

**Guidelines for Municipal Plan Conformance with the Highlands Regional Master Plan
Highlands Open Waters and Riparian Area Protection Standards
New Jersey Highlands Water Protection and Planning Council**

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General: Incorporate the Highlands Council maps of Land Use Capability Zones, the Preservation and Planning Areas, and Highlands Open Waters and Riparian Areas (specify date of the version used), and incorporate by reference the definitions of Highlands Open Waters and Riparian Areas in RMP Policies 1D1 and 1D2 and NJDEP Preservation Area rules at N.J.A.C. 7:38-1.4 and 3.6. LUC Zones: The delineation of Highlands Open Waters and Riparian Areas does not vary by Zone. Preservation Area Special Provisions: Preservation Area buffers for Highlands Open Waters are also 300 feet. Riparian Areas as defined by the RMP are not addressed in the Highlands Preservation Area rules at N.J.A.C. 7:38-3.6. 	NOTE: The Highlands Council will be providing mapped information in digital form through its Municipal Mapping Tool, which can be used by a municipality to meet these requirements.
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Mapping: Identify Highlands Open Waters and Riparian Areas utilizing Highlands Council GIS data. Identify areas mapped as open waters that are on developed parcels, preserved lands and other parcels. Where available, identify specific local open waters and riparian areas through utilization of valid mapping approaches as generally accepted by the scientific community and approved by Council and NJDEP. Narrative: Description of the types (e.g., springs, streams including intermittent streams, wetlands, vernal pools, and bodies of surface water, whether natural or artificial) and extent (stream lengths, acreages of lakes and wetlands, etc.) of Highlands Open Waters in the municipality, and the relevance to environmental protection issues. The narrative can include issues regarding water quality and aquatic habitat protection and opportunities for Highlands Open Waters restoration. 	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.

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

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Municipal Master Plan and Conservation Plan Element		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas, and Highlands Open Waters and Riparian Areas; and the background statement of the RMP, Part 1. Natural Resources. Subpart b. Highlands Open Waters and Riparian Areas, on p. 141. Policy Statement: Adopt by reference RMP Policies 1D4g, 1D4h, 1D4j, and 1D5 into the Conservation Element, and general Policy 1D into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. LUC Zones: RMP provisions apply equally to all Zones. Preservation Area Special Provisions: Specifically cite the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.6 as a justification for regulation of development affecting Highlands Open Waters and their buffers, and Riparian Areas. 	
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish the protection of Highlands Open Waters and Riparian Areas in the Master Plan as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Element. Conservation Plan Element Requirements: Establish importance of protecting Highlands Open Waters and Riparian Areas. In addition to resource conservation and aquatic habitat protection, regulation of development affecting Highlands Open Waters and their buffers and Riparian Areas should be associated with the protection of public health, safety and welfare. Use the Environmental Resource Inventory as the basis, and then discuss the values served by protecting Highlands Open Waters. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of Highlands Open Waters and their buffers and Riparian Areas as the initial identification of these resources in the municipality, to be supplemented and amended as needed, by on-site identification through the local development review process. Stream Corridor Protection/Restoration Plans shall be adopted by reference into the Conservation Plan Element. 	<p>Note that regional data do not provide complete detail on the location of Highlands Open Waters; applicants will be required to provide site-specific information.</p>
Institutional Capability		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Planning: The Council will provide assistance should planning board and zoning board of adjustment members and staff require assistance with this issue to ensure that the development review ordinance is properly implemented, that conformance with the RMP is maintained, and that exceptions and waivers to the Highlands Open Waters and Riparian Areas ordinance are limited as provided herein 	<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>

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		<p>(“Highlands Open Waters and Riparian Areas Regulations,” #13 below), and do not damage municipal values for Highlands Open Waters and Riparian Area protection.</p>	
		<p>2. Project Review: Municipality must have capacity to interpret digital and surveyed data on Highlands Open Waters and Riparian Areas, and apply the ordinance requirements to such resources identified on a property.</p>	<p>Primarily performed by municipal engineer</p>
		<p>3. Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify Highlands Open Waters and related resources.</p>	<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. Primarily performed by municipal engineer, but may include a board committee or the Environmental Commission for site walks</p>
		<p>4. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., stream delineations, hydrology studies) developed and implemented regarding Highlands Open Waters protection and regulation, as related to Plan Conformance or RMP implementation.</p>	
<p>Development Review Checklists</p>		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require the following for all applications to which Highlands Open Waters and Riparian Areas Regulations apply (see #4, “Applicability”).</p> <ul style="list-style-type: none"> a. Highlands Council consistency determination. b. Information identifying Highlands Open Waters and their buffers and Riparian Areas on site using the Highlands Open Waters and Riparian Areas GIS layers described in RMP Policies 1D1 and 1D2. c. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Policies 1D4 and 1D5. d. Where the applicant claims a Highlands Act exemption, require submittal of information necessary for municipal decision, or of a determination by NJDEP or the Highlands Council, as a condition for completeness. (See “Development Review Ordinance, #5 Exemptions” below.) e. Plans showing all Highlands Open Waters, Highlands Open Waters buffers, and Riparian Areas, based on the RMP Policies 1D1 and 1D2 and the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.6. f. Plans showing the proposed area of disturbance for all aspects of the development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures. g. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan. h. Plans showing conservation easements to be imposed through the development approval within Highlands Open Water buffers and Riparian 	

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		<p>Areas for which no disturbance will be allowed (with clear and permanent on-site monuments, such as concrete posts, that minimize the need for land clearing or obstruction of wildlife movement). The easement must be depicted on the plan of record and described in the deed with metes and bounds, including GPS coordinates using the State Plane coordinate system, and complying with Highlands Council easement requirements.</p> <ul style="list-style-type: none"> i. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. j. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). k. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants). l. Copies of any related surveys, site plans, professional reports and environmental site assessments. <p>2. Disturbances: Any application proposing to disturb Highlands Open Waters buffers and/or Riparian Areas shall also provide:</p> <ul style="list-style-type: none"> a. Environmental Impact Statement or Review submitted to the Highlands Council in support of its consistency determination. b. Hydrology, drainage and flooding analysis report or reports prepared in support of conformance with the municipal stormwater management plan and regulations adopted pursuant to N.J.A.C. 7:8, or a Flood Hazard Area Control Act application pursuant to N.J.A.C. 7:13. <p>3. LUC Zones: RMP provisions apply equally to all Zones.</p> <p>4. Preservation Area Major Highlands Developments: Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38-3.6, which provide that all major Highlands developments are prohibited within Highlands Open Waters and its adjacent 300-foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside the Highlands Open Waters or its buffer. Require submittal of Highlands Preservation Area Approval (HPAA) for any project that proposes the disturbance of Highlands Open Waters buffers in accordance with the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.6.</p>	
<p>Land Use Ordinance: Highlands Open Waters and Riparian Areas Regulations</p>		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. Statement of Purpose: Specify at a minimum that the purpose of the ordinance is to implement RMP Goal 1D, and the applicable Policies and Objectives therein and (if Preservation Area is present in the municipality) the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.6. Make a direct link between the ordinance and municipal policy as stated in the Master Plan.</p>	<p>For Highlands Preservation Area municipalities, include purpose of complying with NJDEP Highlands Rules and the Regional Master Plan. RMP provisions apply equally to all Zones.</p>
		<p>2. Special Definitions: Include definitions of Highlands Open Waters and Riparian Areas and Highlands Open Waters buffers (as set forth in RMP Policies 1D1 and</p>	

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		1D2 and at N.J.A.C. 7:3-6, respectively), best management practices, sedimentation, site disturbance, disturbed areas and stability based on the RMP. Adopt by reference Highlands Act definitions at N.J.S.A. 13:20-3. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38.	
		3. Preservation Area Special Standards: Require that mapping of Highlands Open Waters and buffers shall be in accordance with the provisions of N.J.A.C. 7:38-3.6.	
		4. Applicability: The ordinance must apply to any project for which a permit from, or determination by, the municipality is required (including any application for development as defined under the MLUL at N.J.S.40:55D-3) and which involves the presence of a Highlands Open Waters buffer, Riparian Area, or Preservation Area Highlands Open Waters buffer, other than exemptions as specified. a. Highlands Applicability Determinations: 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 1D4 and 1D5, as applicable. ii. Other Developments – Require compliance with the RMP Policies 1D4 and 1D5, as applicable. b. Municipal Requirements: Additional requirements as determined by the municipality.	
		5. Exemptions: Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3. a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b) i. Local Action: Where a municipality can conclude that a proposed project qualifies for an exemption under the NJDEP Preservation Area rules at N.J.A.C. 7:38-2.4(b) (which relate to Highlands Act (N.J.S.A. 13:20-28) Exemptions 5, 7, 9, 10 and 15), the municipality may process the application without formal determination by the NJDEP or the Highlands Council. A decision to process an application under this provision does not constitute, and the applicant may not rely upon, municipal action under this provision as constituting a municipal decision regarding Highlands Applicability Determination. 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. b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b) 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.	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.

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		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.	
		6. <u>Highlands Open Waters and Riparian Areas Application:</u> Provide for a Highlands Open Waters and Riparian Areas application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist (above) for review by the municipal engineer or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP, the ordinance may authorize the reviewing professional to grant an approval if the application does not otherwise require approval by the Planning Board or Zoning Board of Adjustment as an “application for development” under the Municipal Land Use Law. If the application is inconsistent with RMP policies, the reviewing professional must clearly identify the deviations. The ordinance must require that approval of such deviations be authorized only by grant of waivers or exceptions from the Planning Board or Zoning Board of Adjustment in accordance with the provisions at #13, Waivers and Exceptions, below.	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.
		7. <u>Completeness:</u> 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.	The MLUL at N.J.S. 40:55D-10.3 allows a municipality to delegate completeness review to a committee or designee.
		8. <u>Notification to Highlands Council:</u> Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to the Highlands Council at the same time these are provided to the reviewing Board.	This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.
		9. <u>Requirements for Deed Restrictions:</u> Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement and deed restriction on the undisturbed portion of the property that features Highlands Open Waters buffers. The conservation easement and deed restriction must meet applicable requirements of the Highlands Council.	The Highlands Council has developed conservation easement and deed restriction requirements that apply to all situations where these are required through any conformance standard.
		10. <u>Disturbance Limitations:</u> The ordinance must include the following minimum requirements for disturbance of a Highlands Open Waters buffer area: a. Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38, which provide that all major Highlands developments are prohibited within Highlands Open Waters	These are the key standards for site development regarding Highlands Open Waters and Riparian Areas. Note that 10.a allows for limited disturbance of Highlands Open Waters buffers in the Preservation Area

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		<p>and its adjacent 300 foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside Highlands Open Waters or its buffer. Any application proposing a disturbance of a 300-foot buffer adjacent to Highlands Open Waters by a “major Highlands development” in the Preservation Area shall not be approved by the municipality unless the applicant has received NJDEP approval of a Highlands Preservation Area Approval (HPAA) for the project.</p> <p>b. In the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council. Such proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers: 1) avoid the disturbance of Highlands Open Waters buffers; 2) minimize impacts to Highlands Open Waters buffers; and 3) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer. Minimization and mitigation opportunities shall be considered only upon a clear and convincing demonstration by the applicant that the protection buffer cannot be avoided and in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters, unless a waiver is granted by the Highlands Council (RMP Objective 1D4e).</p> <p>c. In the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council. Such disturbances shall employ performance standards such that all proposed disturbances of Highlands Open Waters buffers shall employ Low Impact Development Best Management Practices to mitigate all adverse modification to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer (RMP Objective 1D4f).</p> <p>d. The mitigation requirement of no net loss of functional value shall ensure improvements to one or more function and that there shall be no net loss of any function in the mitigation design. For the Highlands Open Waters buffer functional value assessment, require that the applicant demonstrate improvement or no net loss of functions as follows (RMP Objective 1D4h):</p> <p>1) Habitat – No net loss of instream food sources and no net loss of terrestrial and aquatic habitat functional value due to a shift to a less valuable overall vegetative condition in the protection buffer based on the following continuum from highest to lowest: forest or wetland, scrub/shrub, pasture or meadow, agriculture, maintained lawn, unpaved impervious surface, and other structures;</p> <p>2) Water Quality – A degradation of this functional value will occur if, as a</p>	<p>for linear development. Further, 10.b and 10.c allow for limited disturbance of previously disturbed Highlands Open Waters buffers. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make the findings under 10.b and 10.c, not the NJDEP.</p> <p>Note that the RMP determines that proposed conversions of agricultural lands and land uses to non-agricultural land uses may not consider historic or current agricultural land uses as “land improvements,” “development,” “land disturbances” or “land uses.”</p> <p>The ordinance may include provisions in addition to 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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		<p>result of the proposed land conversions, pollutant loads increase to the Highlands Open Waters;</p> <p>3) Temperature Moderation – A loss in temperature moderation functional value will occur if changes to the existing vegetation result in reduced shading of the Highlands Open Waters or stormwater that discharges to Highlands Open Waters. Further, a loss in temperature moderation functional value may occur with the heating of stormwater by new structures and other impervious surface. Mitigation approaches include removing or relocating impervious surfaces away from the Highlands Open Water or ensuring that stormwater temperature is reduced through shading or other techniques; and</p> <p>4) Channel Integrity – A loss of channel integrity functional value will occur if the project will result in: the loss of bank stabilizing vegetation; the placement of infrastructure that can be feasibly located outside the stream corridor; an increase in the peak rate of stream flow generated, or in localized scour potential, that will increase stream bank and stream bed erosion; or the removal or burial of aquatic habitat in any substantial part of a stream bed or for threatened or endangered species.</p> <p>e. Proposed disturbances of Highlands Open Waters buffers in all LUC Zones shall conform to the buffer requirements of the municipal stormwater management ordinance adopted in compliance with N.J.A.C. 7:14A and 7:8 (RMP Objective 1D4c).</p> <p>f. Disturbances of existing natural vegetation or increases in impervious area within High and Moderate Integrity Riparian Areas in any Land Use Capability Zone shall be limited to the minimum alteration feasible in areas beyond Highlands Open Waters buffer requirements.</p> <p>g. Modifications to Riparian Areas in the Protection Zone shall be prohibited except where a waiver is approved by the NJDEP or the Highlands Council in the Preservation Area or Planning Area, respectively.</p> <p>h. Low Impact Development Best Management Practices shall be implemented for any development activity proposed within a Riparian Area, which minimize both alterations of natural vegetation and increases in impervious area, in compliance with Policies 6N3 and 6N4 and provide for mitigation through restoration of impaired Riparian Areas in the same HUC14 subwatershed.</p> <p>i. Require identification and implementation of opportunities where the restoration and enhancement of previously impaired Riparian Areas are feasible and appropriate as mitigation to any allowable modification to Riparian Area requirements.</p> <p>j. Prohibitions and requirements otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose, such as prohibitions and limitations on site disturbance, forest clearance, infrastructure development, and site development.</p>	

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		<p>11. Reporting Requirements: Require that prior to issuance of a final Certificate of Occupancy or Approval and/or to release of any performance bonding held in relation to the project, that the applicant provide an “as-built” survey depicting the final site conditions.</p>	
		<p>12. Municipal Approvals Conditioned On State Approvals:</p> <p>a. General: Require that the approved development demonstrate compliance where applicable with the New Jersey Erosion Control Standards at N.J.A.C. 2:90-1, the Flood Hazard Area Rules at N.J.A.C. 7:13 and the Freshwater Wetlands Rules at N.J.A.C. 7:7.</p> <p>b. Applicable to Preliminary Approvals: Preliminary approval shall be conditioned such that land modification affecting Highlands Open Waters, Highlands Open Waters buffers, and Riparian Areas shall not occur until such time as the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Preliminary approval shall also be conditioned upon review and approval by the municipal or board attorney of the language to be included in a deed restriction pertinent to any conservation easement that is a part of the approval.</p> <p>c. Applicable to Final Approvals: Final approval shall be conditioned such that land modification affecting Highlands Open Waters, Highlands Open Waters buffers, and Riparian Areas shall not occur unless the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval.</p> <p>d. Applicability of Highlands Council Review. The ordinance must require that for any application for non-exempt development, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form (e.g., CAD, GIS). 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>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 Highlands Open Waters buffers 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>e. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affecting Highlands Open Waters, Highlands Open Waters buffers, and Riparian Areas shall commence until the municipal development approval is final. If the building permit is the only applicable municipal approval, the building permit shall not be approved unless the applicant has proved that the project is in compliance with the standards of this ordinance, that the project is eligible for a Highlands Act exemption, that the Highlands Council has determined that the building permit will not result in the disturbance of Highlands Open Waters buffers, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	
		<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> <p>a. Highlands Act Waiver Provisions: For applications other than major Highlands developments in the Preservation Area, and for any applicable approval in the Planning Area, no development involving a waiver may be approved by the development review board for disturbance of a Highlands Open Waters buffer until the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the RMP.</p> <p>b. Exception Provisions: For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board for disturbance of a Highlands Open Waters buffer only where the applicant can demonstrate that: (a) the deviation is unavoidable and represents the minimum feasible under the particular circumstances surrounding the project proposal, and the grant of relief is reasonable, necessary, and supports the general purpose and intent of the applicable development regulations; or (b) the literal enforcement of the provision(s) of the ordinance at issue is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. The approval of an exception must be accompanied by a detailed justification, and is subject to review by the Highlands Council. The justification must include at a minimum an explanation of how and to what extent the following conditions are addressed:</p> <ul style="list-style-type: none"> i. no alternative exists that will allow for at least a minimum practical use of the property; ii. the exception is for road or utility access to another part of the site where the actual development would occur (if applicable); iii. the exception provides relief only to the minimum extent necessary; iv. other environmental features are not damaged in the process of protecting Highlands Open Waters buffers; and 	<p>NJDEP Highlands Rules provide for limited disturbance of Highlands Open Waters buffers for “linear development” – the municipality may wish to further define the limits of exceptions to the open waters provisions, such as a maximum slope that can be disturbed and minimum buffer from other sensitive features.</p>

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		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.	
Enforcement		PLAN CONFORMANCE STANDARDS: 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: a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. b. Sequencing of compliance inspections to ensure the protection of on-site and off-site resources, achievement of site construction and environmental impact requirements, placement of conservation easement monuments, etc. c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation. 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. 3. Penalties: Provide for civil and criminal penalties for violations.	Specific provision for site inspections is critical to the protection of Highlands Open Waters and all other sensitive environmental features. Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance. In most cases, standard penalty provisions under the MLUL will be sufficient.
Discretionary Conformance Standards		STREAM CORRIDOR PROTECTION/RESTORATION PLAN A Stream Corridor Protection/Restoration Plan shall be used as a basis for both development review and restoration activities. The Plan shall include Steps 1, 2, and 3, and may include Steps 4 and 5 (RMP Objective 1D4i): 1. Identify areas where existing development, land disturbances, or land uses are within Highlands Open Waters buffers have removed or substantially impaired natural vegetation communities, and have significantly reduced or impaired the functional values of Highlands Open Waters buffers. 2. Identify and require opportunities for restoration of areas identified in Step 1 as part of mitigation requirements under a Highlands Act waiver or Objectives 1D4e and 1D4f, or through public or nongovernmental restoration/stabilization projects; 3. Identify the extent of stream corridor features that are critical to supporting the functions of a healthy Highlands Open Waters buffer and that extend beyond the buffers required by Objectives 1D4b and 1D4c. The 300 foot buffer in these areas may be expanded to be most protective of these features which may include, but are not limited to, Critical Habitat, pollutant source areas identified through scientific techniques, and steep slopes; 4. Where Highlands Open Waters buffers include areas identified in Step 1,	

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		<p>regarding Category 2 surface waters in the Planning Area only, the Stream Corridor Protection/Restoration Plan may identify where, based on scientific analysis of site-specific conditions (e.g., topography, vegetation cover type, habitat, soil type, upstream land uses and pollution inputs, width of floodplain, rate and volume of run-off), a buffer of less than the full 300 feet (but including the undisturbed buffer area at a minimum) is sufficient to maintain or improve the protection of Highlands Open Waters and Riparian Areas. The plan must identify alternative buffers that provide functional buffer values at least equivalent to existing conditions and are no less than 150 feet or no less than the extent allowed in State or municipal regulation (including Objectives 1D4b and 1D4c), whichever is greater. Further, the plan shall include a functional value assessment to ensure that there is no net loss in the overall functional value of the subwatershed’s stream buffers. Buffers established through this process shall be determined based on site conditions rather than fixed distances, reflecting findings of the scientific analysis, and shall be used in the site design and development review process regarding determinations of restoration, continued use, or increased use of the disturbed buffer area. Buffer averaging for the purpose of accommodating development proposals is deemed not to meet the requirements of this provision; and</p> <p>5. Where a proposed Highlands Redevelopment Area (designated in accordance with N.J.A.C. 7:38 -1.4) would not meet, in full, Objectives 1D4b through 1D4h but affects an undisturbed buffer area determined to not be necessary for the protection of the functional values for Highlands Open Waters buffer (as determined through scientific analysis of site-specific conditions), modification of the undisturbed buffer may be allowed to no less than the extent allowed in State or municipal regulation. However the applicant shall first demonstrate to the satisfaction of the Highlands Council (and, for the Preservation Area, the NJDEP) that there is no alternative to the proposed reduction of the buffer, and show no impact to the functional values of the buffer, and provide alternative approaches to enhancing or protecting the Highlands Open Waters and resources of the buffer area. Restoration or enhancement of buffer functional values shall be provided on-site or within the same stream reach to achieve a net improvement of existing buffer functional values.</p>	
<p>Recommended Model or Example Ordinances</p>		<p>NJDEP Riparian Zone Model Ordinance. Available at: http://www.nj.gov/dep/watershedmgt/DOCS/WQMP/riparian_model_ordinance.pdf</p>	<p>Model and example ordinances are listed for informational purposes only. Specific language from an ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.</p>

