

Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan Stormwater Control Conformance Standards

New Jersey Highlands Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General: Incorporate by reference the Highlands Council maps and related descriptive information regarding: <ul style="list-style-type: none"> Land Use Capability Zones; Highlands Open Waters and Buffers; Prime Ground Water Recharge Areas; Net Water Availability by HUC14; Impaired Waters Overall Assessment by HUC14; Well Head Protection Areas (WHPAs) for public community and public non-community, non-transient water supply wells, including Tiers 1, 2 and 3; and Carbonate Rock Areas. LUC Zones: Stormwater Management does not vary by LUC Zone. Preservation Area Special Provisions: Incorporate by reference the stormwater requirements set for Highlands Preservation Area Approval with waivers as set for in N.J.A.C. 7:38-6. 	<p>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. This information will be used within the Conservation Plan Element and the Master Plan in relation to RMP Policies and Objectives 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c, which address stormwater management requirements in general and for these specific environmentally-sensitive areas.</p>
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Mapping: Identify any watershed-specific or municipal-specific resources regarding Highlands Open Waters and Buffers, Prime Ground Water Recharge Areas, Net Water Availability, Well Head Protection Areas (WHPAs) or Carbonate Rock Areas that may adjust Highlands Council mapping of these resources. Narrative: Generally describe the relationship of the mapped resources to developed and undeveloped areas of the municipality, and specific resource management issues that have been identified through this analysis. Discuss how the 2004 Stormwater Rules (N.J.A.C. 7:8) have been implemented and what resources (e.g., water quality, ground water levels, base stream flows) have been protected, restored or enhanced. Any wasteload or load allocations imposed, or that may be imposed as a result of TMDL for impaired waters shall be identified. Watershed management plans or stream restoration projects may also be identified and discussed. 	<p>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.</p>

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).

<p>Municipal Master Plan and Conservation Plan Element</p>		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): Adopt by reference the Highlands Council maps: Well Head Protection Areas (WHPAs) including Tiers 1, 2 and 3; Land Use Capability Zone Map; Highlands Open Waters and Buffers; Prime Ground Water Recharge Areas; Net Water Availability by HUC14; Impaired Waters Overall Assessment by HUC14; and Carbonate Rock Areas. Also adopt by reference the background RMP statements of Part 2. Water Resources, Subpart b. Ground Water Recharge Areas; Subpart c.1 Surface Water Quality and Subpart c.3 Wellhead Protection. Policy Statement: Adopt by reference RMP Policies and applicable Objectives including 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2G5c, 2H2a, 2H4a, 6N2, and 6N4c, into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. LUC Zones: Stormwater Management does not vary by LUC Zone. Preservation Area Special Provisions: Specifically cite and reference the applicability of NJDEP Preservation Area rules at N.J.A.C. 7:38-6 in regulation of Stormwater Management. 	
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish Stormwater Management as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Plan Element. Conservation Plan Element Requirements: Establish importance of Stormwater Management. Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by Stormwater Management. Identify and discuss appropriate management approaches to protect environmental and community resources from improper stormwater management. Use these statements as the basis for Master Plan policy in keeping with the RMP. 	<p>Note that regional data do not provide complete detail on the location of Highlands Open Waters and other resources mapped through the stormwater conformance standards; applicants will be required to provide site-specific information.</p>
<p>Institutional Capability</p>		<ol style="list-style-type: none"> Planning: 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, that conformance with the RMP is maintained, and that exceptions and waivers to the Stormwater Management ordinance are limited to those situations allowed by the RMP and the Stormwater Rules (N.J.A.C. 7:8), are the minimum necessary and do not damage municipal objectives of the adopted municipal Stormwater Management Plan. 	<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>
		<ol style="list-style-type: none"> Project Review: Municipality must have capacity to interpret hydrological, hydraulic, and surveyed data and modeling results regarding stormwater management and apply the requirements of the municipal Stormwater Management Plan ordinance requirements in review of development applications proposing stormwater management systems. 	<p>Same as for planning</p>
		<ol style="list-style-type: none"> Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify existing site conditions (such as drainage patterns, topography, or land cover), the scope of Low Impact Development (LID) 	<p>Ensure that the appropriate review body and staff have the ability to visit the site in support of project review, planning</p>

		techniques suitable at the site, and related resources.	and other activities. Primarily performed by municipal engineer, but may include a board committee or the Environmental Commission for site walks
		4. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., hydrology studies, regional stormwater management plans, watershed restoration) developed and implemented regarding water quality protection and regulation, as related to Plan Conformance or RMP implementation.	
Development Review Checklists		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require for all applications addressed by “Stormwater Control Regulations, #4 Applicability” (see below):</p> <ul style="list-style-type: none"> a. Highlands Council consistency determination. b. Project description and site plan(s). The applicant shall submit a map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations will occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high groundwater elevations. All maps must include to the extent present on-site, delineation of Carbonate Rock Areas, Prime Ground Water Recharge Areas, and Well Head Protection Areas. c. 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 “Land Use Ordinance, #5 Exemptions” below.) d. Low Impact Development Approaches. The applicant shall submit a map, at the same scale as the topographic base map, depicting the location and physical description of Low Impact Development management practices used to minimize the creation or increase of stormwater runoff due to development or disturbance of the site. e. Plans showing conservation easements, deed restrictions or other means of resource preservation that will be used as a low impact development technique or non-structural stormwater BMP. The plan shall indicate where 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, naming a third party such as the municipality with easement enforcement rights. 	

		<ul style="list-style-type: none"> f. Copies of any related surveys, site plans, professional and/or environmental site assessments. g. Information submitted in conformance with the municipal stormwater ordinance requirements pursuant to N.J.A.C. 7:8. <p>2. Regulated Major Development Any application major development (as defined by N.J.A.C 7:8) proposing to disturb one acre or add one-quarter acre of impervious surface shall also provide:</p> <ul style="list-style-type: none"> a. Environmental Site Analysis. The applicant shall submit a written description along with the drawings of the natural resources of the site. The description of resources must include at minimum: Carbonate Rock Areas, Prime Ground Water Recharge Areas, Highlands Open Water Buffers and Riparian Areas, and Wellhead Protection Areas. b. A written statement by a competent professional demonstrating and concluding that that the stormwater management plan is consistent with municipal ordinances developed in accordance with RMP Policies and Objectives, 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c. c. Topographic Base Map. The applicant shall submit a topographic base map of the site which extends a minimum of two hundred (200) feet beyond the limits of the proposed development, showing two (2) foot contour intervals. The map shall be based on surveyed data on-site and either aerial survey data or Highlands Council LiDAR information for the off-site portion, and shall indicate the following: drainage patterns, surface water flow paths, contributing drainage areas and receiving waters, steep slopes, soils types, all Highlands Open Waters. The municipality or the Highlands Council may require upstream tributary drainage system information as necessary using Highlands Council LiDAR information or more detailed data where available. d. Stormwater Management Facilities Map. The applicant shall submit a map, at the same scale as the topographic base map, depicting the following information: roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures, total area of disturbance, proposed surface contours and drainage areas, land area to be occupied by the stormwater management facilities and vegetation types thereon, and details of the proposed plan to manage and dispose of stormwater. Details of all stormwater management facility designs, including cross-sections and elevations, for each BMP shall be included, with any associated performance data (e.g. water quality treatment efficiency, recharge/ infiltration data, stage-storage-discharge data). The proposed stormwater management system indicating post-development hydrology consistent with municipal ordinances developed in accordance with RMP Policies and applicable Objectives including, 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c, NJDEP Stormwater Rules N.J.A.C. 7:8, and (for major Highlands development in the Preservation Area) NJDEP Highlands Preservation Area rules at N.J.A.C. 7:38- 6. 	
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Stormwater Control Ordinance		<p>PLAN CONFORMANCE STANDARDS:</p> <ul style="list-style-type: none"> 1. General: Adopt by reference Highlands Act definitions at N.J.S.A. 13:20-3. 2. LUC Zones: Stormwater Management does not vary by LUC Zone. 3. Preservation Area Special Provisions: Cite and indicate applicability of the stormwater provisions of the NJDEP Preservation Area rules at N.J.A.C. 7:38-6. 	
		<p>STORMWATER CONTROL REGULATIONS:</p> <ul style="list-style-type: none"> 1. Statement of Purpose: Specify at a minimum that the purpose of the amended municipal Stormwater Control ordinance is to implement the master plan revisions listed above and the stormwater management requirements of any regional stormwater management plan adopted under N.J.A.C. 7:8 and 7:15 or of any TMDL adopted under N.J.A.C. 7:15 as applicable to the municipality, and (if Preservation Area is present in the municipality) the NJDEP Preservation Area rules at N.J.A.C. 7:38-6. Make a direct link between the stormwater control ordinance and municipal policy as stated in the Master Plan. 	
		<ul style="list-style-type: none"> 2. Special Definitions: Include definitions of low impact development, non-structural management (as set forth in the RMP Policies or at N.J.A.C. 7:38), best management practices, site disturbance, and impervious surface based on the RMP. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38, and the NJ Erosion Control Standards at N.J.A.C. 2:90-1. 	Ordinance purpose, linked to RMP, to justify municipal authority
		<ul style="list-style-type: none"> 3. Standards: <ul style="list-style-type: none"> a. Ordinance provisions developed to implement RMP Policies and Objectives, 1K4c, 2B4c, 2D3a, 2D3b, 2D3c, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c. 	

		<p>b. Special Standards: Specific municipal provisions should be addressed here, along with the stormwater management requirements of any regional stormwater management plan adopted under N.J.A.C. 7:8 and 7:15 or of any TMDL adopted under N.J.A.C. 7:15 as applicable to the municipality.</p>	
		<p>4. Applicability: The ordinance must apply to any regulated development listed in this section for which a permit from, or determination by, the municipality is required (including any application for development as defined under the MLUL (N.J.S.40:55D-3)), other than exemptions as specified below.</p> <p>a. Regulated Development:</p> <ul style="list-style-type: none"> 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 the ordinance provisions developed to implement RMP Policies and Objectives, 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c. ii. Other major developments – Projects that ultimately disturb one acre or add one-quarter acre of impervious surface shall comply with provisions developed to implement RMP Policies and Objectives, 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c.. <p>b. Municipal Requirements: Additional requirements as determined by the municipality’s Stormwater Management Plan or Stormwater Control Ordinance.</p>	
		<p>5. Exemptions: Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</p> <ul style="list-style-type: none"> 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. <p>b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</p> <ul style="list-style-type: none"> 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. ii. NJDEP or Highlands Council Applicability Determination: A determination by NJDEP or the Highlands Council regarding applicability of these 	<p>The Highlands Rules exempt or have special provisions for many single-family dwellings and agriculture/horticulture activities. Municipality may want to consider including some of these actions within the municipal regulations. The RMP does not and cannot require that municipalities be more stringent than the RMP or the Highlands Act, including exemption provisions. Because eligibility for the “legal shield” under the Highlands Act is linked to conformance with the Regional Master Plan, and the RMP cannot address exempt projects, municipalities that include exempt development in their ordinance will not benefit from the legal shield for that portion of the ordinance. However, a municipal ordinance may, under the Highlands Act at N.J.S.A. 13:20-15a(5), be more stringent than the RMP standards for non-exempt development,</p>

		exemptions in the Preservation or Planning Areas, respectively, must be provided prior to municipal consideration of the proposed activity.	and still will be eligible for the legal shield.
		6. Stormwater Management Application: Provide for a stormwater management review process applicable to all regulated development. Require submission of the materials required under the Development Review Checklist for review by the municipal engineer or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP and municipal Stormwater Management Plan and Stormwater Control Ordinance, this 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 through a Stormwater Mitigation Plan outlined in the procedures 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. Completeness: 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.	
		8. Notification to Highlands Council: Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to Highlands Council at the same time these are provided to the reviewing Board.	This is a general provision of Plan Conformance for all applicable local project reviews, under N.J.S.A. 13:20-17.c.
		9. Requirements for Deed Restrictions: Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement/deed restriction on the any land area used as a nonstructural and structural stormwater management measure that ensures that that measure, or equivalent stormwater management measure, is maintained in perpetuity. The easement instrument shall specifically permit access for inspection and maintenance activities for stormwater runoff conveyance, infiltration, and detention areas and facilities.	
		10. Site Requirements: The ordinance must include the following minimum requirements regarding stormwater management for a major development: a. Provisions developed to address and implement RMP Policies and Objectives 1K4c, 2B4c, 2D3a, 2D3b, 2D3e, 2D4g, 2D4h, 2G4, 2G5, 2G5a, 2G5b, 2H2a, 2H4a, 6N2, and 6N4c. b. Carbonate Rock Areas: Eliminate potential hazards to public health and safety, structures and ground water quality that are created by concentrated surface water	These are the key standards for site development regarding stormwater management. The provisions of the NJDEP rules should already be included in the municipal ordinance either by reference or in whole. However, the NJDEP will make the findings under

		<p>flows that dissolve carbonate rock. Such discharge must be mitigated in the construction plans and subsequent approval process, with the maximum emphasis on nonstructural measures and avoidance of modifications to the karst features. Refer to the <i>Carbonate Rock Conformance Standards</i> for additional information.</p> <p>c. Beneficial Water Reuse: Require stormwater reuse for recreational water demands, non-agricultural irrigation, and other non-potable uses to minimize both the volume of stormwater discharges and water demand sought for these purposes.</p> <p>d. Regional Stormwater Plans: Where applicable, comply with applicable components of a regional stormwater management plans, as a mandatory requirement for any site plan application. Achieve a net improvement in ground water recharge volume and maintenance of water quality as required through compliance with and implementation of any related provisions of an adopted regional stormwater plan.</p> <p>e. Prime Ground Water Recharge Areas: Where disturbance of Prime Ground Water Recharge Area (PGWRA) is permitted, achieve 125% of pre-construction recharge volumes for the affected PGWRA of the site within the following areas, in order of priority: (1) the same development site where feasible; (2) the same HUC14 subwatershed, or (3) an interrelated HUC14 subwatershed as approved by the Highlands Council where no feasible option exists in the same HUC14 subwatershed. Refer to the <i>Ground Water Recharge Conformance Standards</i> for additional information.</p> <p>f. Water Quality: Require to the maximum extent feasible, clean stormwater rather than contaminated stormwater. Where runoff from contaminated areas is required, use Low Impact Development and other Best Management Practices standards to minimize the discharge of stormwater-entrained pollutants to ground and surface waters.</p> <p>g. Wellhead Protection Areas (WHPA): Limit the creation of potential contaminant sources within a WHPA by eliminating, where feasible, stormwater management structures that have a significant potential to result in the discharge of pathogens to ground water or surface water. Refer to the <i>Well Head Protection Conformance Standards</i> for additional information.</p> <p>h. Low Impact Development (LID): Wherever feasible, use LID techniques to preserve, mimic, and enhance the natural hydrologic cycle, drainage patterns and natural land cover existing on the site, including but not limited to:</p> <ul style="list-style-type: none"> • Implementation of on-site stormwater management features that maintain, restore and enhance the pre-existing natural drainage patterns of the site; • Limitations on the amount of impervious cover allowed on a site as a means to protect and increase stormwater infiltration and reduce stormwater runoff; • Use a “design with nature” approach; • Use of grass channels, dry swales, wet swales, infiltration basins, bio-swales and water gardens, green roofs, and other low impact approaches to attenuate and control stormwater and provide multiple environmental benefits; and 	<p>10.i and not the municipality.</p> <p>The ordinance may include provisions in addition to and/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>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> <ol style="list-style-type: none"> a. General: Require that the approved development demonstrate compliance where applicable with the NJ Erosion Control Standards at N.J.A.C. 2:90-1. b. Applicable to Preliminary Approvals: Preliminary approval shall be conditioned such that land modification affecting stormwater management 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. c. Applicable to Final Approvals: Final approval shall be conditioned such that land modification affecting stormwater management 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>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</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. Applicability of Highlands Council Review. The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form. All resolutions memorializing a final decision shall include conditions requiring these submittals, and that no local decision shall be deemed final until the Highlands Council has received the information required in this paragraph.</p> <p>e. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affecting stormwater management 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 one acre or the addition one-quarter acre of impervious surface, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	<p>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>
		<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 unless the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. Exception Provisions: For applications other than major Highlands developments in the Preservation Area, exceptions from the stormwater control ordinance may be approved by the development review board 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; (b) exemptions from specific stormwater management elements as permitted by N.J.A.C. 7:8-4.6 or 7:8-6.3 (c) the literal enforcement of one or more provisions of the ordinance is</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</p>

		<p>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 water quality, soil erosion, sediment control, aquifer recharge, and stormwater runoff management; <p>c. Additional Provisions: No exception may be approved that violates the NJ 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>d. Mitigation: The municipality may provide grant variances or exemptions from design and performance standards of the municipal stormwater management plan provided that the municipality has adopted a mitigation plan in accordance with N.J.A.C. 7:8-4.2(c)11.</p>	<p>Highlands Council as the basis for its review of a municipal approval under the call-up provisions.</p>
Enforcement		<p>1. Site Inspections: Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> a. Verification of baseline conditions in all areas designated for conservation 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. 	<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. Administrative Compliance: Provide for issuance of a stop-work order, revocation of building permits, refusal to approve further work, or denial of certificates of occupancy, plus mandatory remedial and corrective measures including full restoration of any resources that are improperly disturbed.</p>	<p>Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.</p>
		<p>3. Penalties: Provide for civil and criminal penalties for violations.</p>	<p>In most cases, standard penalty provisions under the MLUL will be sufficient.</p>

<p>Recommended Model or Example Ordinances</p>		<ol style="list-style-type: none"> 1. NJDEP Model Stormwater Control Ordinance for Municipalities. Available from: http://www.njstormwater.org/tier_A/pdf/NJ_SWBMP_D.pdf 2. Model Stormwater Control Ordinance for Pinelands Portions of Municipalities Available from: http://www.state.nj.us/pinelands/landuse/conf/model.html 3. Model Stormwater Control Ordinance for Municipalities. Hunterdon County Environmental Toolbox Committee, 2005. Available from: http://www.co.hunterdon.nj.us/pdf/stormwater/HCETModelOrdinanceFINALNov05.pdf 	<p>Model and draft ordinances are listed for informational purposes only. Specific language from each ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.</p>
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