

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE MAY 22, 2008 COUNCIL MEETING

**Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan
Steep Slopes Protection Conformance Standards**

New Jersey Highlands Water Protection and Planning Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General: Incorporate the Highlands Council maps of Land Use Capability Zones, the Preservation and Planning Areas, and Steep Slopes (specify date of the version used), and incorporate by reference the definitions of Steep Slope Protection Areas and steep slopes in RMP Policies 1E2 through 1E5 and NJDEP Preservation Area rules at N.J.A.C. 7:38-1.4 and 3.8, respectively. Identify through an accompanying narrative at least the following classes of steep slopes: 10 to 15%; 15% to 20%; greater than 20%. Identify riparian areas that intersect with any of these steep slope categories. LUC Zones: RMP provisions apply equally to all Zones. Preservation Area Special Provisions: Incorporate by reference the USDA-NRCS Soil Survey soil capability classes. 	<p>NOTE: Ridgelines and viewsheds are not “steep slopes” and should be addressed separately. While these resources are all related, their regulation has different purposes and requires different treatment.</p> <p>The Highlands Council will be providing mapped information in digital form through its Municipal Mapping Tool, which can be used by a municipality to meet these requirements. The steep slope categories provide the basis for delineation of Steep Slope Protection Areas.</p>
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Mapping: Identify steep slopes using most accurate available information, using the steep slope classes listed above. Use LiDAR data interpretations of steep slopes where available. Otherwise, use the Highlands Council 2007 Steep Slopes map (based on USGS 30 meter digital elevation modules in GIS), or locally developed digital elevation or topographic data where more accurate. Where the data quality is sufficient, the minimum mapping area for a Steep Slope Protection Area or steep slope should be 5,000 square feet. Narrative: Explanation of the geology that creates the steep slopes in the municipality, and its relevance to environmental protection issues. The narrative can include issues regarding erodible soils, stormwater velocity increases related to development impacts, thin soils and their relationship to septic system and infrastructure development, location of springs and seeps, etc. 	<p>Most municipal data will not be sufficient to map all steep slopes. Highlands Council LiDAR-based topography is presently available upon request, with steep slope mapping to follow in 2008.</p> <p>This material is the scientific foundation of the regulation and is critical to the establishment of a legal defense. A municipality is required to develop an independent ERI for Plan Conformance; this information will be part of the ERI.</p>

¹ This column is for the municipal self-assessment. C = fully complete. P = partially complete, with a need for improvement. IP = in progress. NS = not started. NA = not applicable (e.g., for a municipality for which this component is not relevant).

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Municipal Master Plan and Conservation Plan Element		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas, and Steep Slopes; and the background statement of the RMP, Part 1. Natural Resources. Subpart c. Steep Slopes, on p. 115. Policy Statement: Adopt by reference RMP Policies 1E2 through 1E5 into the Conservation Element, and Policies 1E8 and 1E9 (pp. 115-116) into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. LUC Zones: RMP provisions apply equally to all Zones. Preservation Area Special Provisions: Specifically cite the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.8 as a justification for regulation of steep slopes in this area. 	
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish the protection of steep slopes in the Master Plan as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Element. Conservation Plan Element Requirements: Establish importance of protecting steep slopes. In addition to resource conservation, rural character and aesthetics, regulation of steep slopes should be associated with the protection of public health, safety and welfare. Use the Environmental Resource Inventory as the basis, and then discuss the values served by protecting steep slopes. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of steep slopes as the initial identification of steep slopes in the municipality, to be supplemented and amended as needed, by on-site identification through the local development review process. 	Note that regional data do not provide complete detail on steep slopes; applicants will be required to provide site-specific information.
Institutional Capability		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Planning: The Council will provide assistance should planning board and zoning board of adjustment members and staff require assistance with this issue to ensure that the development review ordinance is properly implemented, that conformance with the RMP is maintained, and that exceptions and waivers to the steep slope ordinance are limited as provided herein (“Steep Slopes Regulations,” #13 below), and do not damage municipal values for steep slope protection. 	To assist board members and staff regarding this topic and the implementing ordinance, the Highlands Council will provide educational and training opportunities as requested. Council will work with the municipality’s professionals if requested.
		<ol style="list-style-type: none"> Project Review: Municipality must have capacity to interpret digital and surveyed data on steep slopes, and apply the ordinance requirements to the steep slopes identified on a property. 	Primarily performed by municipal engineer

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		3. Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify steep slopes and related resources.	Primarily performed by municipal engineer, but may include a board committee or the Environmental Commission for site walks
		4. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., hydrology studies) developed and implemented regarding steep slopes protection and regulation, as related to Plan Conformance or RMP implementation.	
Development Review Checklists		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require the following for all applications to which Steep Slope Regulations apply (see #4, "Applicability").</p> <ol style="list-style-type: none"> a. Highlands Council consistency determination. b. Information identifying steep slopes on site using the classes of Steep Slope Protection Area in RMP Policies 1E2 through 1E5. c. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Policies 1E8 and 1E9. d. Where the applicant claims a Highlands Act exemption, require submittal of information necessary for municipal decision, or of a determination by NJDEP or the Highlands Council, as a condition for completeness. (See "Development Review Ordinance, #5 Exemptions" below.) e. Plans showing all steep slopes, with clear delineation of the slope classes and Steep Slope Protection Areas based on the RMP Policies 1E2 through 1E5 and the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.8. f. Plans showing the proposed area of disturbance for all aspects of the development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures. g. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan. h. Plans showing conservation easements to be imposed through the development approval within Steep Slope Protection Areas for which no disturbance will be allowed (with clear and permanent on-site monuments, such as concrete posts, that minimize the need for land clearing or obstruction of wildlife movement). The easement must be depicted on the plan of record and described in the deed with metes and bounds, including GPS coordinates using the State Plane coordinate system, naming the municipality and the Highlands Council, at a minimum, with easement enforcement rights. i. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. j. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). k. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants). 	

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		<ol style="list-style-type: none"> 1. Copies of any related surveys, site plans, professional reports and environmental site assessments. 2. Major Disturbances: Any application proposing to disturb 5,000 square feet or more within Steep Slope Protection Areas shall also provide: <ol style="list-style-type: none"> a. Environmental Impact Statement or Review submitted to the Highlands Council in support of its consistency determination. b. Hydrology, drainage and flooding analysis report or reports prepared in support of conformance with the municipal stormwater management plan and regulations adopted pursuant to N.J.A.C. 7:8, or a Flood Hazard Area Control Act application pursuant to N.J.A.C. 7:13. 3. LUC Zones: RMP provisions apply equally to all Zones. 4. Preservation Area Major Highlands Developments: Require submittal of Highlands Preservation Area Approval (HPAA) for any project that proposes the disturbance of steep slopes in accordance with the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.8. 	
Land Use Ordinance: Steep Slope Regulations		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> 1. Statement of Purpose: Specify at a minimum that the purpose of the ordinance is to implement RMP Policies 1E8 and 1E9, and (if Preservation Area is present in the municipality) the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.8. Make a direct link between the ordinance and municipal policy as stated in the Master Plan. 	For Highlands Preservation Area municipalities, include purpose of complying with NJDEP Highlands Rules and the Regional Master Plan. RMP provisions apply equally to all Zones.
		<ol style="list-style-type: none"> 2. Special Definitions: Include definitions of Steep Slope Protection Areas and steep slopes (as set forth in RMP Policies 1E2 through 1E5 and at N.J.A.C. 7:38, respectively), riparian areas, best management practices, sedimentation, site disturbance, and stability based on the RMP. Adopt by reference Highlands Act definitions at N.J.S.A. 13:20-3. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38, and the NJ Erosion Control Standards at N.J.A.C. 2:90-1. 	
		<ol style="list-style-type: none"> 3. Preservation Area Special Standards: Require that mapping of steep slope areas shall be in accordance with the provisions of N.J.A.C. 7:38-3.8. 	
		<ol style="list-style-type: none"> 4. Applicability: The ordinance must apply to any project for which a permit from, or determination by, the municipality is required (including any application for development as defined under the MLUL at N.J.S.40:55D-3) and which involves the presence of a Steep Slope Protection Area or Preservation Area steep slope, other than exemptions as specified. <ol style="list-style-type: none"> a. Highlands Applicability Determinations: <ol style="list-style-type: none"> i. Major Highlands Developments – In the Preservation Area, require compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38 and with RMP Policies 1E8 and 1E9. ii. Other Developments – Require compliance with the RMP Policies 1E8 and 1E9. b. Municipal Requirements: Additional requirements as determined by the municipality. 	

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		<p>5. Exemptions: Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</p> <p>i. Local Action: Where a municipality can conclude that a proposed project qualifies for an exemption under the NJDEP Preservation Area rules at N.J.A.C. 7:38-2.4(b) (which relate to Highlands Act (N.J.S.A. 13:20-28) Exemptions 5, 7, 9, 10 and 15), the municipality may process the application without formal determination by the NJDEP or the Highlands Council. A decision to process an application under this provision does not constitute, and the applicant may not rely upon, municipal action under this provision as constituting a municipal decision regarding Highlands Applicability Determination.</p> <p>ii. NJDEP or Highlands Council Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Area, respectively, may be relied upon regarding applicability of these exemptions.</p> <p>b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</p> <p>i. Local Action: The municipality shall not consider an application complete for review that proposes the use of any other Highlands Act exemptions, unless a NJDEP or Highlands Council Applicability Determination is provided with the application in the Preservation or Planning Area, respectively.</p> <p>ii. NJDEP or Highlands Council Applicability Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Areas, respectively, must be provided prior to municipal consideration of the proposed activity.</p>	<p>The Highlands Rules exempt or have special provisions for many single-family dwellings and agriculture/horticulture activities. Municipality may want to consider including some of these actions within the municipal regulations. The RMP does not and cannot require that municipalities be more stringent than the RMP or the Highlands Act, including exemption provisions. Because eligibility for the “legal shield” under the Highlands Act is linked to conformance with the Regional Master Plan, and the RMP cannot address exempt projects, municipalities that include exempt development in their ordinance will not benefit from the legal shield for that portion of the ordinance. However, a municipal ordinance may, under the Highlands Act at N.J.S.A. 13:20-15a(5), be more stringent than the RMP standards for non-exempt development, and still will be eligible for the legal shield.</p>
		<p>6. Steep Slopes Application: Provide for a steep slopes application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist (above) for review by the municipal engineer or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP, the ordinance may authorize the reviewing professional to grant an approval. If the application is inconsistent with RMP policies, the reviewing professional must clearly identify the deviations. The ordinance must require that approval of such deviations be authorized only by grant of waivers or exceptions from the Planning Board or Zoning Board of Adjustment in accordance with the provisions at #13, Waivers and Exceptions, below.</p>	<p>Review by the municipal engineer may entail professional fees. The municipality should consider its fee and escrow ordinances. Review procedures may provide for completeness determination, timeframes for review and decision-making, and options for conditional approvals.</p>
		<p>7. Completeness: Stipulate that no application for development (as defined by the MLUL at N.J.S. 40:55D-3) may be scheduled for local Board review until after it has been deemed complete by the applicable Board or completeness designee.</p>	

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		8. Notification to Highlands Council: Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to the Highlands Council at the same time these are provided to the reviewing Board.	This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.
		9. Requirements for Deed Restrictions: Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement and deed restriction on the undisturbed Constrained, Moderately Constrained and Severely Constrained steep slopes of the property.	
		10. Disturbance Limitations: The ordinance must include the following minimum requirements for disturbance of a steep slope or Steep Slope Protection Area: <ul style="list-style-type: none"> a. Any application proposing a disturbance of steep slopes as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.8 by a “major Highlands development” in the Preservation Area shall not be approved by the municipality unless the applicant has received NJDEP approval of a Highlands Preservation Area Approval (HPAA) for the project. b. Disturbance of Severely Constrained and Moderately Constrained Slopes by any regulated development in the Planning Area, or of a regulated Preservation Area development not addressed by 10.a above, is prohibited (RMP Policy 1E8), except for linear development that meets the requirements of N.J.A.C. 7:38-3.8(c)1 through 4. c. Disturbance of Constrained or Limited Constrained Slopes by any regulated development in the Planning Area, or of a regulated Preservation Area development not addressed by 10.a above, may only be approved where the land disturbance or human development will incorporate low impact development best management practices (RMP Policy 1E9), except for linear development that meets the requirements of N.J.A.C. 7:38-3.8(c) 1 through 4. d. Prohibitions and requirements otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose, such as prohibitions and limitations on site disturbance, forest clearance, infrastructure development, and site development (including but not limited to setbacks from building to steep slopes, maximum post-construction slope, maximum retaining wall height). 	<p>These are the key standards for site development regarding steep slopes. Note that 10.b and 10.c allow for limited disturbance of steep slopes for linear development. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make the findings under 10.b and 10.c, not the NJDEP.</p> <p>The ordinance may include provisions in addition to and/or that are more restrictive than those required pertinent to the RMP. While RMP policies must be regulated as zoning requirements (requiring variance relief for any deviation), any additional provisions may, at the option of the municipality, be treated as design standards with allowances for waivers.</p>
		11. Reporting Requirements: Require that prior to issuance of a final Certificate of Occupancy or Approval and/or to release of any performance bonding held in relation to the project, that the applicant provide an “as-built” survey depicting the final site conditions.	

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		<p>12. Municipal Approvals Conditioned On State Approvals:</p> <p>a. General: Require that the approved development demonstrate compliance where applicable with the NJ Erosion Control Standards at N.J.A.C. 2:90-1.</p> <p>b. Applicable to Preliminary Approvals: Preliminary approval shall be conditioned such that land modification affecting steep slopes or Steep Slope Protection Areas shall not occur until such time as the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Preliminary approval shall also be conditioned upon review and approval by the municipal or board attorney of the language to be included in a deed restriction pertinent to any conservation easement that is a part of the approval.</p> <p>c. Applicable to Final Approvals: Final approval shall be conditioned such that land modification affecting steep slopes or Steep Slope Protection Areas shall not occur unless the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval.</p> <p>d. Applicability of Highlands Council Review. The ordinance must require that for any application for non-exempt development, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form. All resolutions memorializing a final decision shall include conditions requiring these submittals, and that no local decision shall be deemed final until the Highlands Council has received the information required in this paragraph.</p> <p>e. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affecting steep slopes or Steep Slope Protection Areas shall commence until the municipal development approval is final. If the building permit is the only applicable municipal approval, the building permit shall not be approved unless the applicant has proved that the project is in compliance with the standards of this ordinance, that the project is eligible for a Highlands Act exemption, that the Highlands Council has determined that the building permit will not result in the disturbance of steep slopes, or that the project has received an HPAA</p>	<p>The purpose of this provision is to ensure that applicants do not assume approval prior to the legal fact of final approval, and that site disturbance based on preliminary findings does not harm resources that might be protected through a Highlands Project Review, Highlands Council “call up,” or HPAA permit process.</p> <p>The Highlands Council has “call up” rights under N.J.S.A. 13:20-17.c, allowing for a determination, “within 15 days after any final local government unit approval, rejection, or approval with conditions thereof,” on whether to review “any application for development in the preservation area.” Once a municipality comes into conformance in the Planning Area, the same approach applies. Because disturbance of steep slopes based on <u>preliminary</u> municipal approval would contradict the clear intent of the Act to allow Council review upon <u>final</u> approval, conditions on local preliminary and final approval are necessary. In addition to Council review authority for specific projects, the Council may determine that a municipal decision does not conform to the RMP as agreed to under Plan Conformance, and may act to determine that the municipality is no longer in conformance. Doing so would trigger provisions of the Act regarding loss of the legal shield, funding priorities and return of any prior funding provided by the Council.</p>

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		or HPAA with waiver from the NJDEP.	
		<p>13. Waivers and Exceptions: The ordinance must provide clear guidance to the reviewing Board, specifying that any waivers may be granted only in cases where the following review standards are met:</p> <ul style="list-style-type: none"> a. Highlands Act Waiver Provisions: For applications other than major Highlands developments in the Preservation Area, and for any applicable approval in the Planning Area, no development involving a waiver may be approved by the development review board for disturbance of a Steep Slope Protection Area the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the RMP. b. Exception Provisions: For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board for disturbance of a Steep Slope Protection Area only where the applicant can demonstrate that: (a) the deviation is unavoidable and represents the minimum feasible under the particular circumstances surrounding the project proposal, and the grant of relief is reasonable, necessary, and supports the general purpose and intent of the applicable development regulations; or (b) the literal enforcement of the provision(s) of the ordinance at issue is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. The approval of an exception must be accompanied by a detailed justification, and is subject to review by the Highlands Council. The justification must include at a minimum an explanation of how and to what extent the following conditions are addressed: <ul style="list-style-type: none"> i. no alternative exists that will allow for at least a minimum practical use of the property; ii. the exception is for road or utility access to another part of the site where the actual development would occur (if applicable); iii. the exception provides relief only to the minimum extent necessary; iv. other environmental features are not damaged in the process of protecting steep slopes; and v. the exception results in no disturbance of any Severely Constrained Slope. c. Additional Provisions: No exception may be approved that violates the NJ Erosion Control Standards at N.J.A.C. 2:90-1. All exceptions granted by the review board must be reported to the Highlands Council upon local approval. 	<p>NJDEP Highlands Rules provide for limited disturbance of steep slopes for “linear development” – the municipality may wish to further define the limits of exceptions to the steep slope provisions, such as a maximum slope that can be disturbed and minimum buffer from other sensitive features.</p>

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Enforcement		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. Site Inspections: Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. b. Sequencing of compliance inspections to ensure the protection of on-site and off-site resources, achievement of site construction and environmental impact requirements, placement of conservation easement monuments, etc. c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation. 	<p>Specific provision for site inspections is critical to the protection of steep slopes and all other sensitive environmental features.</p>
		<p>2. Administrative Compliance: Provide for issuance of a stop-work order, revocation of building permits, refusal to approve further work, or denial of certificates of occupancy, plus mandatory remedial and corrective measures including full restoration of any resources that are improperly disturbed.</p>	<p>Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.</p>
		<p>3. Penalties: Provide for civil and criminal penalties for violations.</p>	<p>In most cases, standard penalty provisions under the MLUL will be sufficient.</p>
Recommended Model or Example Ordinances		<p>1. Hunterdon County Environmental Toolbox Committee model ordinance for “Steep Slopes” available from: http://www.co.hunterdon.nj.us/planning/toolbox.htm#ordinances</p>	<p>Model and draft ordinances are listed for informational purposes only. Specific language from each ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.</p>