

**Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan
Historic Resource Protection Conformance Standards**

New Jersey Highlands Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Municipal Master Plan and Historic Preservation Plan Elements		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): NA Policy Statement: Establish the importance of preserving the identified historic, cultural and archaeological resources of the Highlands Region in the policies, goals, objectives section of the Master Plan. Adopt by reference RMP Policies 4A3 through 4A5 (each with their associated Objectives) into the Historic Preservation Plan Element. Relate the policies to MLUL purposes as appropriate. LUC Zones: RMP provisions apply equally to all Zones. 	
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish historic resource protection as a policy of the municipality, enumerating the purposes and benefits in the statement of objectives, principles, assumptions, policies and standards. Historic Preservation Plan Element Requirements: Establish the goals for historic resource protection in the Highlands Region. List the historic sites and/or districts that are included on the Highlands Historic and Cultural Resource Inventory and all locally designated historic sites and historic districts. If desired, include a historic resource survey or inventory which lists other existing and potential historic resources within the community. Describe criteria or standards used to determine historic significance or value, and indicate that the U.S. Secretary of the Interior’s Standards for Treatment of Historic Properties will serve as guidance in review of designated historic sites. Discuss and describe any future plans for historic resource protection education and incentives, heritage tourism efforts, and local regulations relative to sites, districts and other historic resources. Describe how the components of the Historic Preservation Plan Element relate to the Land Use Plan element and its policies and objectives and how historic resource protection may be used as a tool to advance the goals of the municipal master plan. 	
Institutional Capability		<ol style="list-style-type: none"> Planning: The Council will provide assistance should planning board staff and members require assistance with this issue to ensure that the development 	To assist board members and staff regarding this topic and the implementing ordinance, the

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).

		review ordinance (if one is adopted) is properly implemented and that conformance with the RMP is maintained. If a municipal historic preservation advisory committee is established, members shall have sufficient understanding of historic preservation issues to ensure that reviews and recommendations may be relied upon to offer assistance to the planning board and zoning board of adjustment.	Council will provide educational and training opportunities as requested. Council will work with the municipality's professionals if requested.
		2. Project Review: Municipality must apply the requirements of any adopted Historic Preservation Ordinance to the specific projects.	Same as for planning
		3. Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify that applicable requirements are implemented.	Ensure that the appropriate review body and staff have the ability to visit the site in support of project review, planning and other activities
		4. Independent Projects: The municipality must inform the Highlands Council of special or independent projects developed and implemented regarding historic preservation, such as surveys or local guidelines.	
Development Review Checklists		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require for all applications:</p> <ul style="list-style-type: none"> a. Highlands Council consistency determination. b. List of sites or districts identified in the Highlands Historic and Cultural Inventory that are located adjacent to or within sight of the proposed development, or from which the development site lies in view. c. If a Historic Preservation Ordinance is adopted, a report identifying other known and potential historic, cultural and/or archaeological resources on the subject site and immediately adjacent properties, including but not limited to those which are listed on the Highlands Historic and Cultural Resource Inventory. Potential historic resources should include any structure that is 50 or more years old, is a generally recognized historic resource within the community, or has been proposed for recognition as worthy of historic resource protection. d. Narrative description of the extent to which the application exhibits compliance with RMP policies and objectives to treat historic resources on the project site sensitively with a goal of incorporating these resources into the overall project purposes and the Historic Preservation Ordinance, if one is adopted. Demonstrate how the historic resources were evaluated as a resource, as opposed to being treated as a limitation. Describe measures included in the project proposal to minimize negative impact to the historic resources. If impacts are unavoidable, detail other options considered and reasons for choosing the proposed project over the alternatives. Demonstrate that sensitive treatment of historic, cultural and/or archaeological resources was considered and integrated as a primary factor in development of the project. e. Plans showing the proposed area of disturbance for all aspects of the 	

		<p>development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures.</p> <p>f. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). Descriptions and illustrations of how proposed new structures physically relate to any historic resources identified through items b or c, above. Provide details of the sensitive treatment of historic details, if appropriate. Require applicants for redevelopment and/or infill projects to demonstrate that the proposal is compatible with the architecture, form and massing of the existing neighborhood or area.</p> <p>g. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</p> <p>h. Copies of any related surveys, site plans, and professional and/or environmental site assessments.</p>	
<p>Land Use Ordinance – Historic Preservation Provisions</p>		<p>DISCRETIONARY CONFORMANCE COMPONENT</p> <p>1. Statement of Purpose: Specify that the purpose of the ordinance is to implement municipal Master Plan goals and objectives and RMP policies and objectives regarding protection of historic, cultural and archaeological resources.</p> <p>a. Encourage and facilitate sensitive adaptive re-use of historic structures as a means to protect them from demolition and to give them an economic role in the existing community. Recognize and protect the nature of historic transportation structures such as bridges and signs in reviewing transportation improvement projects. Advocate a context sensitive design approach when maintenance or replacement of historic infrastructure is proposed. Discourage the practice of tearing down existing, good quality housing to replace with historically inconsistent new structures.</p> <p>b. Refer to the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties as the guideline for municipal historic preservation initiatives.</p> <p>c. Make a direct link between the ordinance and municipal policy as stated in the Master Plan.</p>	
		<p>1. Special Definitions: Include definitions of historic resource, historic site, historic district and other pertinent historic resource terminology.</p>	<p>Ordinance purpose, linked to RMP, to justify municipal authority</p>
		<p>2. Special Standards: To be determined according to individual municipal conditions.</p>	
		<p>3. 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 (N.J.S.40:55D-3)), other than exemptions as specified below.</p> <p>a. Highlands Applicability Determinations:</p> <p>i. Major Highlands Developments – In the Preservation Area, require</p>	

		<p>compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38 and with RMP Policies 4A1 through 4A8 and Policies 4C1 and 4C2 (each with their associated Objectives);</p> <p>ii. Other Developments – Require compliance with the RMP Policies 4A1 through 4A8 and Policies 4C1 and 4C2 (each with their associated Objectives).</p> <p>b. Municipal Requirements: Additional requirements as determined by the municipality.</p>	
		<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 NJDEP 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. Historic Preservation Application: In a municipality with a historic preservation advisory committee or similar entity, provide for a historic preservation application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review by the historic preservation advisory body or other qualified professional(s).</p>	<p>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</p>	<p>The MLUL at N.J.S. 40:55D-10.3 allows a</p>

		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.	municipality to delegate completeness review to a committee or designee.
		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 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 Maintenance of Resources: Require that any proposed activity requiring municipal approval under this ordinance require reasonable assurance that the resources declared historic resources will be maintained and not allowed to fall into disrepair.	
		10. Development Requirements: The ordinance, if adopted, should include the following minimum requirements regarding historic preservation: <ul style="list-style-type: none"> a. Development or redevelopment projects must be designed to have the minimum practicable degradation or impact to a historic, cultural or archaeological resource as listed on the Highlands Region Historic and Cultural Resource Inventory. Demolition of a historic resource does not constitute minimum practicable degradation. b. The historic resource and its historic setting should be protected from encroachment or damage. Maintain the integrity of the resource and maintain its historic surroundings, such as a landscape setting. c. Should alteration be the only feasible alternative, every effort should be made to minimize the impact. Any alterations must be made in keeping with the character of the original structure. d. Incorporate the historic resource as part of the project proposal whenever possible. e. Pattern the proposed new structures on the historic architecture when appropriate and feasible. f. Relocation of a historic structure should only be undertaken when other options have proved infeasible. 	
		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.	
		12. Municipal Approvals Conditioned On State Approvals: <ul style="list-style-type: none"> a. General: Require that the approved development demonstrate compliance 	The purpose of this provision is to ensure that applicants do not assume approval prior to the

	<p>where applicable with the New Jersey 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 affected by requirements for historic resource protection 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 affected by requirements for historic resource protection 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 in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious 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. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affected by requirements for historic resource protection 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</p>	<p>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, 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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		<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 regarding historic resource protection unless the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the provisions of 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 regarding historic resource protection 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 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. c. Additional Provisions: No exception may be approved that violates the New Jersey 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 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>
<p>Enforcement</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 	<p>Specific provision for site inspections is critical to the protection of the features protected by this ordinance and all other sensitive environmental features.</p>

		<p>easements, deed restrictions or other means of resource preservation.</p> <p>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.</p> <p>c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation.</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>	Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.
		<p>3. Penalties: Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the MLUL will be sufficient.
Recommended Model or Example Ordinances		<p>1. Pinelands Model Historic Preservation Ordinance, September 1988, New Jersey Pineland Commission, http://www.state.nj.us/pinelands/landuse/cult/</p> <p>2. New Jersey’s Certified Local Government Guidelines, August 2007, New Jersey Department of Environmental Protection, State Historic Preservation Office. http://www.nj.gov/dep/hpo/3preserve/clgguides8_07.pdf</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.