

**Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan  
Smart Growth, Community Design, and Low Impact Development Conformance Standards**

**New Jersey Highlands Council**

COMPONENT	STATUS <sup>1</sup>	STANDARDS	COMMENTARY
Municipal Master Plan and Land Use Plan and Conservation Plan Elements		<p><b>BASIC PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>General (Background Statement):</b> Adopt by reference the Highlands Council Land Use Capability Map Series for Zones, Water Availability, Public Community Water Systems, Domestic Sewerage Facilities, and Septic System Yield.</li> <li>2. <b>Policy Statement:</b> Adopt by reference RMP Policy 6N5 into the Land Use Plan Element, Policies 6N1 through 6N4 (each with their associated Objectives) into the Conservation Plan Element, and Goal 6N and Policy 6N6 into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate.</li> <li>3. <b>LUC Zones:</b> RMP provisions apply equally to all Zones.</li> </ol>	
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>Master Plan Requirements:</b> Establish smart growth principles 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 Land Use Plan Element and the Conservation Plan Element. Describe how the various master plan elements comprehensively address the advancement of sustainability as an overall master plan goal</li> <li>2. <b>Land Use Plan Element Requirements:</b> Establish the importance of smart growth principles as the tool for implementing the land use plan of the municipality. Utilize smart growth principles to guide land use development patterns and processes that fit within the planning capacity of the natural environment and available infrastructure. The Land Use Plan element should reflect, and be supported by, the policies and objectives of the other elements of the municipal master plan. These shall reflect the relevant policies and objectives of the Highlands Regional Master Plan.</li> <li>3. <b>Conservation Plan Element Requirements:</b> Establish the importance of Low Impact Development (LID) techniques and Best Management Practices (BMPs). Incorporate BMPs for steep slopes, forest resources, critical habitat, Highlands open waters and riparian areas, carbonate rock areas, and prime ground water</li> </ol>	The recently authorized “Green Buildings and Environmental Sustainability” Plan Element may serve as the master plan element which addresses low impact development and environmentally oriented smart growth and conservation principles.

<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).

		recharge areas. Establish LID techniques for stormwater management, resource protection and site design. Additionally declare the intention to achieve community-wide standards for minimizing disturbance and impervious surfaces. Establish the intention of limiting the use of pipes and other structural devices for handling stormwater in favor of preserving natural drainage and infiltrations features and attributes. Specify the intent to require a conservation design planning process for all development and redevelopment projects which shall begin with an “existing features and site analysis plan.” An “existing features and site analysis plan” identifies and maps all critical environmental features, all water bodies, all historic, cultural, archaeological and scenic features, all existing structures, all topographic features, and all significant physical features.	
<b>Institutional Capability</b>		1. <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, and that exceptions and waivers to the Smart Growth and LID ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for smart growth and development design.	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.
		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.	Same as for planning
		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.	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. <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 smart growth, community design and low impact development standards.	
<b>Development Review Checklists</b>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <p>1. <b>General:</b> As a minimum condition of completeness, require for all applications:</p> <ol style="list-style-type: none"> <li>a. Highlands Council consistency determination.</li> <li>b. Existing features and site analysis plan, identifying and mapping: <ul style="list-style-type: none"> <li>• All critical environmental features (critical habitat, carbonate rock, wetlands, forest lands, etc);</li> <li>• All water bodies (rivers, lakes, ponds, reservoirs, etc);</li> <li>• All historic, cultural, archaeological and scenic features;</li> <li>• All existing structures (including ruins and stone walls);</li> <li>• All topographic features (steep slopes, rock outcrops, etc); and</li> <li>• All significant physical features.</li> </ul> </li> <li>c. Narrative description of the extent to which the application exhibits</li> </ol>	

		<p>compliance with municipal ordinances developed in accordance with RMP Policies and Objectives outlined in the Low Impact Development Program (Chapter 5).</p> <ul style="list-style-type: none"> <li>d. 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. Include description of green design techniques considered and incorporated into plan layout. Indicate methods for re-use and recycling of building materials when development involves demolition.</li> <li>e. Plans showing the proposed grading, soil conservation plan, sediment and soil erosion control plan, and low impact development techniques.</li> <li>f. Plans showing the proposed landscape plan which incorporates native, drought-tolerant, disease-resistant plant species and shall not include invasive plant species.</li> <li>g. Plans showing the proposed areas of dedicated open space and the conservation easements or other protection measures to be imposed through the development approval. The goal of 50% open space may be comprised of active recreation, passive recreation, trail systems, and critical environmental areas, such as steep slopes, habitat lands, wetlands, water bodies, riparian corridors, forests, and lands dedicated to low impact development stormwater management techniques. Such areas may not include structural stormwater management facilities such as detention, retention and infiltration basins, swales and storm sewers.</li> <li>h. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). Descriptions and illustrations of the energy and water efficiency measures developed for the proposed buildings. Detail siting of structures based on microclimate considerations. Description of microclimate conditions (i.e., sun exposure, prevailing winds) affecting the project site and the extent to which they have been (or will be) considered in the design, orientation and lay-out of proposed buildings to optimize energy efficiency.</li> <li>i. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants).</li> <li>j. Copies of any related surveys, site plans, and professional and/or environmental site assessments.</li> </ul>	
<p><b>Land Use Ordinance</b></p>		<p>1. <b>Statement of Purpose:</b> Specify at a minimum that the purpose of the ordinance is to implement RMP Policies and Objectives for Smart Growth, Community Design and Low Impact Development. Make a direct link between the ordinance and municipal policy as stated in the Master Plan, in particular emphasizing the intent to minimize disturbance and impervious surfaces on a community-wide basis, and to limit the use of pipes and other structural devices for handling stormwater in favor of preserving natural drainage and infiltration</p>	<p>Ordinance purpose, linked to RMP and municipal master plan to justify municipal authority.</p>

		features and attributes.	
		2. <b>Special Definitions:</b> Include definitions of sustainability, low impact development, best management practices, site disturbance, and terms related to low impact development and best management practices as found in the RMP.	
		3. <b>Special Standards:</b> To be determined according to individual municipal conditions.	
		4. <b>Applicability:</b> The ordinance must apply to any project for which a permit from, or determination by, the municipality is required (including any application for development as defined under the MLUL (N.J.S.40:55D-3)), other than exemptions as specified below. <b>a. Highlands Applicability Determinations:</b> 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 municipal ordinances developed in accordance with RMP Policies 6N1 through 6N6, including all associated Objectives. ii. Other Developments – Require compliance with municipal ordinances developed in accordance with RMP Policies 6N1 through 6N6, including all associated Objectives. <b>b. Municipal Requirements:</b> Additional requirements as determined by the municipality.	
		5. <b>Exemptions:</b> Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3. <b>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</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 NJDEP 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>b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</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.

		<p>ii. NJDEP or Highlands Council Applicability Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Areas, respectively, must be provided prior to municipal consideration of the proposed activity.</p>	
		<p>6. <b>Low Impact Development Application:</b> Provide for a low impact development application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review by the municipal engineer or other qualified professional. The low impact development application process should allow for a performance based assessment; seeking to meet the overall policies and objectives contained in the RMP's Low Impact Development Program.</p>	<p>Review by the municipal engineer may entail professional fees. The municipality should consider its fee and escrow ordinances. Review procedures may provide for completeness determination, timeframes for review and decision-making, and options for conditional approvals.</p>
		<p>7. <b>Completeness:</b> Stipulate that no application for development (as defined by the MLUL at N.J.S. 40:55D-3) may be scheduled for local Board review until after it has been deemed complete by the applicable Board or completeness designee.</p>	
		<p>8. <b>Notification to Highlands Council:</b> Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to Highlands Council at the same time these are provided to the reviewing Board.</p>	<p>This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.</p>
		<p>9. <b>Requirements for Maintenance of Lands:</b> Require that any proposed activity requiring municipal approval under this ordinance require reasonable assurance that the lands dedicated to low impact development and required open space will be maintained as such. A conservation easement/deed restriction may be required, but is not necessary if another assurance mechanism is acceptable.</p>	
		<p>10. <b>Development Requirements:</b> The ordinance must include the following minimum requirements regarding smart growth, community design and low impact development techniques:</p> <ul style="list-style-type: none"> <li>a. Site design process that follows conservation design planning, including the following steps: <ul style="list-style-type: none"> <li>1) Prepare existing features and site analysis plan;</li> <li>2) Evaluate site context through identification of the physical and community character of the surrounding area;</li> <li>3) Select open space conservation areas, where applicable, that maximize the retention of resource values, provide connections to existing trails, open spaces, or greenways, and incorporate natural features and</li> </ul> </li> </ul>	

		<p>characteristics as site amenities;</p> <ul style="list-style-type: none"> <li>4) Establish development yield (residential, retail, office, community facilities, etc.) and apportion water and sewer availability;</li> <li>5) Lay out building lots and incorporate low impact development design techniques for stormwater management, site design, and resource protection; and</li> <li>6) Incorporate resource standards and smart growth guidelines.</li> </ul> <ul style="list-style-type: none"> <li>b. Adherence to an on-site stormwater capture performance standard of 80% for average annual precipitation, to the maximum extent feasible.</li> <li>c. Allowances for flexibility in site design to incorporate smart growth principles, such as shared parking and driveway areas, and to permit adjustments and modifications to certain requirements where such deviations will minimize or eliminate adverse impacts to Highlands natural resources.</li> <li>d. Allowances for flexibility in site design to take advantage of low impact development techniques, such as biofiltration swales and reduced road or driveway widths.</li> <li>e. Site preparation plan that allows clearing and grading only within the construction envelope and a minimum area for construction equipment maneuvering, with protection of mature trees and habitat outside of the site preparation area to ensure survival.</li> <li>f. Landscaping standards requiring use of native, drought-tolerant, disease-resistant plants, allowing for natural landscaping wherever feasible, and prohibiting planting of invasive species.</li> <li>g. Provisions for maintaining low impact development techniques into the future and procedures for replacing techniques if necessary.</li> </ul>	
		<p>11. <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> <ul style="list-style-type: none"> <li>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.</li> <li>b. <b>Applicable to Preliminary Approvals:</b> Preliminary approval shall be conditioned such that land modification affected by requirements for smart growth, community design and low impact development techniques 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</li> </ul>	<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</p>

		<p>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 smart growth, community design and low impact development techniques shall not occur unless the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval.</p> <p>d. <b>Applicability of Highlands Council Review.</b> The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious 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 smart growth, community design and low impact development techniques 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 smart growth, community design and low impact development techniques, 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</p>	<p>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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		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>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 smart growth, community design and low impact development techniques unless the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. <b>Exception Provisions:</b> For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board regarding smart growth, community design and low impact development techniques 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>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>
<b>Enforcement</b>		<p>1. <b>Site Inspections:</b> Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> <li>a. Verification of baseline conditions in all areas designated for conservation</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>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. <b>Administrative Compliance:</b> Provide for issuance of a stop-work order, revocation of building permits, refusal to approve further work, or denial of certificates of occupancy, plus mandatory remedial and corrective measures including full restoration of any resources that are improperly disturbed.</p>	Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.
		<p>3. <b>Penalties:</b> Provide for civil and criminal penalties for violations.</p>	In most cases, standard penalty provisions under the MLUL will be sufficient.
<b>Recommended Model or Example Ordinances</b>		<p>1. Model Stormwater Control Ordinance for Municipalities as found at Appendix D in the New Jersey Stormwater Best Management Practice Manual, April 2004. <a href="http://www.njstormwater.org/tier_A/pdf/NJ_SWBMP_D.pdf">http://www.njstormwater.org/tier_A/pdf/NJ_SWBMP_D.pdf</a></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.