing Authority may require conservation easements, deed notices, performance guarantees, maintenance guarantees, monitoring reports, or other instruments reasonably necessary to secure continued compliance.

F. No municipal approval shall authorize disturbance before the Highlands Council call-up period has expired or any call-up review has been completed.

§ 124-49. Highlands Council transmittal and call-up.

A. Within 15 calendar days after issuance of a decision under Article XXII, the Board Secretary, Zoning Officer, or other issuing official shall transmit the decision and such supporting materials as the Highlands Council requires.

B. The Highlands Council call-up period shall expire 15 calendar days after the Highlands Council receives a complete transmittal. Absent notice of call-up within that period, the municipal decision becomes effective at the expiration of the period, subject to all other conditions.

C. If the Highlands Council exercises call-up authority, the municipal decision shall remain ineffective unless and until the Highlands Council issues the required approval or determination. The applicant shall provide additional materials reasonably required for the call-up review.

D. The Borough shall maintain the transmittal, proof of receipt, call-up notice, and final Highlands Council disposition with the municipal application record.

§ 124-50. Coordination with other procedures.

A. The procedures in this Part supplement, and do not replace, the procedures in Parts 1 and 2 of this chapter, Chapter 195, Chapter 215, and other applicable provisions of the Borough Code.

B. Hearings, notices, decisions, fees, escrow, and professional-review procedures shall be governed by the otherwise applicable provisions of this chapter except where Article XXII or the Highlands Plan Conformance Procedures require an additional step.

C. Where the Highlands Council provides a current model checklist, application form, or transmittal form, the Administrative Officer may require its use without further ordinance amendment, provided the form does not alter a substantive standard established by ordinance.

D. An applicant for an application governed by Article XXII that requires public notice under N.J.S.A. 40:55D-12 shall provide notice to the Highlands Council at least ten days before the public hearing in accordance with current Highlands Council Project Review Procedures and shall submit proof of service to the Administrative Officer.

SECTION 3. APPENDICES AND EXHIBITS

Appendix A, Major Potential Contaminant Sources; Appendix B, Minor Potential Contaminant Sources; and Exhibits 1 through 9 attached hereto are hereby adopted and incorporated into Chapter 215, Article XXII. The Borough Clerk shall maintain the official copies with the Code and may provide the maps as separate full-size documents for public inspection and development review.

SECTION 4. REPEALER; CONTINUED EFFECT OF OTHER REGULATIONS

All ordinances or parts of ordinances inconsistent with this Ordinance are repealed only to the extent of the inconsistency. Except as expressly amended herein, all provisions of the Borough Code remain in full force and effect. Where two applicable standards differ, the more protective standard shall govern as provided in § 215-120.

SECTION 5. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is held invalid by a court of competent jurisdiction, the invalidity shall not affect the remaining portions, which shall remain in full force and effect.

SECTION 6. CODIFICATION

This Ordinance may be renumbered, reorganized, or otherwise revised for codification, provided that no substantive provision is altered. Cross-references shall be confirmed by the Borough Clerk and codifier.

SECTION 7. REFERRAL AND NOTICE

A. After introduction, the Borough Clerk shall refer this Ordinance to the Joint Land Use Board for review under N.J.S.A. 40:55D-26 and 40:55D-64. The Board shall report to the Mayor and Council within the time prescribed by law concerning consistency with the Master Plan and any recommendations it deems appropriate.

B. The Borough Clerk shall provide all notices required by N.J.S.A. 40:55D-15, 40:55D-63, and other applicable law, and shall transmit the proposed Ordinance to the Highlands Council for final consistency review before adoption or effectiveness, as required by the Final Consistency Review and Plan Conformance Procedures.

SECTION 8. POST-ADOPTION TRANSMITTALS

Following final adoption and publication, the Borough Clerk shall file the Ordinance with the Morris County Planning Board as required by N.J.S.A. 40:55D-16, transmit it to the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1, and provide a certified copy and notice of the effective date to the Highlands Council.

SECTION 9. EFFECTIVE DATE

This Ordinance shall take effect after final passage and publication as provided by law and after satisfaction of any required Highlands Council consistency review.

INTRODUCED:9/9/2026
PUBLIC HEARING: 9/23/2026
ADOPTED:9/23/2026

ATTEST:	**BOROUGH OF MENDHAM**
_____	_____
Lauren McBride, Borough Clerk	James R. Kelly, Mayor

APPENDIX A — MAJOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council, based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations, to be Major Potential Contaminant Sources include:

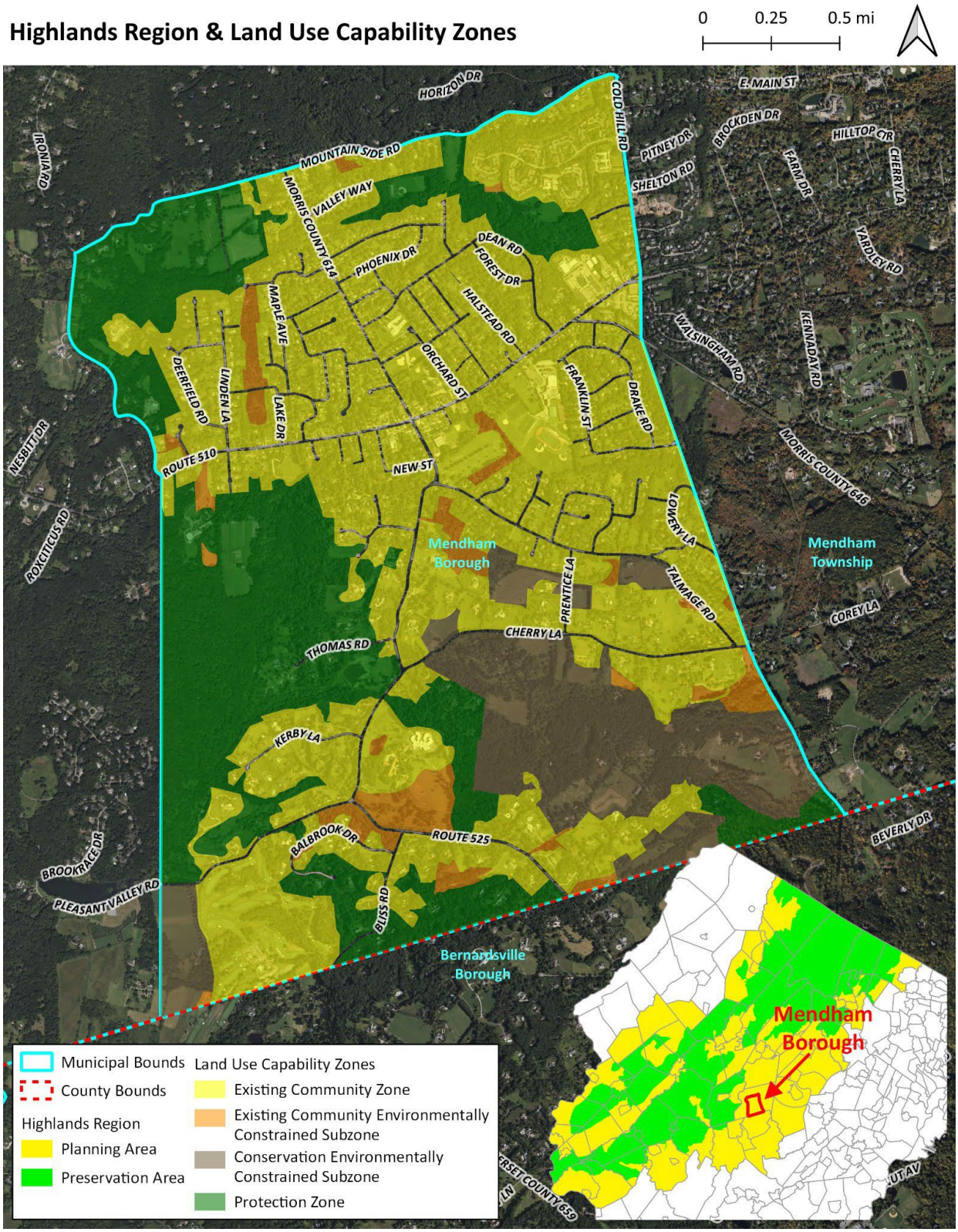
1. Underground fuel, chemical, and oil storage tanks regulated by NJDEP under the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.
2. Above-ground storage of a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center for repair and maintenance.
4. Dry-cleaning processing facility.
5. Road-salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, or locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of landscaping equipment and materials, excluding household storage and maintenance.
11. Livestock operation containing 300 or more Animal Units, where one Animal Unit equals 1,000 pounds of live animal weight, as defined by the New Jersey Department of Agriculture at N.J.A.C. 2:91.
12. Quarrying or mining facility.
13. Asphalt or concrete manufacturing facility.
14. Junkyard, auto-recycling, or scrap-metal facility.
15. Residential or agricultural motor fuel in an NJDEP-exempt underground storage tank of less than 1,000 gallons.

APPENDIX B — MINOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council, based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations, to be Minor Potential Contaminant Sources include:

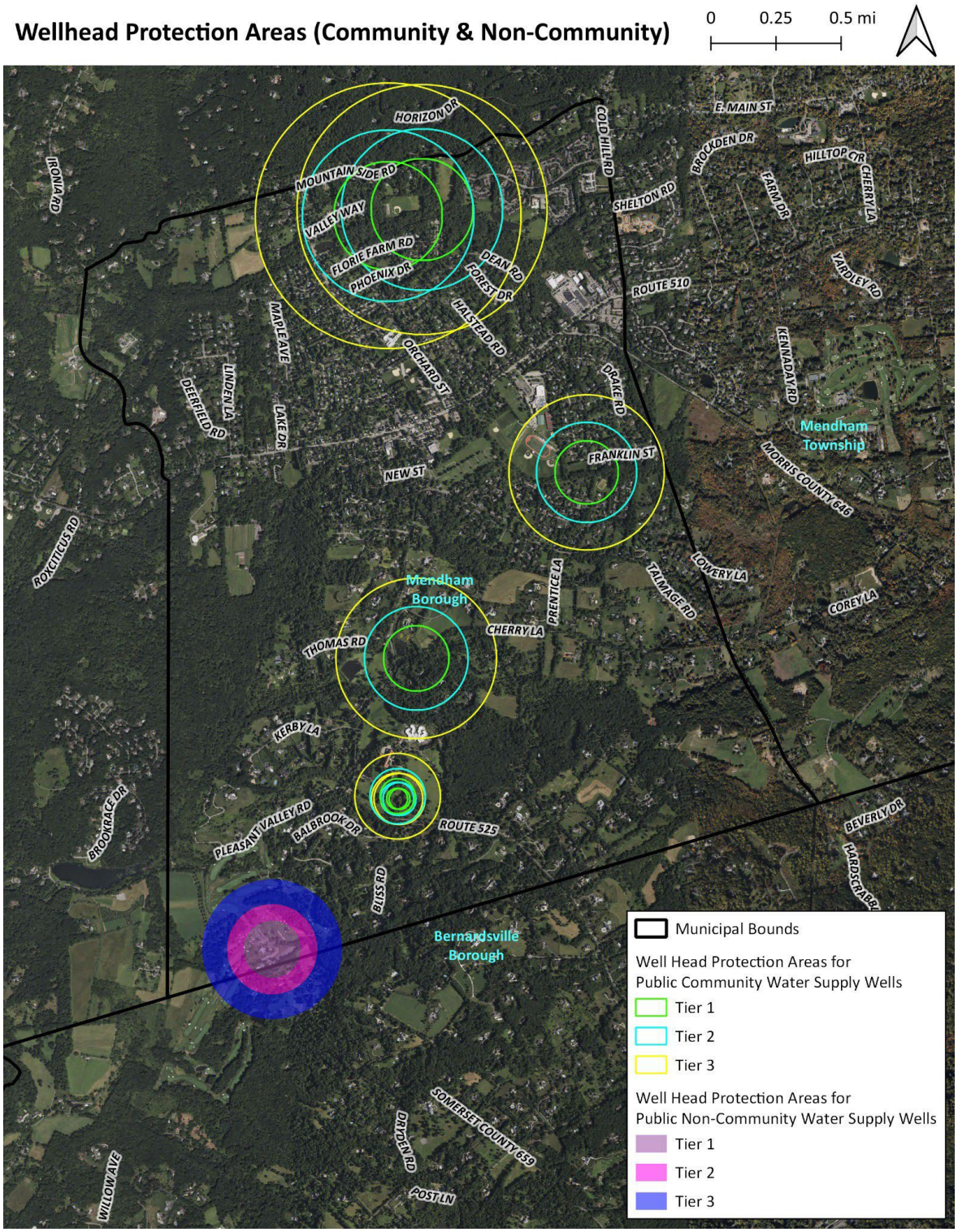
1. Underground storage of a hazardous substance or waste in a quantity of less than 50 gallons.
2. Underground heating-oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by an NJPDES permit under N.J.A.C. 7:14A.
4. Industrial waste line.
5. Septic-system disposal field.
6. Facility requiring a ground-water-discharge permit issued by NJDEP pursuant to N.J.A.C. 7:14A et seq.
7. Stormwater retention or recharge basin on an industrial property receiving runoff from surfaces other than roofs.
8. Dry well on an industrial property receiving runoff from surfaces other than roofs.
9. Waste-oil collection, storage, and recycling facility.
10. Agricultural chemical bulk-storage and mixing or loading facility, including crop-dusting facilities.
11. Above-ground storage of hazardous substances or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing eight or more Animal Units, where one Animal Unit equals 1,000 pounds of live animal weight, or receiving 142 or more tons of animal waste per year, as defined by the New Jersey Department of Agriculture at N.J.A.C. 2:91.

EXHIBIT 1 — HIGHLANDS REGION AND LAND USE CAPABILITY ZONES



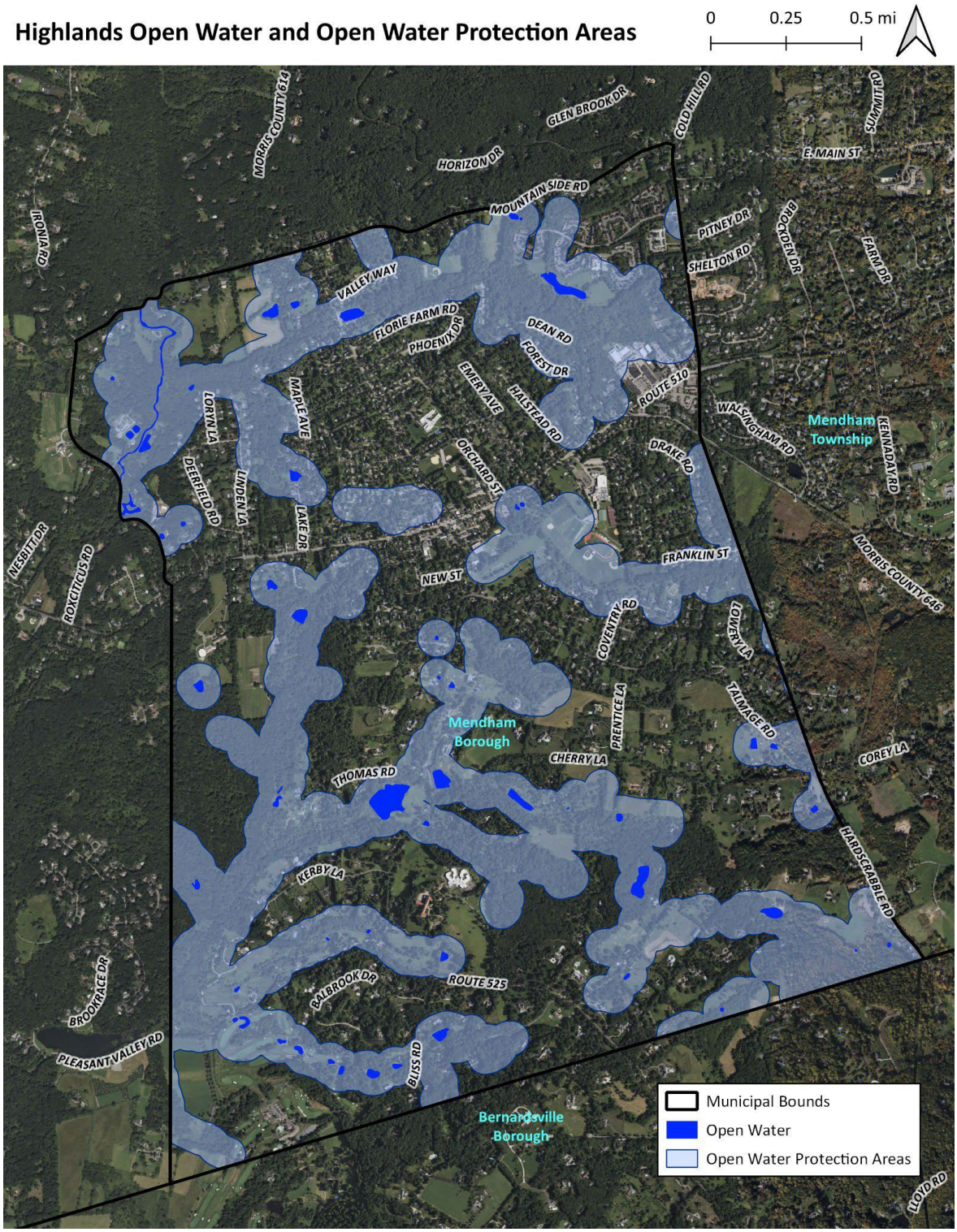
Sources: New Jersey Highlands Water Protection and Planning Council, "Land Use Capability Zones," updated July 1, 2025; New Jersey Highlands Water Protection and Planning Council, "Preservation and Planning Area," July 1, 2008; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "County Boundaries of NJ," updated April 10, 2025; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 2 — WELLHEAD PROTECTION AREAS (COMMUNITY AND NON-COMMUNITY)



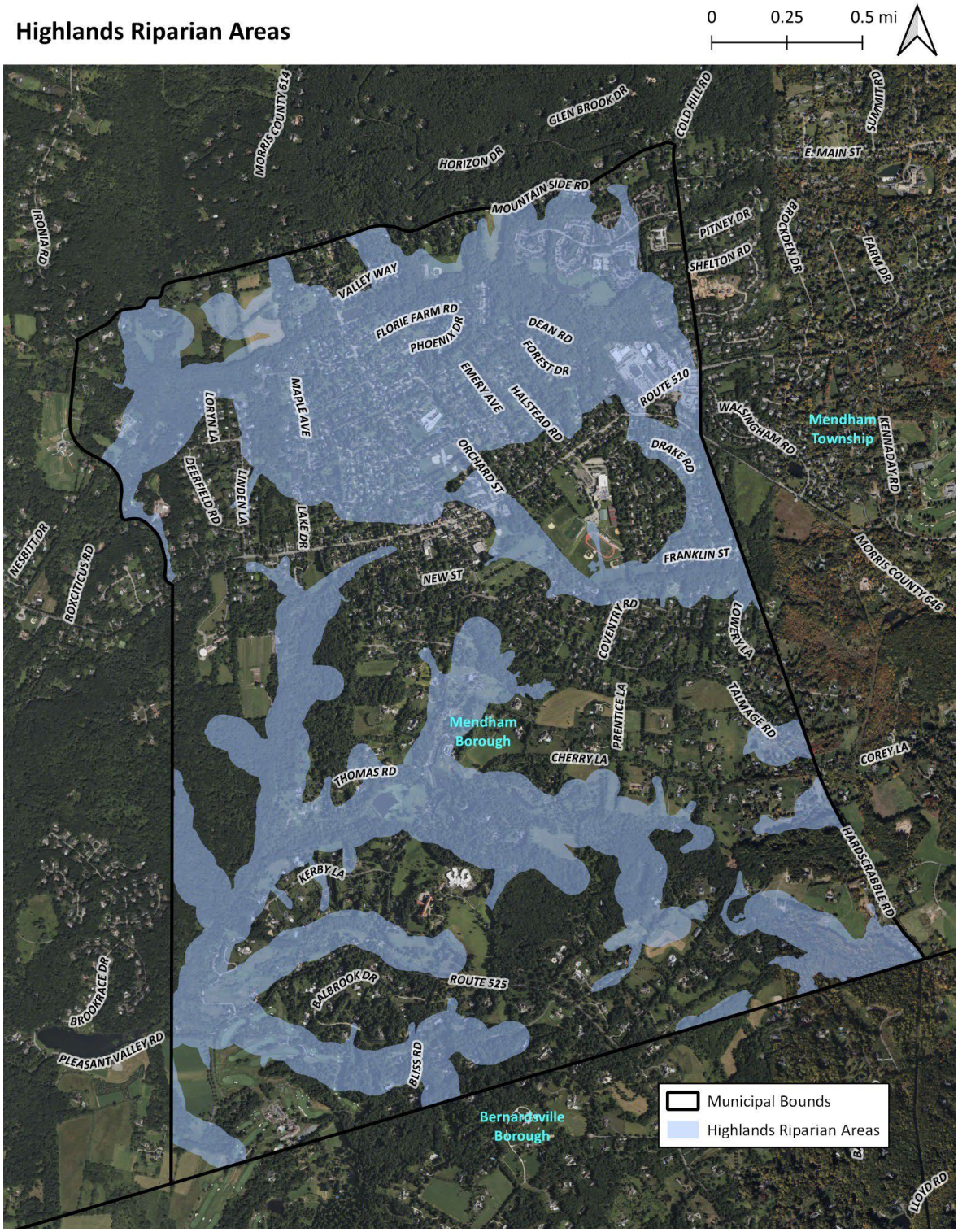
Sources: New Jersey Department of Environmental Protection, Bureau of GIS, "Well Head Protection Areas for Public Community Water Supply Wells in New Jersey," updated November 24, 2025; New Jersey Department of Environmental Protection, Bureau of GIS, "Well Head Protection Areas for Public Non-Community Water Supply Wells in New Jersey," updated November 24, 2025; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "County Boundaries of NJ," updated April 10, 2025; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 3 — HIGHLANDS OPEN WATER AND OPEN WATER PROTECTION AREAS



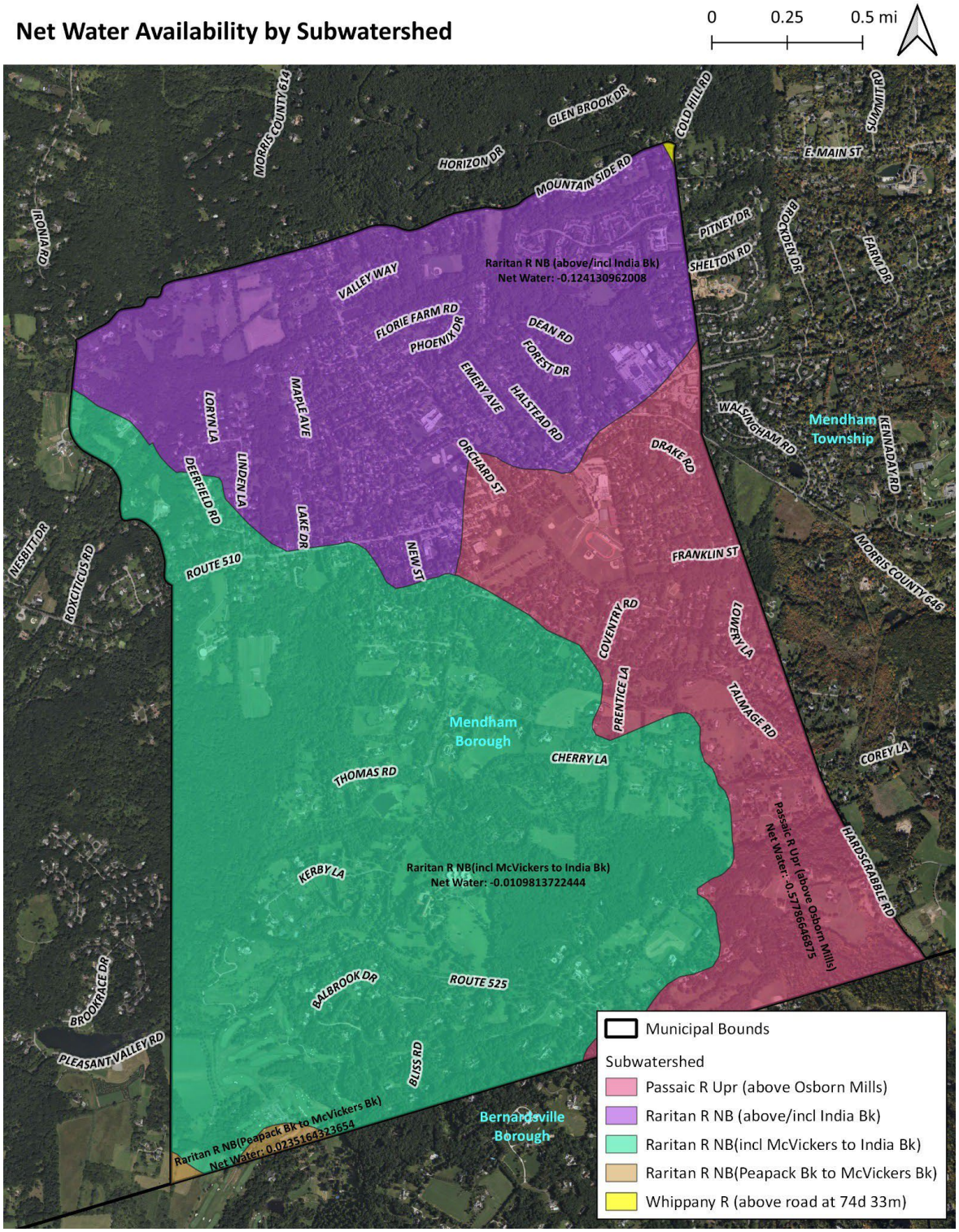
Sources: New Jersey Highlands Water Protection and Planning Council, "Open Water," updated September 10, 2021; New Jersey Highlands Water Protection and Planning Council, "Open Water Protection Area," updated February 6, 2024; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 4 — HIGHLANDS RIPARIAN AREAS



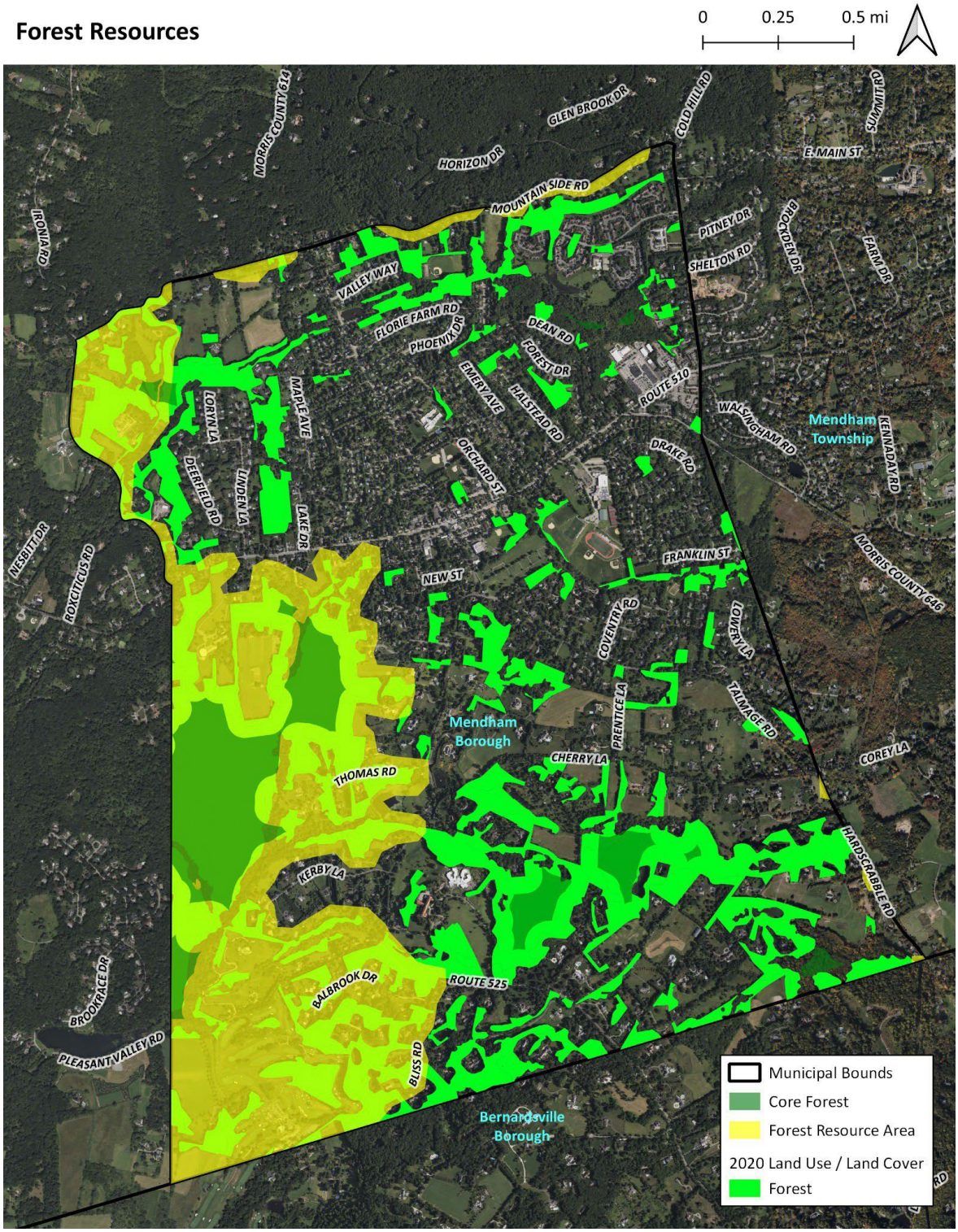
Sources: New Jersey Highlands Water Protection and Planning Council, "Riparian Area," updated January 30, 2024; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 5 — NET WATER AVAILABILITY



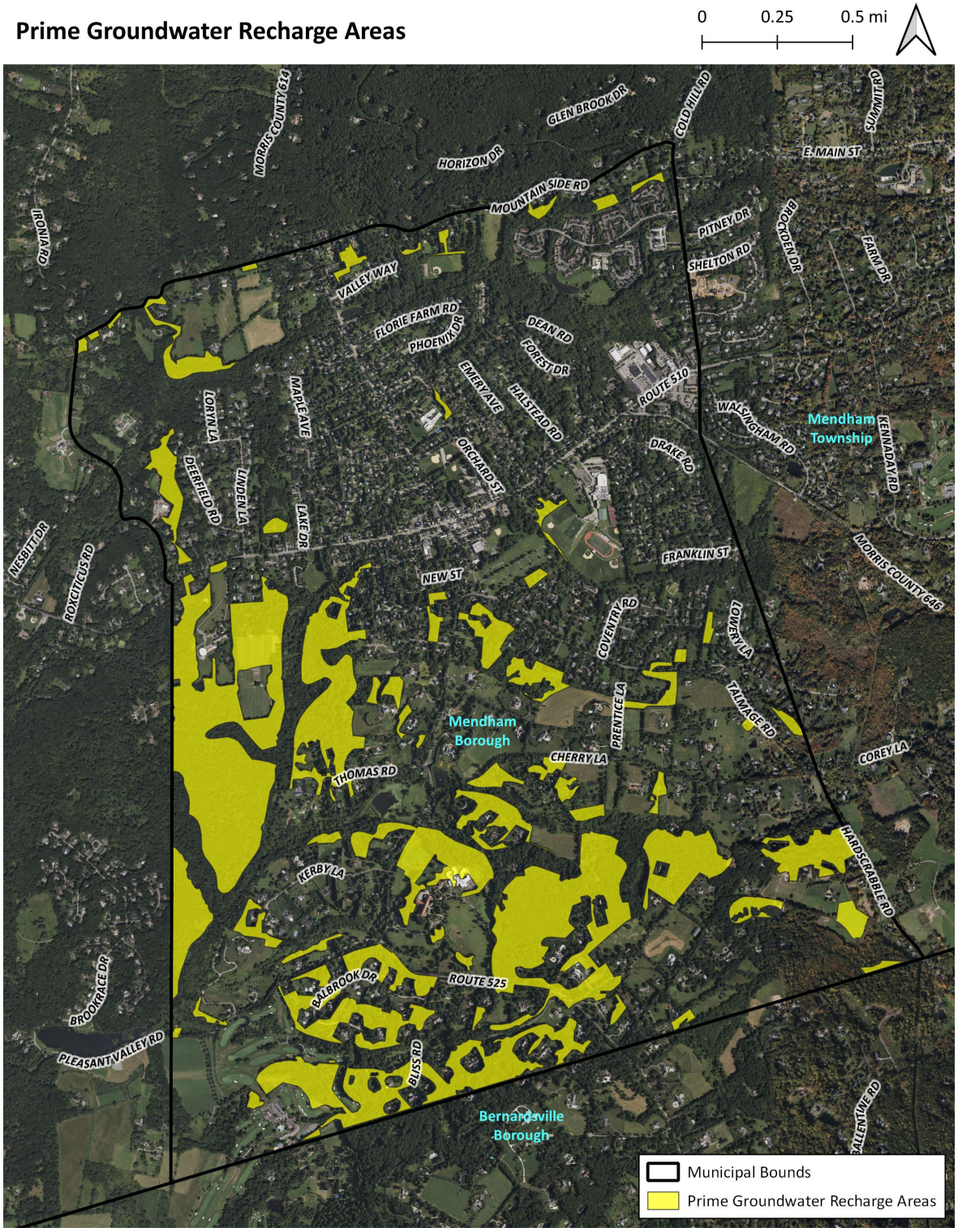
Sources: New Jersey Highlands Water Protection and Planning Council, "Net Water Availability," updated November 17, 2022; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 6 — FOREST RESOURCES



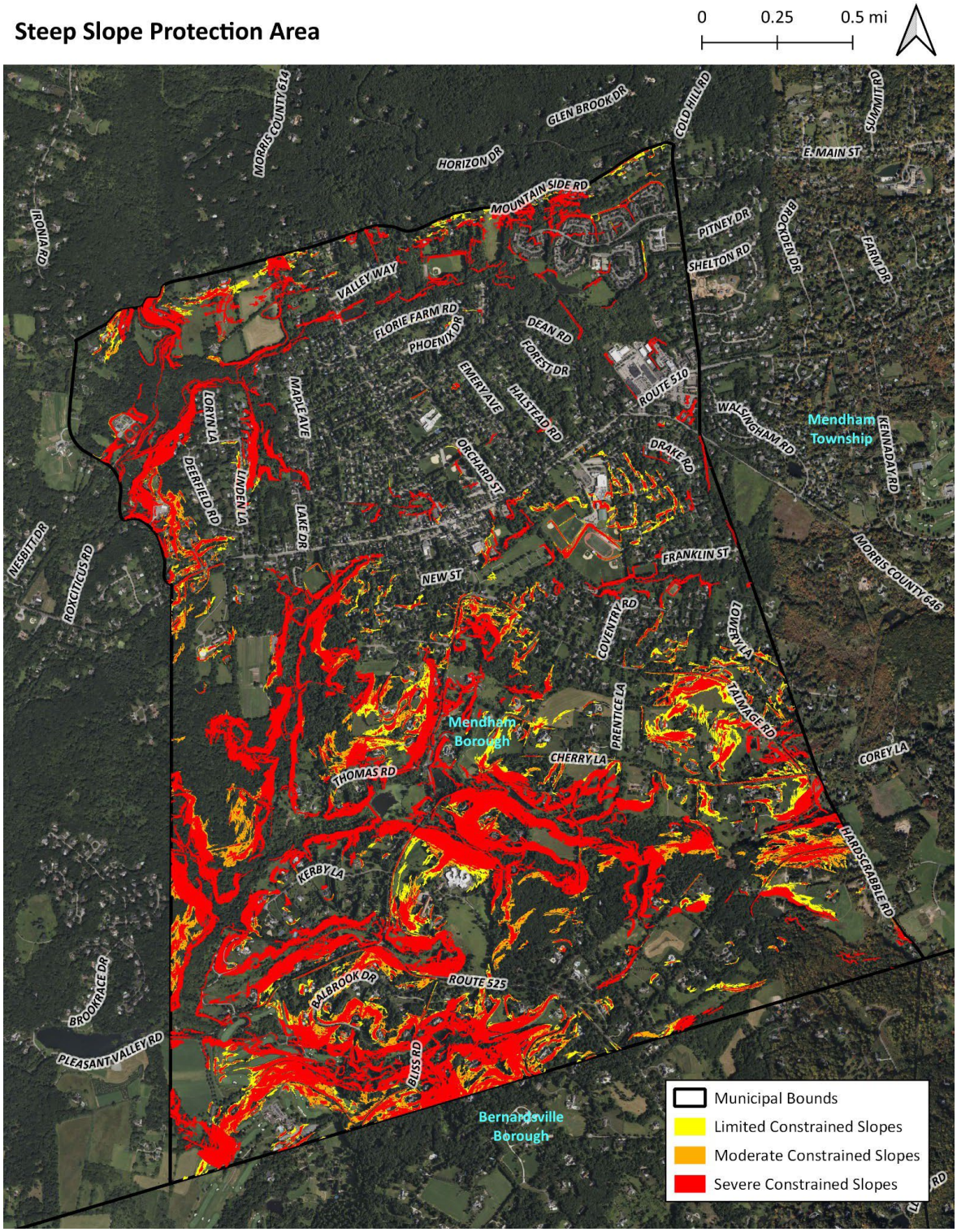
Sources: New Jersey Highlands Water Protection and Planning Council, "Core Forest," updated January 29, 2024; New Jersey Highlands Water Protection and Planning Council, "Forest Resource Area," July 1, 2008; New Jersey Department of Environmental Protection, Bureau of GIS, "Land Use/Land Cover of New Jersey 2020," updated December 18, 2024; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 7 — PRIME GROUNDWATER RECHARGE AREAS



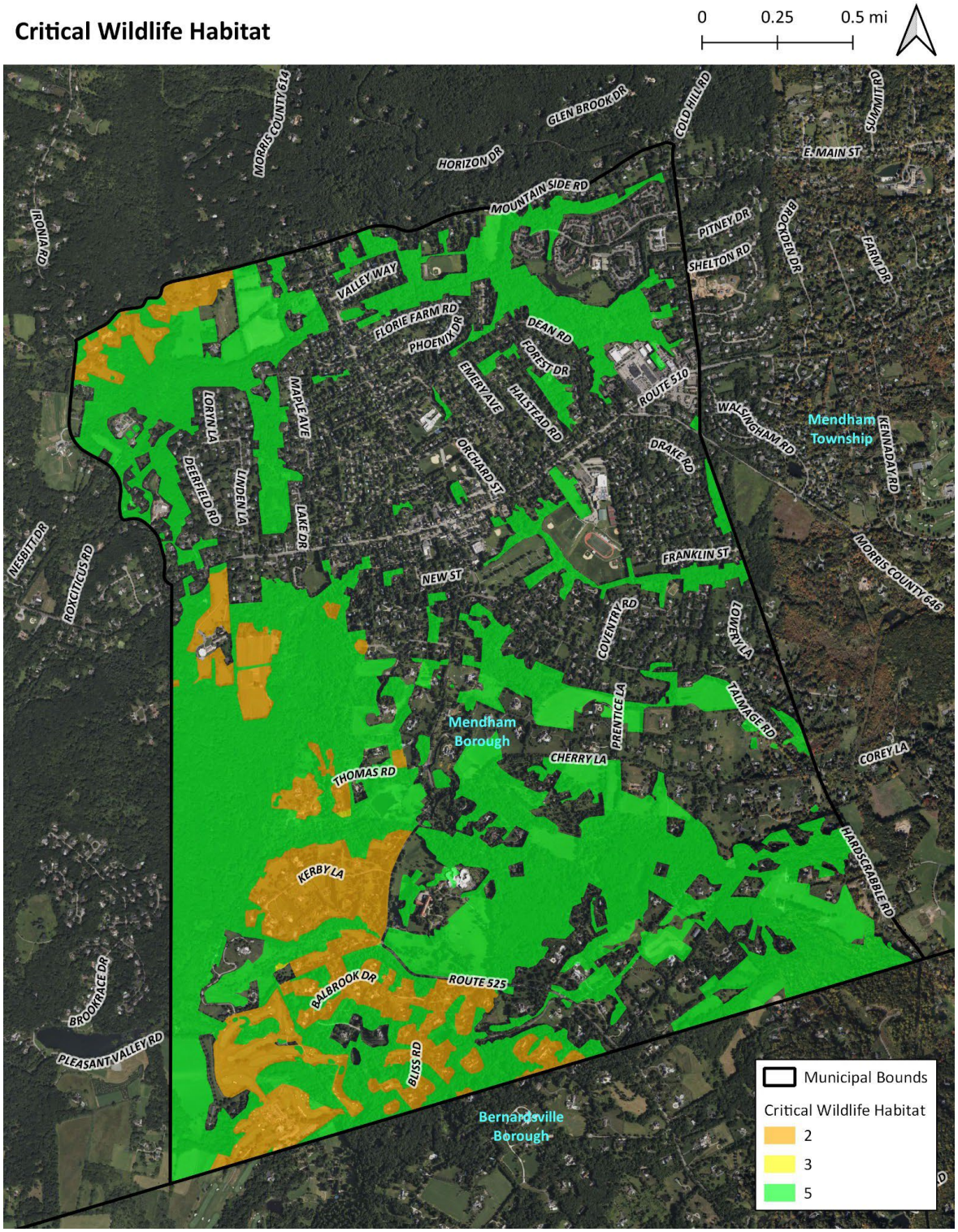
Sources: New Jersey Highlands Water Protection and Planning Council, "Prime Groundwater Recharge," updated September 30, 2025; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 8 — STEEP SLOPE PROTECTION AREAS



Sources: New Jersey Highlands Water Protection and Planning Council, "Steep Slope Protection Area," updated March 26, 2026; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025.

EXHIBIT 9 — CRITICAL WILDLIFE HABITAT



Sources: New Jersey Department of Environmental Protection, Bureau of GIS, "Skylands Habitat (Landscape Project v3.4)," updated December 8, 2025; New Jersey Office of GIS, "Road Centerlines of NJ," May 15, 2026; New Jersey Office of GIS, "Municipal Boundaries of NJ," updated April 10, 2025. No confirmed vernal pools or NJDEP Natural Heritage Priority Sites are mapped within Mendham Borough; a small peripheral portion of a vernal-pool buffer associated with a feature in Mendham Township is located near the municipal edge.