

CHAPTER VI. IMPLEMENTATION

The Highlands Regional Master Plan establishes a resources planning and management framework for the Highlands Region. The Highlands Regional Master Plan, however, is not self-executing and will require the concerted effort of agencies at all levels of government, the general public, property owners and private industry.

The Highlands Council is the lead agency responsible for the implementation of the Highlands Regional Master Plan. The Council has several critical implementation responsibilities including:

- preparation of implementation documents including model ordinances, handbooks, technical guides, bibliographies of substantive literature
- administration of local government conformance proceedings including review and approval of revised master plans and development regulations
- project review
- public education
- provision of financial and technical assistance to local governments
- creation and administration of the Highlands Development Credit program
- formation of the Highlands Credit Bank
- advocacy at the State and federal level for funding of RMP implementation, including land acquisition
- monitoring and updating of the Regional Master Plan

These functions are addressed below in the following categories and programs:

- Regional Master Plan Conformance, Consistency and Coordination
 - Plan Conformance – including the administrative, grants and technical assistance aspects
 - RMP Updates
 - Map Adjustments
 - Federal, State and Regional Agency Coordination
 - Local Participation
- Highlands Project Review
 - Project Review Process
 - Project Review Standards
- Improvement of the Regional Master Plan
 - Water Resources and Ecosystem Science Agenda
 - Regional Master Plan Monitoring

These programs focus on the procedural and programmatic methods for implementing and improving the Regional Master Plan over time. Plan Conformance is the process by which Highlands Region counties and municipalities implement relevant aspects of the RMP and gain the benefits of Plan Conformance, such as

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AT THE JUNE 12, 2008 COUNCIL MEETING

grants, technical and planning assistance, and a legal shield for local development review decisions that are based on conformance. RMP Updates provide a method for updating the RMP to address factual issues, while Map Adjustments address RMP modifications that relate to local planning initiatives. Map Adjustments will conform to the RMP policies and objectives and achieve no net harm to Highlands resources. Agency coordination and local participation are both critical aspects of RMP implementation.

The Highlands Council gains regulatory and advisory review authority and responsibilities upon adoption of the RMP, and the Highlands Project Review programs discuss the general approach that will be used for these reviews. The Highlands Council will adopt detailed procedures for implementation of the Highlands Project Review process.

Finally, the RMP will be the focus of continuing improvement and assessment through the final two programs. The science agenda will emphasize improved and alternative methods for determining the capability of the Highlands Region to sustain various types, intensities and locations of land uses. The RMP Monitoring program will allow the Highlands Council to identify significant successes and continuing issues related to RMP policies, objectives and programs, so that the RMP may periodically be improved through amendments, including the required six-year updates.

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

Part 1. Regional Master Plan Conformance, Consistency and Coordination

Subpart a. Plan Conformance

Issue Overview

Municipal and county conformance with the RMP (Plan Conformance) is the overall goal for implementation of the various elements of the Plan. The Highlands Act establishes the requirement that all municipalities and counties with land in the Preservation Area bring their local plans and development regulations into conformance with the “goals, requirements, and provisions of the regional master plan.” Voluntary conformance for municipalities and counties with land in the Planning Area is also provided for in the Act, which outlines the benefits that shall accrue to those municipalities and counties that conform.

Program Summary

Plan Conformance is intended to align municipal and county plans, regulations and programs with the goals, requirements and provisions of the RMP. The process to achieve conformance will be logical, time efficient and comprehensive, and the Highlands Council will provide grant funding to assist local jurisdictions in completing it. The conformance process will begin with the development of detailed guidance for municipalities and counties, which will be provided along with planning and technical assistance from the Highlands Council. Each municipality and county going through the conformance process will follow a general approach that includes an assessment of current plans and regulations, an evaluation of future planning needs and conditions, modification of plans and regulations as necessary, and a public involvement process. The Highlands Council will review Petitions for Plan Conformance and decide to approve, approve with conditions or reject the petitions. Conformance approval will in most cases be with conditions, where a finding is made that the municipality or county has conformed with all immediate mandatory Conformance requirements, and will conform with all other mandatory Conformance requirements within an agreed upon implementation schedule. The Highlands Council will then track the progress of the municipality or county in meeting that schedule, and will monitor development reviews and capital projects for compliance with the conformance approval.

RMP Policies and Objectives Addressed

This program addresses RMP provisions regarding the modification of municipal master plans, zoning ordinances and development review ordinances, and of county master plans and development review requirements, as needed to achieve Plan Conformance.

Plan Conformance Guidelines

The Highlands Council will prepare and distribute to all Highlands municipalities and counties *Plan Conformance Guidelines* outlining the procedures for Plan Conformance. The *Plan Conformance Guidelines* will include a matrix outlining all of the immediate mandatory elements, the long term mandatory elements, and the discretionary elements. The Guidelines will describe each Conformance element in detail. The Guidelines will also provide descriptions and criteria for all of the associated grant programs that will be available to municipalities and/or counties in support of Plan Conformance.

Planning and Technical Assistance

The Highlands Council has assembled a significant amount of data and analyses relative to the Region and will make this information available to municipal and

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AT THE JUNE 12, 2008 COUNCIL MEETING

county representatives prior to commencement of Plan Conformance.

The application of the Land Use Capability Map Series to individual municipalities will involve translating the boundaries in the LUCM Series to a more refined scale and to reflect local conditions. In order to ensure that the Land Use Capability Zone Map is accurate and up to date, municipalities and counties may request RMP Updates, which will be considered and processed throughout the process of Plan Conformance. Map Adjustments may also be requested as a component of a Petition for Plan Conformance. This process is defined in more detail in the *Land Use Capability Analysis Program* in Chapter V and the *RMP Update Program* and *Map Adjustment Program*.

The Highlands Council website will continue to serve as a means for sharing current technical data and Plan Conformance information. The Council will provide information in support of Plan Conformance to each municipality and county. The information will include but not be limited to: the Highlands *Regional Build-Out Model Technical Report* and background information, Highlands Resource data layers, the LUCM Series and supporting data layers, and various discretionary Plan Conformance tools. This information will support local knowledge and planning during Plan Conformance.

The Highlands Council will make grant funds and other financial and technical assistance available to Highlands municipalities and counties to support any revision of their master plans, development regulations or other regulations which are designed to bring those plans or regulations into conformance with the RMP or the implementation of a Transfer of Development Rights (TDR) program (see Grant Programs, below).

The Highlands Council staff will be available to offer planning and technical assistance throughout Plan Conformance and during municipal and county implementation of the elements of the RMP. Additionally, funding will be available in the form of grants to municipalities and counties to further assist them in implementing the elements of the RMP.

**Procedures for
Municipal and County
Plan Conformance**

Preservation Areas – All jurisdictions having lands in the Preservation Area must petition the Highlands Council for conformance with respect to that area within 9 to 15 months of adoption of the RMP. To initiate the conformance process, the Highlands Council will schedule and provide notice of submission deadlines to all Preservation Area jurisdictions upon the adoption of the RMP. Such notice will be followed by an information packet, which will include the *Plan Conformance Guidelines* as well as maps and technical information developed by the Highlands Council for, and specific to, each governmental unit.

Planning Areas – Municipalities and counties may choose whether or not to conform to the RMP with respect to lands located in the Planning Area, and may file petitions relative to such areas at any time. Planning Area petitions may be filed independently or in conjunction with mandatory filings for the Preservation Area. For municipalities located fully within the Planning Area, information packets including the above-listed items will be provided after the adoption of the RMP.

Notice of Intent – Information packets will include a model “Notice of Intent” to pursue Plan Conformance, which the applicable governing body must adopt

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

by resolution at a duly-noticed public meeting prior to commencing the petition process. For jurisdictions having lands in both the Preservation Area and the Planning Area, the resolution must indicate whether the petition will seek conformance with respect to the Preservation Area alone, or for both the Preservation and Planning Areas.

Petitions for Plan Conformance – Petitions for Plan Conformance must include (among other things) the proposed revisions to the municipal or county planning documents that are necessary to conform to the RMP. In recognition of the limited timeframe for submission of Preservation Area petitions, the Highlands Council will provide model supplements for master plans and development regulations, which petitioners may use to quickly develop petitions for Plan Conformance. A detailed list of submission requirements will be provided in the *Plan Conformance Guidelines* document.

Basic Plan Conformance – Petitions for Plan Conformance may be designed to accomplish immediate mandatory conformance requirements at the outset of the process, with more complex, long-term conformance tasks to be completed under a Council-approved Implementation Plan. Under this scenario, the Council will grant what is known as “Basic” Plan Conformance (which is Plan Conformance with conditions) once the petitioner has satisfactorily completed all immediate mandatory conformance requirements. Basic Plan Conformance will entitle the petitioner to all of the rights and benefits of full Plan Conformance, provided that the Implementation Plan and scheduling requirements included therein are rigorously adhered to. This approach will require that Highlands Resources be given immediate protection via adoption of specific regulations applicable to municipal and county review of land development applications. Highlands model master plan and development regulation supplements will address each of these areas.

Overview Meetings – After the effective date of the final RMP, the Highlands Council will host a series of overview meetings throughout the Highlands Region to explain the elements of the Plan and the Plan Conformance process. The Highlands Council encourages County Planning Departments to assist their constituent municipalities in the Plan Conformance process if the municipalities officially request that the County Planning Departments do so.

Municipal Process – The municipal Plan Conformance process will commence with municipal review of Highlands LUCM maps, charts and technical data to identify any need for RMP Updates. RMP Updates should be addressed as early as possible in the Plan Conformance process, but will be processed on a continuing basis, as needed throughout.

The municipality will then undertake a thorough review of its planning program, including master plan, zoning ordinances, development regulations, maps, and supporting documents, for consistency with the RMP. Foremost among RMP consistency requirements is the need for municipal regulations that protect Highlands resources and designated Highlands Resource Areas. Equally important is that municipal planning programs limit growth, development and/or redevelopment in Highlands communities to areas having the physical capacity to support it.

To determine the extent of the physical capacity, the municipality will conduct a Land Use Capability Analysis, involving a review and assessment of its land-

**Municipal Plan
Conformance**

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

resource- and utility-based capacities. This will be followed by a “Limiting Factor” Analysis, to determine and map out the most significant constraints to community development. These analyses will reveal the municipality’s capacity to support existing development and any intended future growth, development and/or redevelopment. In conducting these analyses, the municipality may choose to work jointly with neighboring municipalities, such as those sharing the same sub-watershed(s) on issues of common interest or where economies of scale may be achieved through joint analysis. See the *Land Use Capability Analysis Program* in Chapter V for more details on this process.

In cases where the results of these analyses indicate a need for substantial changes in the municipal planning program, the municipality is encouraged to conduct a community visioning session(s) to involve the local public and to develop or confirm a representative vision of the community for the future. The results of community visioning shall be included as part of the Petition for Plan Conformance. Whether or not the municipality engages in community visioning, it will be required to hold public hearings during the process of conformance and prior to filing of a petition for conformance to the Highlands Council. Minutes from all public hearings shall be submitted to the Highlands Council as part of the municipality’s Petition for Plan Conformance.

The Petition for Plan Conformance shall be the formal submittal to the Highlands Council from a municipality for consideration of Plan Conformance. The Petition shall include the proposed master plan amendments, zoning ordinance revisions, and resource protection ordinances, as well as the community vision (if applicable), all supporting documentation, and a Municipal Self-Assessment Report.

Municipal Self-Assessment Report – The Municipal Self-Assessment (MSA) Report will describe the municipality’s progress toward achieving full Plan Conformance as of the date of filing its Petition. It will discuss and outline the steps remaining to fully align the municipal planning program with the RMP and thus achieve Plan Conformance. The MSA Report must in addition, include a proposed Implementation Schedule for completion of each outstanding task leading to full Plan Conformance.

In order to meet the requirements of Plan Conformance for immediate mandatory items (i.e., “Basic” Plan Conformance), the municipality must adopt the elements of the Highlands Regional Master Plan related to critical natural resources.. Where a municipality can demonstrate to the satisfaction of the Highlands Council that existing provisions of its master plan and land development regulations cover these areas in an equivalent or more restrictive manner than the RMP, the existing provisions shall be sufficient to satisfy the conformance requirement. The *Plan Conformance Guidelines* will include a table specifying the policies and objectives which are immediate mandatory items and must be adopted (or demonstrated to already exist) by the municipality in order to be eligible to receive Plan Conformance approval.

As noted previously, a series of long-term mandatory items may be made a condition of approval which must be accomplished according to an established schedule, unless the municipality has addressed them prior to submitting a petition for Plan Conformance. The municipality may also pursue Plan Conformance regarding discretionary items which may be included in the

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

approved Implementation Schedule.

Municipalities may seek the designation of centers, cores, and nodes through Plan Conformance by proposing such a designation in a Petition for Plan Conformance that is both consistent with the State Development and Redevelopment Plan's (State Plan) criteria for center, core and node designation and is in conformance with the Regional Master Plan. Designated centers, cores and nodes in the Highlands Region may include the full range of types afforded by the State Plan.

The Highlands Region includes 20 previously designated centers (see figure *State Planning Commission Designated Centers*). The figure includes the expiration dates of these designated centers in order to identify the timeframe within which the Highlands Council and the State Planning Commission may examine the potential reestablishment of any expiring center designations through the Plan Conformance or Plan Endorsement process. The figure additionally provides an overview of the intersection of the boundaries of the existing designated centers and the Highlands Land Use Capability Zone Map. This information and the additional information in the RMP will allow municipalities, the Highlands Council and the State Planning Commission to reassess the designated center boundaries to ensure protection of Highlands resources and identification of appropriate areas for growth.

**County Plan
Conformance**

County Process – The county Plan Conformance process will commence with county review of Highlands LUCM maps, charts and technical data to identify any need for RMP Updates. RMP Updates should be addressed as early as possible in the Plan Conformance process, but will be processed on a continuing basis, as needed throughout.

The county will then review its planning and development documents and regulations for consistency with the RMP. In addition to adoption of policies and practices for application to county properties and facilities, counties will specifically be responsible for plans and regulations governing wastewater management, farmland preservation, recreation and open space, and transportation/circulation. Counties may choose to work in coordination with their constituent municipalities. The county is encouraged to participate in the community visioning events of its constituent municipalities and/or may choose to hold a county-wide visioning session.

In order to meet the requirements of Plan Conformance for immediate mandatory items, the county must adopt the elements of the RMP related to water availability and conservation measures. The long-term mandatory items which will be accomplished according to an established schedule include Wastewater Management Plans, Comprehensive Farmland Preservation Plans, Recreation and Open Space Plans, County Transportation Plans and Stormwater Management Plans. Where a county can demonstrate to the satisfaction of the Highlands Council that existing planning and regulatory programs address these topics in an equivalent or more restrictive manner than called for by the RMP, the existing programming shall be sufficient to satisfy the conformance requirement. The *Plan Conformance Guidelines* will include a table specifying the policies and objectives which are immediate mandatory items and must be adopted (or demonstrated to already exist) by the county in order to be eligible to receive Plan Conformance approval.

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

**Highlands Council
Review, Evaluation
and Decision Process**

Counties will be required to hold one or more public hearings during the process of conformance and prior to filing of a petition for conformance to the Highlands Council. Minutes from all public hearings shall be submitted to the Highlands Council as part of the county's Petition for Plan Conformance.

The Petition for Plan Conformance shall be the formal submittal to the Highlands Council from a county for consideration of Plan Conformance. The Petition shall include the proposed master plan amendments, regulatory revisions, the county vision (if applicable), all supporting documentation, and a County Self-Assessment Report.

County Self-Assessment Report – The County Self-Assessment (CSA) Report will describe the county's progress toward achieving full Plan Conformance as of the date of filing its Petition. It will discuss and outline the steps remaining to fully align the county planning program with the RMP and thus achieve Plan Conformance. The CSA Report must in addition, include a proposed Implementation Schedule for completion of each outstanding task leading to full Plan Conformance.

The Highlands Council may convene a committee to review municipal and county Petitions for Plan Conformance. The membership of the Committee may change based on the municipality or county being reviewed in order to avoid a conflict of interest for any Council member. The Committee shall review the Municipal and County Assessment Reports, community visioning results, and all supporting documentation and make recommendations to the Highlands Council for each Petition to be approved, rejected or approved with conditions. It is anticipated that all Plan Conformance approvals will have conditions attached, at a minimum outlining all of the long-term mandatory items of Conformance.

If a Petition is rejected or approved with conditions relative to the immediate mandatory elements of Plan Conformance, the notification will be accompanied by a specific listing of the actions the municipality or county must take in order to receive a Plan Conformance approval.

Approval of Plan Conformance shall last for a period of six years or, for municipalities, until the next municipal reexamination of the municipal master plan if less than six years. Upon notification of approval, the municipality or county shall be eligible for all of the benefits of Plan Conformance including:

1. Strong Presumption of Validity, Extraordinary Deference, and Burden of Proof – As set forth in the Highlands Act, a strong presumption of validity applies to master plans, land use ordinances and local decisions of municipalities and counties that are in conformance with the RMP. If a conforming municipality or county is challenged in court, the actions they have taken to conform to the RMP shall be given extraordinary deference and the burden of proof shall be on the plaintiff to prove that the municipality or county acted in an arbitrary, capricious or unreasonable manner.

Legal Representation – The Council shall, where appropriate in accordance with the Highlands Act, provide legal representation to any requesting local government unit located in the Highlands Region in any cause of action

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

filed against the local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to the Municipal Land Use Law, the State Uniform Construction Code Act, or the Highlands Act.

2. Planning Grants – The Highlands Council is authorized to provide grants for the reasonable expenses associated with modifying master plans, land use ordinances, development regulations, and other relevant components of municipal and county planning programs to make them conform to the Regional Master Plan.

Approval of Plan Conformance is equivalent to Plan Endorsement by State Planning Commission and brings with it the benefits of Plan Endorsement, such as State aid, planning assistance, technical assistance, and other benefits awarded by the State.

**Compliance
Component**

Once a municipality or county has received Plan Conformance approval, it has an obligation to maintain the plans, ordinances and regulations that brought it into conformance. The Highlands Act specifies that “the council may revoke a conformance approval granted ..., after conducting a hearing, if the council finds that the local government unit has taken action inconsistent with the regional master plan”. Jurisdictions seeking to amend ordinances or regulations relating to the Highlands RMP must provide them to the Highlands Council for review and approval prior to adoption at the local level.

Municipal and county Plan Conformance will be periodically verified through submission of periodic status reports. If the council revokes a Plan Conformance approval for a municipality or county that has received grants or funding based on its conformance status, it may be required to return those funds to the Council.

Grants Programs

Highlands Regional Master Plan Compliance Aid Grants

The Highlands Regional Master Plan Compliance Aid Grants are intended to fund planning and science projects which are necessitated by the mandatory requirements of the RMP and the associated Plan Conformance and implementation process.

Initial Assessment Grant Program

The purpose of the Initial Assessment Grant is to enable municipalities and counties to conduct an initial review of the policies and requirements of the RMP to determine the level of effort anticipated for the municipality or county to conform to the RMP. The Initial Municipal Assessment Grants will support an early and preliminary assessment on the part of the municipality and county and will not obligate them in any way to commit to Plan Conformance for the Planning Area in the future.

The funding assistance is to be used to review existing land use planning, development and regulatory documents and mechanisms against the policies, strategies and implementation techniques contained in the RMP.

The Initial Assessment Grant program will accept applications from municipalities and counties located within the Highlands Region.

Plan Analysis and Conformance Grant Program

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

Municipalities and counties within the Preservation Area are required to participate in Plan Conformance to bring their local planning and zoning into conformance with the RMP. Those within the Planning Area may, after completing the Initial Assessment, choose to participate in Plan Conformance for the Planning Area. Any municipality or county that submits a duly-adopted Notice of Intent to Petition for Plan Conformance will be eligible for grant funding to help offset the costs associated with the process.

The Plan Analysis and Conformance grants will fund municipal and county work that builds on the initial assessment. Funds may be used to analyze local plans, regulations, and programs and evaluate how well they support the goals, policies, and objectives of the RMP. Funds may also be used to perform capacity and constraints analyses, conduct community vision sessions, develop action plans that will align local planning with the RMP, conduct public outreach to involve and inform the community, and to prepare the Municipal or County Self-Assessment Report.

Immediate Mandatory Elements of Conformance Approval

As part of a municipality's or county's Petition for Plan Conformance, certain elements of the RMP must be adopted and enacted to receive Highlands Council conformance approval. The Plan Analysis and Conformance Grants are intended to also assist local governments in implementing these requirements. The immediate mandatory requirements will be summarized in the *Plan Conformance Guidelines*, during the Overview Meetings and during conformance discussions.

Highlands Implementation Grant Program

Long-term Mandatory Elements of Conformance Approval

As a condition of Plan Conformance approval, additional elements will be required of each conforming municipality and county unless they already conform to these elements as part of their initial Petition for Plan Conformance. An Implementation Schedule will be established to outline each element and the timeframe within which they must be achieved. The Highlands Implementation Grants will be made available to assist municipalities and counties in actions to complete these requirements. They may include development of such items as additional resource protection standards, resource management plans, fiscal sustainability measures, certain development standards, or historic and scenic resource protection plans.

Highlands Incentive Planning Aid Grants

The Highlands Incentive Planning Aid Grants are intended to fund planning and science projects which advance the goals, policies and objectives of the RMP, but are not mandatory requirements of Plan Conformance.

Discretionary Elements of Conformance Approval

The RMP contains a range of policies and objectives and associated elements that the Highlands Council is committed to as part of the future vision of the Highlands, but have been deemed discretionary. Highlands Incentive Planning Aid Grant monies will be available to initiate important elements of the RMP through planning studies on targeted issues. Sample projects that may be eligible include planning for brownfield and grayfield redevelopment, town

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

center/transit village development, and local and regional economic development strategies.

Transfer of Development Rights (TDR) Grants

The Highlands Council has established a \$1 million Voluntary Receiving Zone Feasibility Grant Program. This grant program is designed to assist municipalities in assessing the potential for locating a receiving zone within the community. Eligible municipalities will receive both financial support and technical assistance from the Council. Participation in the grant program requires a commitment by the municipality to fully evaluate the feasibility and desirability of designating a receiving zone. Additional grant funding will be made available to offset the costs of implementation of a TDR program.
