

**Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan**  
**Critical Habitat Conformance Standards**  
**New Jersey Highlands Council**

COMPONENT	STATUS <sup>1</sup>	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p><b>BASIC PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>General:</b> Incorporate by reference the Highlands Council maps of Land Use Capability Zones, the Preservation and Planning Areas, and Critical Habitat. Incorporate the three categories [1) Critical Wildlife Habitat, 2) Significant Natural Areas, 3) vernal pools + 1,000 foot buffer] of Critical Habitat in RMP Policy 1F1, the Highlands Act goals at N.J.S.A. 13:20-10(b)(3) and 13:20-10(c)(2), and definitions for endangered species, threatened species, and rare species in NJDEP Preservation Area rules at N.J.A.C. 7:38-1.4 and 3.11 respectively.</li> <li><b>LUC Zones:</b> RMP provisions apply equally to all Zones.</li> <li><b>Preservation Area Special Provisions:</b> Provide reference to the Highlands Resource Area Determination requirements for location, presence, and/or absence of “rare, or threatened and/or endangered wildlife habitat” at N.J.A.C. 7:38-4.1(d)(3) and “rare or endangered plant species habitat” at N.J.A.C. 7:38-4.1(d)(4).</li> </ol>	<p>The Highlands Council will be providing Critical Habitat mapped information in digital form through its Municipal Mapping Tool, which can be used by a municipality to meet these requirements. The primary distinction between the RMP definition of Critical Wildlife Habitat and the NJDEP Preservation Area rules is that the NJDEP rules include the use of Landscape Project Rank 2 for all wildlife species, while the RMP uses a subset of Landscape Project Rank 2. The NJDEP definition will apply only to developments regulated through N.J.A.C. 7:38.</p>
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>Mapping:</b> Identify Critical Wildlife Habitat using NJDEP Landscape Project. Update vernal pool locations based on the most recent NJDEP certification listings, and Significant Natural Areas based on information from the Highlands Council. Identify areas mapped as Critical Habitat that are on developed parcels, preserved lands and other parcels. Where available, identify specific local habitat through utilization of valid mapping approaches as generally accepted by the scientific community and approved by Council and NJDEP-Endangered and Nongame Species Program (ENSP) and Natural Heritage Program (NHP).</li> <li><b>Narrative:</b> Description of the types of habitat that exist in the municipality, and relevance to environmental protection issues. The narrative can include items such as vegetation description, habitat location, habitat connectivity, habitat value (quantity, quality, type, and function), surrounding land uses, whether habitat is preserved, public land, or privately held land, etc. If local habitat is mapped and accepted by Council and NJDEP-ENSP and NHP, mapping methodology must be included in narrative.</li> </ol>	<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 full Plan Conformance, but not for Basic Conformance.</p>
Municipal		<b>BASIC PLAN CONFORMANCE STANDARDS:</b>	<i>Cross-reference to specific RMP Goals, Policies and</i>

<sup>1</sup> 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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<p><b>Master Plan and Conservation Plan Element</b></p>		<ol style="list-style-type: none"> <li>1. <b>General (Background Statement):</b> Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas, and Critical Habitat; and the background statement of the RMP, Part 1. Natural Resources. Subpart d. Critical Habitat, on p. XX.</li> <li>2. <b>Policy Statement:</b> Adopt by reference RMP Policies 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2 into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate.</li> <li>3. <b>LUC Zones:</b> RMP provisions apply equally to all Zones.</li> <li>4. <b>Preservation Area Special Provisions:</b> Specifically cite and incorporate by reference the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.11 as a justification for regulation of habitat for any rare, threatened, or endangered species of animal or plant.</li> </ol>	<p><i>Objectives, along with any other RMP components, to be included by reference.</i></p>
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>Master Plan Requirements:</b> Establish protection of Critical Habitat in the Master Plan as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Element.</li> <li>2. <b>Conservation Plan Element Requirements:</b> Establish importance of protecting Critical Habitat. Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by protecting Critical Habitat. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of Critical Habitat as the initial identification of Critical Habitat in the municipality, to be supplemented and amended as approved by the Council in consultation with NJDEP-ENSP and NHP, by on-site identification through the local development review process.</li> </ol>	
<p><b>Institutional Capability</b></p>		<ol style="list-style-type: none"> <li>1. <b>Planning:</b> 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 Critical Habitat ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for Critical Habitat protection.</li> </ol>	<p>To assist board members and staff regarding this topic and the implementing ordinance the Council will provide educational and training opportunities as requested. Council will work with the municipality's professionals if requested.</p>
		<ol style="list-style-type: none"> <li>2. <b>Project Review:</b> Municipality must have capacity to interpret digital and field-determined data on Critical Habitat and apply the ordinance requirements to the Critical Habitat identified on a property.</li> </ol>	<p>Same as for planning</p>
		<ol style="list-style-type: none"> <li>3. <b>Site Visit Authority:</b> Municipality staff and development review boards must have ability to conduct site visits to visually verify Critical Habitat and related resources.</li> </ol>	<p>Ensure that the appropriate review body and staff have the ability to visit the site in support of project review, planning and other activities</p>
		<ol style="list-style-type: none"> <li>4. <b>Independent Projects:</b> The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g.,</li> </ol>	

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		<p>local species habitat evaluations) developed and implemented regarding Critical Habitat protection and regulation, as related to Plan Conformance or RMP implementation.</p>	
<p><b>Development Review Checklists</b></p>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>General:</b> As a minimum condition of completeness, require for all applications addressed by “Critical Habitat Regulations, #4 Applicability” (see below):             <ol style="list-style-type: none"> <li>a. Highlands Council consistency determination.</li> <li>b. Information identifying Critical Habitat on site using the Critical Habitat GIS layers for Critical Wildlife Habitat, Significant Natural Areas, and Vernal Pools, described in RMP Policy 1F1. If the application is for a major Highlands development in the Preservation Area, include information identifying Critical Habitat per NJDEP’s Highlands Resource Area Determination requirements for location, presence, and/or absence of “rare, or threatened and/or endangered wildlife habitat” at N.J.A.C. 7:38-4.1(d)(3) and “rare or endangered plant species habitat” at N.J.A.C. 7:38-4.1(d)(4).</li> <li>c. A Critical Habitat Survey Report as defined at “Critical Habitat Regulations, #10 Disturbance Limitations” (see below).</li> <li>d. A letter from NJDEP-Natural Heritage Program Database about all species found on and adjacent to the property.</li> <li>e. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Policies 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2</li> <li>f. 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 “Critical Habitat Regulations, #5 Exemptions” below.)</li> <li>g. Plans showing all Critical Habitat based on the RMP Policy 1F1 and the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.11</li> <li>h. 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.</li> <li>i. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan.</li> <li>j. Plans showing conservation easements to be imposed through the development approval on Critical Habitat for which no disturbance will be allowed (with clear and permanent on-site monuments, such as concrete posts, that avoid 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 a third party such as the municipality with easement enforcement rights. The easement must conform to RMP Policy 1F3 which requires periodic monitoring of</li> </ol> </li> </ol>	

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		<p>easement restrictions protecting Critical Habitat, species, and ecological communities from any changes in land use or management practices that would impair these resources.</p> <p>k. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</p> <p>l. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications).</p> <p>m. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</p> <p>n. Copies of any related surveys, site plans, professional and/or environmental site assessments.</p> <p>2. <b>LUC Zones:</b> RMP provisions apply equally to all Zones.</p> <p>3. <b>Preservation Area Special Provisions:</b> Require submittal of Highlands Preservation Area Approval (HPAA) for any project that proposes the disturbance of Critical Habitat on site in accordance with the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.11..</p>	
<b>Land Use Ordinance</b>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <p>1. <b>General:</b> Adopt by reference RMP Policies 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2 and Highlands Act goal at N.J.S.A. 13:20-10(b)(3) and 13:20-10(c)(2).</p> <p>2. <b>LUC Zones:</b> RMP provisions apply equally to all Zones.</p> <p>3. <b>Preservation Area Special Provisions:</b> Adopt by reference the Highlands Resource Area Determination requirements for location, presence, and/or absence of “rare, or threatened and/or endangered wildlife habitat” at N.J.A.C. 7:38-4.1(d)(3) and “rare or endangered plant species habitat” at N.J.A.C. 7:38-4.1(d)(4).</p>	Note: The Highlands Council anticipates that the need may arise to modify the Plan Conformance Standards at a later date to ensure conformance with NJDEP adoption of rules for the protection of rare, threatened or endangered animal or plant species, if such adoption occurs.
		<b>CRITICAL HABITAT REGULATIONS:</b>	
		<p>1. <b>Statement of Purpose:</b> Specify at a minimum that the purpose of the ordinance is to implement RMP Policies 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2 and (if Preservation Area is present in the municipality) the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.11. Make a direct link between the ordinance and municipal policy as stated in the Master Plan.</p>	For Highlands Preservation Area municipalities, include purpose of complying with NJDEP Highlands Rules and the Regional Master Plan.
		<p>2. <b>Special Definitions:</b> Include definitions of the three categories of Critical Habitat: 1) Critical Wildlife Habitat, 2) Significant Natural Areas, 3) vernal pools + 1,000 foot buffer (as set forth in RMP Policy 1F1), and endangered species, threatened species, and rare species in NJDEP Preservation Area rules at N.J.A.C. 7:38-1.4 and 4.1(d)(3,4) respectively), best management practices, site disturbance, and no net loss of habitat value based on the RMP. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38.</p>	Ordinance purpose, linked to RMP, to justify municipal authority

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		<p>3. <b>Special Standards:</b> Require that mapping of Critical Habitat shall be in accordance with the provisions of RMP Policy 1F1 and N.J.A.C. 7:38-3.11. A vernal pool protection buffer or a Critical Wildlife Habitat area or Significant Natural Area delineation may be modified only if an applicant can demonstrate conformance with RMP Objectives 1F6e and 1F6f respectively.</p>	
		<p>4. <b>Applicability:</b> 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 (N.J.S.40:55D-3)) and which involves the presence of Critical Habitat, other than exemptions as specified below.</p> <p><b>a. Highlands Applicability Determinations:</b></p> <ul style="list-style-type: none"> <li>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 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2</li> <li>ii. Other Developments – Require compliance with the RMP Policies 1F1 through 1F6, including Objectives for Policies 1F5 through 1F6, Policies 1F7, 1G1, and 1G2.</li> </ul> <p><b>b. Municipal Requirements:</b> Additional requirements as determined by the municipality.</p>	
		<p>5. <b>Exemptions:</b> Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p><b>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</b></p> <ul style="list-style-type: none"> <li>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 NJDEP Highlands Applicability Determination.</li> <li>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.</li> </ul> <p><b>b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</b></p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<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>

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		<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>6. <b>Critical Habitat Application:</b> Provide for a Critical Habitat application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist 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 through the procedures 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. <b>Completeness:</b> 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>	
		<p>8. <b>Notification to Highlands Council:</b> 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.</p>	<p>This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.</p>
		<p>9. <b>Requirements for Conservation Easements and Deed Restrictions:</b> Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement through a deed restriction for Critical Habitat located on the property that will not be disturbed by the project. The easement must conform to RMP Policy 1F3 which requires periodic monitoring of easement restrictions protecting Critical Habitat, species, and ecological communities from any changes in land use or management practices that would impair these resources.</p>	
		<p>10. <b>Disturbance Limitations:</b> The ordinance must include the following minimum requirements regarding disturbance of Critical Habitat:  a. Any application proposing a disturbance of Critical Habitat as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.11 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</p>	<p>These are the key standards for site development regarding the resources affected by the ordinance. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make</p>

	<p>Highlands Preservation Area Approval (HPAA) for the project.</p> <p>b. Any application proposing a disturbance of Critical Habitat under this ordinance must provide a <b>Critical Habitat Survey Report</b> that includes:</p> <ul style="list-style-type: none"> <li>i. A description of the site and the area surrounding it within a 0.5 mile radius;</li> <li>ii. A map of all Critical Habitat, described in RMP Policy 1F1, incorporating any RMP Updates approved by the Council under RMP Objectives 1F6e and 1F6f. If the application is for a major Highlands development located in the Preservation Area, include mapped Critical Habitat per NJDEP’s Highlands Resource Area Determination requirements for location, presence, and/or absence of “rare, or threatened and/or endangered wildlife habitat” at N.J.A.C. 7:38-4.1(d)(3) and “rare or endangered plant species habitat” at N.J.A.C. 7:38-4.1(d)(4) on the site and within 500 feet thereof;</li> <li>iii. If the applicant proposes site-specific Critical Habitat information that differs from Critical Habitat described in RMP Policy 1F1, the application must be in conformance with RMP Objectives 1F6e and 1F6f.</li> <li>iv. A field survey and description of the local ecological community type(s) <u>on</u> the site and a description of the <u>surrounding, macro-scale</u> ecological community type(s) of which the property is part;</li> <li>v. A description of the type of habitat utilized by any species identified through “Disturbance Limitations, #10.b.ii” above, including the identification of such habitat, identified on-site.</li> <li>vi. A field survey and inventory of wildlife species found on property and the habitat they require to remain viable. The inventory shall include a description of observed species, the survey method, other species not observed but likely occurring on the site, and reported occurrences of rare, threatened and endangered species both on the site and within 500 feet thereof to the extent physically or visually accessible, and important breeding or feeding habitat for rare, threatened or endangered wildlife. The inventory shall include a map depicting surveyed species and associated habitat.</li> <li>vii. A field survey and inventory of rare plant species found on the property. Rare plants species for the county of the proposed project are found at <a href="http://www.nj.gov/dep/parksandforests/natural/heritage/countylist.html">http://www.nj.gov/dep/parksandforests/natural/heritage/countylist.html</a>. The inventory shall include a description of the survey method, all vegetation communities, and occurrences of rare, threatened and endangered species both on the site and within 500 feet thereof to the extent physically or visually accessible. The inventory shall include a map depicting surveyed species and associated habitat.</li> </ul>	<p>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>
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		<ul style="list-style-type: none"> <li>viii. A description of the nature, density and intensity of the proposed use or activity in sufficient detail to allow analysis of the effects of such land use change upon identified Critical Habitat;</li> <li>ix. An analysis of the effects (direct and indirect) of the proposed use or activity upon species and their habitats including: <ul style="list-style-type: none"> <li>• Feasibility of avoidance and avoidance alternatives;</li> <li>• Selection of the alternative that will cause the least impact before mitigation is proposed;</li> <li>• Demonstration of low impact development best management practices and avoidance of disturbance to critical habitat;</li> <li>• Avoidance and minimization of impacts when disturbance is permitted or waived.</li> </ul> </li> <li>x. A description explaining how the applicant will <u>avoid the disturbance of Critical Habitat</u>.</li> <li>xi. If a waiver is granted by NJDEP or the Highlands Council that allows for development within Critical Habitat, a description explaining how the applicant will preferentially minimize and then mitigate adverse impacts to habitat. Mitigation measures must result in no net loss of habitat value. No net loss of habitat value shall result in either maintaining and the subsequent protection of, or restoring and the subsequent protection of, the four elements of habitat value: <ul style="list-style-type: none"> <li>• Quantity (e.g. acreage);</li> <li>• Quality (e.g. core forest vs. edge forest, intact riparian buffer vs. fragmented riparian buffer);</li> <li>• Type (e.g. scrub-shrub, wetland, mature forest);</li> <li>• Function (e.g. winter hibernacula for timber rattlesnakes, stormwater filtration).</li> </ul> </li> <li>xii. Mitigation must meet the habitat and life-cycle requirements of the specific species affected. Mitigation must be species specific, and may include but is not limited to: <ul style="list-style-type: none"> <li>• Creation, restoration or enhancement of habitat;</li> <li>• Preservation of critical habitat on lands for which previous development approvals or exemptions would result in habitat losses;</li> <li>• Prohibition of access to habitat areas damaged by access;</li> <li>• Seasonal restriction of construction activities;</li> <li>• Conservation easements on lands for which previous development approvals or exemptions would result in habitat losses.</li> </ul> </li> <li>xiii. Mitigation guidelines for establishing no net loss of habitat value are included in the Critical Habitat Conservation and Management Plan.</li> </ul>	
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		<p>c. <b>Disturbance</b> of Critical Habitat 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 1F1) except as permitted through the issuance of a waiver approved by the Highlands Council, at “Waivers and Exemptions, #13(b)” (see below) or unless an applicant can demonstrate Objective 1F6e or 1F6f to the satisfaction of the Highlands Council in coordination with NJDEP’s Endangered and Nongame Species Program;</p> <p>d. <b>Prohibitions</b> and limitations otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose, including prohibitions and limitations on site disturbance, forest clearance, infrastructure development, and site development.</p>	
		<p><b>11. Reporting Requirements:</b> 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.</p>	
		<p><b>12. Municipal Approvals Conditioned On State Approvals:</b></p> <p>a. <b>General:</b> 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. <b>Applicable to Preliminary Approvals:</b> Preliminary approval shall be conditioned such that land modification affecting Critical Habitat 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. <b>Applicable to Final Approvals:</b> Final approval shall be conditioned such that land modification affecting Critical Habitat 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. <b>Applicability of Highlands Council Review.</b> The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious</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 regulated resources 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,</p>

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		<p>coverage of one (1) acre, or more, 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. <b>Applicable to Building Permits:</b> The ordinance must require that no building permit shall be issued and no other land modification affecting Critical Habitat 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 Critical Habitat or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	<p>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>
		<p>13. <b>Waivers and Exceptions:</b> 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> <p>a. <b>Highlands Act Waiver Provisions:</b> 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 Critical Habitat unless the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. <b>Exception Provisions:</b> For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board for disturbance of critical habitat, 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 one or more provisions of the ordinance 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</p>	<p>NJDEP Highlands Rules may provide for certain waivers – the municipality may wish to more clearly define the limits of exceptions to the ordinance provisions where they won’t conflict with the NJDEP rules or the RMP, which incorporates the same waivers with regard to the Planning Area.</p> <p>Exceptions are applicable where site-specific conditions prevent complete application of a standard. Exceptions are not available for factors other than site conditions, such as any scheduling or financial constraints of the applicant. The mandatory statement of justification for an exception shall be used by the Highlands Council as the basis for its review of a municipal approval under the call-up provisions.</p>

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		<p>include at a minimum an explanation of how and to what extent the following conditions are addressed:</p> <ul style="list-style-type: none"> <li>i. no alternative exists that will allow for at least a minimum practical use of the property;</li> <li>ii. the exception is for road or utility access to another part of the site where the actual development would occur (if applicable);</li> <li>iii. the exception provides relief only to the minimum extent necessary;</li> <li>iv. other environmental features are not damaged in the process of protecting critical habitat.</li> </ul> <p>c. <b>Additional Provisions:</b> 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>	
<b>Enforcement</b>		<p>1. <b>Site Inspections:</b> 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"> <li>a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</li> <li>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.</li> <li>c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation.</li> </ul>	Specific provision for site inspections is critical to the protection of the features protected by this ordinance and all other sensitive environmental features.
		<p>2. <b>Administrative Compliance:</b> 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>	Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.
		<p>3. <b>Penalties:</b> Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the MLUL will be sufficient.
<b>Recommended Model or Example Ordinances</b> (up to five, with model ordinances listed first)		1.	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.
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