

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

**New Jersey Highlands Council**

COMPONENT	STATUS <sup>1</sup>	STANDARDS	COMMENTARY
Municipal Master Plan and Conservation or Historic Preservation Plan Element		<p><b>BASIC PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>General (Background Statement):</b> Adopt by reference RMP introductory language from Chapter 4, Part 4 “Historic, Cultural, Archaeological and Scenic Resources” as the basis for RMP policies.</li> <li><b>Policy Statement:</b> Adopt by reference RMP Policies 4B3, 4B5, and 4C3 (each with their associated Objectives) into the Conservation or Historic Preservation Plan Element, and into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate.</li> <li><b>LUC Zones:</b> RMP provisions apply equally to all Zones.</li> </ol>	
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>Master Plan Requirements:</b> Establish scenic resource protection as a policy of the municipality, enumerating the purposes and benefits as cited in the statement of objectives, principles, assumptions, policies and standards and the Conservation or Historic Preservation Plan Element.</li> <li><b>Conservation or Historic Preservation Plan Element Requirements:</b> Establish the goals for scenic resource protection in the municipality. Discuss and describe plans for scenic resource protection strategies, scenic resource inventory, public outreach, and other scenic resource initiatives. Establish the criteria for designation of scenic resources if local designation is intended and include any scenic resource inventory completed to date. Describe community character and how scenic resources support the continuation of that character. Describe how the scenic resource components of the Conservation or Historic Preservation Plan Element relate to the Land Use Plan element and its policies and objectives.</li> </ol>	
Institutional Capability		<ol style="list-style-type: none"> <li><b>Planning:</b> The Council will provide assistance should planning board and zoning board of adjustment staff and members require assistance with this issue to ensure that the development review ordinance is properly implemented and that conformance with the RMP is maintained.</li> </ol>	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.

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

		<p>2. <b>Project Review:</b> Municipality must have capacity to interpret digital and surveyed data on site plans and apply the ordinance requirements to the specific projects.</p>	<p>Same as for planning</p>
		<p>3. <b>Site Visit Authority:</b> Municipality staff and development review boards must have ability to conduct site visits to visually verify site design standards are being implemented.</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</p>
		<p>4. <b>Independent Projects:</b> The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects developed and implemented regarding scenic resource protection, such as scenic resource inventories or local scenic protection guidelines.</p>	
<p><b>Development Review Checklists</b></p>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <p>1. <b>General:</b> As a minimum condition of completeness, require for all applications:</p> <ul style="list-style-type: none"> <li>a. Highlands Council consistency determination.</li> <li>b. For any application proposing improvements to lands located within the boundary lines delineated by a Scenic Resource Management Plan, a graphic illustration of the proposed improvements superimposed to scale, over actual photographs of the scenic resource area taken from representative locations surrounding the site.</li> <li>c. For any application proposing improvements to lands located within the boundary lines delineated by a Scenic Resource Management Plan that crosses municipal and/or county boundary lines, any supplemental submission materials as may be prescribed by the adopted Scenic Resources Management Plan.</li> <li>d. Narrative description of the extent to which the application exhibits compliance with scenic resource protection policies and adopted standards, including those within a scenic resources management plan approved by the Highlands Council. Indicate how scenic resources will be protected from encroachment. Indicate how development proposal will enhance the scenic resources, where appropriate. Specifically, describe measures included in the project proposal to minimize negative impact to scenic resources. If impacts are unavoidable, detail other options considered and reasons for choosing the proposed project over the alternatives.</li> <li>e. Plans showing the proposed area of disturbance for all aspects of the development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures.</li> <li>f. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). Descriptions and illustrations of how proposed new structures physically relate to the scenic resources.</li> <li>g. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</li> <li>h. Copies of any related surveys, site plans, and professional and/or</li> </ul>	<p><i>A Scenic Resource Management Plan is required to include the following:</i></p> <ul style="list-style-type: none"> <li>1) <i>Identify the critical attributes of the scenic resource that must be preserved in order to protect its regional significance;</i></li> <li>2) <i>Identify the major threats to those critical attributes;</i></li> <li>3) <i>Establish a specific course of action to ensure protection of the resource, such as ordinances or design guidelines and standards to guide public and private actions;</i></li> <li>4) <i>Identify the extent of land area to be governed by the specific protection mechanisms;</i></li> <li>5) <i>Document the intent of the municipality to enforce those aspects of the management plan for which the municipality has responsibility;</i></li> <li>6) <i>Identify what actions, public or private, that will trigger the protection mechanism; and</i></li> <li>7) <i>Establish a monitoring program to gauge the efficacy of the management plan.</i></li> </ul>

		environmental site assessments.	
<b>Land Use Ordinance – Scenic Resources</b>		<p>1. <b>Statement of Purpose:</b> Specify at a minimum that the purpose of the ordinance is to:</p> <ul style="list-style-type: none"> <li>a. Implement the goals, policies and objectives of both the municipal master plan and the Highlands Regional Master Plan; and</li> <li>b. If applicable, implement the scenic resource protection mechanisms as detailed in the resource management plan prepared as part of scenic resource nomination process.</li> </ul>	A scenic resource protection ordinance is appropriate when a municipality has participated in the scenic resource nomination process and has successfully designated scenic resources for inclusion in the Highlands Scenic Resource Inventory.
		2. <b>Special Definitions:</b> Include definitions of scenic resource, Highlands Scenic Resource Inventory, viewshed and other pertinent scenic resource terminology.	
		3. <b>Special Standards:</b> To be determined according to individual municipal circumstances.	
		<p>4. <b>Applicability:</b> The ordinance must apply to any project located within a scenic resource area described in a Scenic Resource Management Plan 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> <ul style="list-style-type: none"> <li>a. <b>Highlands Applicability Determinations:</b> <ul style="list-style-type: none"> <li>i. Major Highlands Developments – In the Preservation Area, require compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38 and with RMP Policies 4B1, 4B3, 4B4, 4B5, 4C1 and 4C3 (each with their associated Objectives);</li> <li>ii. Other Developments – Require compliance with the RMP Policies 4B1, 4B3, 4B4, 4B5, 4C1 and 4C3 (each with their associated Objectives).</li> </ul> </li> <li>b. <b>Municipal Requirements:</b> Additional requirements as determined by the municipality.</li> </ul>	
		<p>5. <b>Exemptions:</b> Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <ul style="list-style-type: none"> <li>a. <b>Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</b> <ul style="list-style-type: none"> <li>i. Local Action: Where a municipality can conclude that a proposed project qualifies for an exemption under the NJDEP Preservation Area rules at N.J.A.C. 7:38-2.4(b) (which relate to Highlands Act (N.J.S.A. 13:20-28) Exemptions 5, 7, 9, 10 and 15), the municipality may process the application without formal determination by the NJDEP or the Highlands Council. A decision to process an application under this provision does not constitute, and the applicant may not rely upon, municipal action under this provision as constituting a municipal decision regarding NJDEP Highlands Applicability Determination.</li> <li>ii. NJDEP or Highlands Council Determination: A determination by NJDEP or the Highlands Council regarding applicability of these</li> </ul> </li> </ul>	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

		<p>exemptions in the Preservation or Planning Area, respectively, may be relied upon regarding applicability of these exemptions.</p> <p>b. <b>Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</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>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. <b>Scenic Resource Application:</b> In a municipality affected by a Scenic Resource Management Plan approved by the Highlands Council, or with an existing scenic resource inventory and protection standards, provide for a scenic resource application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review relevant to the designated scenic resources within the municipality. If the proposed project may affect a scenic resource in an adjacent municipality, require submission materials relevant to the impacts on those scenic resources as well.</p>	<p>Scenic resources covered by the Application are those listed in the Highlands Scenic Resource Inventory. Municipal officials may choose to include local scenic resources as well.</p>
		<p>7. <b>Completeness:</b> Stipulate that no application for development (as defined by the MLUL at N.J.S. 40:55D-3) may be scheduled for local Board review until after it has been deemed complete by the applicable Board or completeness designee.</p>	<p>The MLUL at N.J.S. 40:55D-10.3 allows a municipality to delegate completeness review to a committee or designee.</p>
		<p>8. <b>Notification to Highlands Council:</b> Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to Highlands Council at the same time these are provided to the reviewing Board.</p>	<p>This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.</p>
		<p>9. <b>Notification to the Public/Other Jurisdictions:</b> Where a project site falls within a scenic resource area that crosses municipal and/or county boundary lines, public notice requirements shall, in addition to the applicable notice requirements of the MLUL, incorporate any supplemental notice provisions as mutually agreed and set forth in the adopted Scenic Resource Management Plan.</p>	
		<p>10. <b>Requirements for Maintenance of Resources:</b> Require that any proposed activity requiring municipal approval under this ordinance require reasonable</p>	

		assurance that any on-site designated scenic resources will be maintained. A conservation easement/deed restriction may be required, but is not necessary if another assurance mechanism is deemed acceptable.	
		<p>11. <b>Development Requirements:</b> The ordinance must include the following minimum requirements regarding scenic resource protection:</p> <p>a. Development or redevelopment projects must be designed to have the minimum feasible impact to a scenic resource listed on the Highlands Scenic Resource Inventory, and must be in compliance with any applicable scenic resource management plan approved by the Highlands Council. The scenic resource and its associated viewshed, as described in the associated management plan, shall be protected from encroachment to the greatest extent feasible. The quality of the components that make up the resource and the intrinsic quality of its elements, as presented in the Highlands Scenic Resource Evaluation Criteria of the nomination process, shall be preserved. If encroachment is unavoidable, the application shall include a detailed reporting of the options considered to avoid or mitigate such encroachment.</p>	<p>Scenic quality of components include: unity, vividness, variety, and intactness.                  Intrinsic quality of elements include: landform, vegetation, water, color, adjacent scenery, uniqueness, and cultural elements.</p>
		<p>12. <b>Reporting Requirements:</b> Require that prior to issuance of a final Certificate of Occupancy or Approval and/or to release of any performance bonding held in relation to the project, that the applicant provide an “as-built” survey depicting the final site conditions.</p>	
		<p>12. <b>Municipal Approvals Conditioned On State Approvals:</b></p> <p>a. <b>General:</b> Require that the approved development demonstrate compliance where applicable with the New Jersey Erosion Control Standards at N.J.A.C. 2:90-1.</p> <p>b. <b>Applicable to Preliminary Approvals:</b> Preliminary approval shall be conditioned such that land modification affected by requirements for scenic 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. <b>Applicable to Final Approvals:</b> Final approval shall be conditioned such that land modification affected by requirements for scenic 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</p>	<p>The purpose of this provision is to ensure that applicants do not assume approval prior to the legal fact of final approval, and that site disturbance based on preliminary findings does not harm resources that might be protected through a Highlands Project Review, Highlands Council “call up,” or HPAA permit process.</p> <p>The Highlands Council has “call up” rights under N.J.S.A. 13:20-17.c, allowing for a determination, “within 15 days after any final local government unit approval, rejection, or approval with conditions thereof,” on whether to review “any application for development in the preservation area.” Once a municipality comes into conformance in the Planning Area, the same approach applies. Because disturbance of regulated resources based on <u>preliminary</u> municipal approval would contradict the clear intent of the Act to allow</p>

		<p>municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval.</p> <p>d. <b>Applicability of Highlands Council Review:</b> The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form. All resolutions memorializing a final decision shall include conditions requiring these submittals, and that no local decision shall be deemed final until the Highlands Council has received the information required in this paragraph.</p> <p>e. <b>Applicable to Building Permits:</b> The ordinance must require that no building permit shall be issued and no other land modification affected by requirements for scenic 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 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 meets requirements for scenic resource protection, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p> <p>f. For disturbances requiring federal permits, receiving federal funding or involving other federal actions and that may affect resource values of the Musconetcong National Scenic and Recreational River, no local approval shall be deemed final until completion of the National Park Service review of the disturbance pursuant to section 10(a) of the National Wild and Scenic Rivers Act.</p>	<p>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>
		<p>13. <b>Waivers and Exceptions:</b> The ordinance must provide clear guidance to the reviewing Board, specifying that any waivers may be granted only in cases where the following review standards are met:</p> <p>a. <b>Highlands Act Waiver Provisions:</b> For applications other than major Highlands developments in the Preservation Area, and for any applicable approval in the Planning Area, no development involving a waiver may be approved by the development review board regarding scenic resource protection unless the applicant has received approval by the Highlands</p>	<p>NJDEP Highlands Rules may provide for certain waivers – the municipality may wish to more clearly define the limits of exceptions to the ordinance provisions where they won't conflict with the NJDEP rules or the RMP, which incorporates the same waivers with regard to the Planning Area.</p>

		<p>Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. <b>Exception Provisions:</b> For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board regarding scenic 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:</p> <ul style="list-style-type: none"> <li>i. no alternative exists that will allow for at least a minimum practical use of the property;</li> <li>ii. the exception is for road or utility access to another part of the site where the actual development would occur (if applicable);</li> <li>iii. the exception provides relief only to the minimum extent necessary;</li> <li>iv. other environmental features are not damaged.</li> </ul> <p>c. <b>Additional Provisions:</b> 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>	<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><b>Enforcement</b></p>		<p>1. <b>Site Inspections:</b> Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> <li>a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation.</li> <li>b. Sequencing of compliance inspections to ensure the protection of on-site and off-site resources, achievement of site construction and environmental impact requirements, placement of conservation easement monuments, etc.</li> <li>c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation.</li> </ul>	<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>2. <b>Administrative Compliance:</b> Provide for issuance of a stop-work order, revocation of building permits, refusal to approve further work, or denial of certificates of occupancy, plus mandatory remedial and corrective measures including full restoration of any resources that are improperly disturbed.</p>	<p>Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.</p>
		<p>3. <b>Penalties:</b> Provide for civil and criminal penalties for violations.</p>	<p>In most cases, standard penalty provisions</p>

			under the MLUL will be sufficient.
<p><b>Recommended Model or Example Ordinances</b></p>		<ol style="list-style-type: none"> <li>1. City of Malibu, California Scenic, Visual, and Hillside Resource Protection Ordinance, September 13, 2002 (<i>This ordinance provides a good framework for a scenic resource ordinance, but should be modified to reflect New Jersey land use law.</i>)</li> <li>2. Township of Washington, Morris County, Steep Slopes, Ridgeline, Mountainside, Hillside and Viewshed Protection Area Regulations Ordinance RO-44-05.</li> </ol>	<p>Model and draft ordinances are listed for informational purposes only. Specific language from each ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.</p>