

## Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan Water Conservation and Deficit Mitigation Conformance Standards

### New Jersey Highlands Council

COMPONENT	STATUS <sup>1</sup>	STANDARDS	COMMENTARY
Environmental Resource Inventory		<p><b>BASIC PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>General:</b> Incorporate by reference the Highlands Council maps of Land Use Capability Zone Map, Net Water Availability by HUC14, and Existing Areas Served by Public Community Water Supply Systems, and incorporate by reference the definitions of Ground Water Capacity, Ground Water Availability, Net Water Availability, Existing Constrained Areas, Conditional Water Availability, and Current Deficit Areas. Incorporate by reference the results of the Net Water Availability Analysis in the Water Resources Technical Report, Vol 2.</li> <li><b>LUC Zones:</b> Identify the Ground Water Availability thresholds that apply to each zone.</li> <li><b>Preservation Area Special Provisions:</b> Incorporate by reference the NJDEP map of the Preservation Area boundaries.</li> </ol>	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><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li><b>Mapping:</b> Incorporate directly current versions of all maps adopted by reference in Basic Plan Conformance, and any refined HUC14 subwatershed delineations using Highlands LiDAR data of topographic boundaries.</li> <li><b>Narrative:</b> Generally describe the relationship of the water resources to developed and undeveloped areas of the municipality, and specific resource management issues that have been identified through this analysis. Identify through an accompanying narrative known hydrogeological studies the municipality may have commissioned.</li> </ol>	During the process of RMP Updates, provide the Council with data that relate to resource layers underlying the LUC Zone classification and other parts of the LUC Map series, watershed resource value, and existing consumptive and depletive water use. Once approved by the Highlands Council, the map layers will be updated and should then be incorporated into the ERI.
Municipal Master Plan and Conservation 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 the Highlands Council maps of Land Use Capability Map series and Net Water Availability by HUC14 and the background statement of the RMP, Part 2. Water Resources, Subpart a. Water Quantity, Availability, and Use.</li> <li><b>Policy Statement:</b> Adopt by reference RMP Policies 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7 into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate.</li> </ol>	

<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).

		<ol style="list-style-type: none"> <li>3. <b>LUC Zones:</b> Although Ground Water Availability thresholds vary by zone, water deficit mitigation and water conservation standards do not.</li> <li>4. <b>Preservation Area Special Provisions:</b> Specifically cite and indicate the applicability of NJDEP Preservation Area rules at N.J.A.C. 7:38-3.2 &amp; 3.3 in the regulation of water supply diversions and public community water systems.</li> </ol>	
		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>Master Plan Requirements:</b> Establish water conservation and water deficit mitigation (where deficits exist) through the use of Water Use and Conservation Plans and project-specific requirements as a policy of the municipality, enumerating the purposes and benefits as cited in the Conservation Element.</li> <li>2. <b>Conservation Plan Element Requirements:</b> Establish importance of water conservation, deficit avoidance and deficit mitigation. Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by sustainable water supply. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map and analysis of Net Water Availability by HUC14 as the initial identification of water availability in the municipality, to be supplemented and amended as needed, by continuing municipal and Highlands Council updates of water use through the local development review, RMP Updates and conformance process including the development of Water Use and Conservation Management Plans. Describe the municipality’s efforts to promote and codify water conservation.</li> <li>3. <b>Water Use and Conservation Management Plan –</b> Develop and adopt a Water Use and Conservation Management Plan addressing the entire municipality or each HUC14 subwatershed affecting the municipality, regardless of the net water availability (deficit or non-deficit) in the source subwatersheds that supply the municipality, addressing RMP Policies 2B4, 2B5, 2B6, 2B7, and 2B8. Identify the opportunities to develop a joint or regional Water Use and Conservation Management Plan or Plans that will involve any other municipalities or utilities that utilize the same water resources or subwatersheds. Establish the priorities for allocation of water availability, through direct ground water withdrawals or through a water utility, that are consistent with RMP Policies 2B4 and 2J4. Include within each Water Use and Conservation Management Plan the following minimum components:             <ol style="list-style-type: none"> <li>a. <b>Identification of Water Sources and Uses –</b> Include a water utility profile complete with demand data, service areas, water sources, and wastewater returns.</li> <li>b. <b>Analysis of Net Water Availability –</b> Using the Highlands Council water availability methods (see Policies 2B2 through 2B3), validate or modify prior Highlands Council results using new data regarding consumptive and depletive water uses and the movement of water within HUC14 subwatersheds, leading to more current and defensible net water availability results. The use of more sophisticated water models can also be proposed,</li> </ol> </li> </ol>	

		<p>but must be at least as protective of the water regime (focused especially on stream base flows) as the RMP approach.</p> <ul style="list-style-type: none"> <li>c. <b>Water Use Priorities</b> – Establish or develop a process to establish priorities and allocations for Net Water Availability or Conditional Water Availability (as relevant to the subwatershed), including reservation of water availability as a scarce resource for existing or projected affordable housing obligations.</li> <li>d. <b>Deficit Avoidance</b> – A subwatershed that is not in deficit shall not be placed in deficit through anticipated water uses within the municipality. Demonstrate through the municipal build-out process that projected water demands will not exceed Net Water Availability. Where new water resources are included in the build-out, identify the source from which those water resources will be developed, consistent with the RMP.</li> <li>e. <b>Deficit Reduction Target</b> – Establish targets for reduction of the deficit in net water availability over 2-, 5- and 10-year periods that are feasible based on available mitigation strategies. The deficit reduction targets must eliminate the deficit in net water availability at the earliest feasible time and shall ensure that projected consumptive and depletive water uses based on the municipal build-out do not exceed the projected Net Water Availability. Where these objectives are not feasible, the alternative deficit reduction targets must be fully justified.</li> <li>f. <b>Deficit Reduction and Elimination Strategy</b> - Describe, based on the prior analyses, the selected strategies for deficit reduction and elimination to meet the targets established in (e) above, including responsible parties, schedules, funding commitments, etc. Where a subwatershed is in a deficit of Net Water Availability, discuss deficit mitigation strategies and establish a prioritized approach to reducing deficits that includes mitigation requirements for the use of Conditional Water Availability. The mitigation of additional water uses shall at a minimum achieve subwatershed water deficit reduction benefits equivalent to the site-specific requirements in Appendix A (see attached), but may be achieved through project-specific mitigation, other mechanisms, or any combination of these.</li> <li>g. <b>Funding Opportunities</b> – Address financial mechanisms that will be utilized for implementation of the plan.</li> <li>h. <b>Interim Water Uses</b> – Determine whether and in what manner additional water uses may be authorized during implementation of the Water Use and Conservation Management Plan. The net effect of additional water uses must not delay achievement of the deficit reduction targets.</li> <li>i. <b>Operation and Monitoring</b> – Identify and commit to ongoing monitoring of water uses and validation of mitigation. In these cases, affected entities could include counties or multiple municipalities.</li> </ul>	
<p><b>Institutional</b></p>		<p>1. <b>Planning:</b> The Council will provide assistance should planning board and</p>	<p>To assist board members and staff regarding</p>

<p><b>Capability</b></p>		<p>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 water conservation and mitigation ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for water resources.</p>	<p>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>
		<p>2. <b>Project Review:</b> Municipality must have capacity to interpret digital data on water availability, water supply and water use, and to apply the ordinance requirements of deficit avoidance and mitigation and water conservation to specific properties and project reviews.</p>	
		<p>3. <b>Site Visit Authority:</b> Ensure that the municipal engineer and other professionals have the authority to inspect project sites to ensure implementation of water use mitigation techniques.</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 (e.g., building code changes regarding water conserving devices, hydrogeologic studies, nitrate dilution modeling, aquifer yield ) developed and implemented regarding deficit avoidance, mitigation and regulation, as related to Plan Conformance or RMP implementation.</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 addressed by the Water Conservation and Water Deficit Mitigation Ordinance (see #4 below, “Applicability,):</p> <ul style="list-style-type: none"> <li>a. Highlands Council consistency determination.</li> <li>b. Information identifying project water demand data, water supply source, and water utility information.</li> <li>c. Narrative of the extent to which the application exhibits compliance with the municipal Water Conservation and Water Deficit Mitigation Ordinance developed in accordance with RMP Policies 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7 and RMP Programs <i>Highlands Restoration: Water Deficits and The Efficient Use of Water</i>.</li> <li>d. Where the applicant claims a Highlands Act exemption, require submission of information necessary for municipal decision, or of a determination by NJDEP or the Highlands Council, as a condition for completeness. (See “Development Review Ordinance, #5 Exemptions” below.)</li> <li>e. In the absence of an approved municipal or subwatershed-based Water Use and Conservation Plan, Highlands Council approval of the water conservation and deficit mitigation measure(s) proposed for the development.</li> </ul> <p>2. <b>Water Conservation and Mitigation:</b> Submit the following material related to the project’s impact on municipal water availability.</p>	

		<ol style="list-style-type: none"> <li>a. Identify the water supply source HUC14(s) for the project, including its net water availability, deficit status, conditional availability (as applicable).</li> <li>b. A water use analysis indicating the project total water use and consumptive water use for the project. The analysis must show annual average and summer seasonal peak usage for the project.</li> <li>c. Include narrative describing the alternatives for water conservation measures that have been evaluated and those that are being implemented, including both on-site measures and off-site measures. Where off-site measures are proposed, require accompanying documentation demonstrating applicant’s right of access to and authority to construct, install or otherwise implement such measures at the off-site location, as well as to ensure on-going monitoring and maintenance of same. Where off-site mitigation measures are provided by a third party (e.g., water reductions from a utility), then the third party shall certify that the mitigation has been implemented, will be maintained, and not utilized as mitigation for other projects.</li> <li>d. If deficit mitigation is required (for deficit subwatersheds), include analysis describing how mitigation is to be addressed. Include plan identifying location of mitigation measures, and providing detailed specifications and calculations supporting mitigation amounts.</li> <li>e. For municipalities where a Water Use and Conservation Management Plan (WUCMP) has been approved, submit statement and narrative on how the project supports the goals and standards of the WUCMP.</li> </ol> <ol style="list-style-type: none"> <li>3. <b>LUC Zones:</b> The requirements for the development review checklist will not vary by LUC zone.</li> <li>4. <b>Preservation Area Special Provisions:</b> Require submission of Highlands Preservation Area Approval (HPAA) for any project that requires approval in accordance with the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.2 &amp; 3.3.</li> </ol>	
<p><b>Water Conservation and Water Deficit Mitigation Ordinance</b></p>		<p><b>PLAN CONFORMANCE STANDARDS:</b></p> <ol style="list-style-type: none"> <li>1. <b>General:</b> Adopt by reference Highlands Act definitions at N.J.S.A. 13:20-3.</li> <li>2. <b>LUC Zones:</b> The ordinance will not vary by LUC zone.</li> <li>3. <b>Preservation Area Special Provisions:</b> Require that all applicable development comply with the <i>Standards for Water Supply Diversion Sources</i> and <i>Public Community Water Systems</i> provisions of the NJDEP Preservation Area rules at N.J.A.C. 7:38-3.2 and 3.3 through approval of an HPAA.</li> </ol>	
		<p><b>WATER CONSERVATION AND WATER DEFICIT MITIGATION REGULATIONS:</b></p>	
		<ol style="list-style-type: none"> <li>1. <b>Statement of Purpose:</b> Specify at a minimum that the purpose of the ordinance is to achieve water conservation and water deficit mitigation in accordance with the following standards: <ul style="list-style-type: none"> <li>• RMP Policies 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7;</li> <li>• RMP Programs <i>Highlands Restoration: Water Deficits</i> and <i>The Efficient Use of</i></li> </ul> </li> </ol>	<p>Ordinance purpose, linked to RMP, to justify municipal authority</p>

		<p><i>Water</i>, and</p> <ul style="list-style-type: none"> <li>• The NJDEP Preservation Area rules at N.J.A.C. 7:38-3.2 &amp; 3.3 (for those portions of the municipality within the Preservation Area and where applicable to the development). Make a direct link between the ordinance and municipal policy as stated in the Master Plan.</li> </ul>	
		<p>2. <b>Special Definitions:</b> Include definitions of net water availability, conditional water availability, Water Use and Conservation Plans, best management practices, site disturbance, and water conservation (as set forth in the RMP and at N.J.A.C. 7:38). Adopt by reference Highlands Act definitions at N.J.S.A. 13:20-3. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38.</p>	
		<p>3. <b>Special Standards:</b> <u>N/A</u></p>	To be determined based on additional local needs.
		<p>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)) and which involves the new or increased use of any on-site or delivered water supply other than in connection with any exemption as specified below.</p> <p><b>a. Highlands Applicability Determinations:</b></p> <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 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7;</li> <li>ii. Other Developments –Require compliance with the RMP Policies 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7.</li> </ul> <p><b>b. Municipal Requirements:</b> Ensure compliance with other municipal ordinances developed in accordance with RMP Policies 2A2, 2B4 through 2B8, 2J2, and 2J4 through 2J7. Other requirements as determined by the municipality.</p>	
		<p>5. <b>Exemptions:</b> Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p><b>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</b></p> <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 Highlands Applicability Determination.</li> <li>ii. NJDEP or Highlands Council Determination: A determination by</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

		<p>NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Area, respectively, may be relied upon regarding applicability of these exemptions.</p> <p>b. <b>Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</b></p> <ul style="list-style-type: none"> <li>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.</li> <li>i. 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.</li> </ul>	<p>exempt development in their ordinance will not benefit from the legal shield for that portion of the ordinance. However, a municipal ordinance may, under the Highlands Act at N.J.S.A. 13:20-15a(5), be more stringent than the RMP standards for non-exempt development, and still will be eligible for the legal shield.</p>
		<p>6. <b>Development Application:</b> Provide for a municipal process regarding water conservation and deficit mitigation requirements applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review by the municipal engineer, municipal planner, or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP, including conformance with any approved municipal or subwatershed Water Use and Conservation Plan, the ordinance may authorize the reviewing professional to grant an approval if the application does not otherwise require approval by the Planning Board or Zoning Board of Adjustment as an “application for development” under the Municipal Land Use Law. If the application is inconsistent with RMP policies, the reviewing professional must clearly identify the deviations. The ordinance must require that approval of such deviations be authorized only by grant of waivers or exceptions from the Planning Board or Zoning Board of Adjustment through the procedures at #12, Waivers and Exceptions, below.</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>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</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>the reviewing Board.</p>	
		<p>9. <b>Conservation and Mitigation Requirements:</b> The ordinance must include the following minimum requirements regarding the use of any potable or non-potable water:</p> <ul style="list-style-type: none"> <li>a. <b>General:</b> Any application proposing a disturbance as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38 by a “major Highlands development” in the Preservation Area as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38, shall not be approved by the municipality unless conditioned upon or subsequent to NJDEP approval of a Highlands Preservation Area Approval (HPAA) for the project.</li> <li>b. <b>Water Conservation:</b> All applications are required to incorporate water conservation measures to promote sound resource use, reduce supply deficits, and reduce the need for additional utility infrastructure. All water uses in the Highlands should be efficient, so that environmental stresses are limited and the ability of water supplies to meet public needs is maximized. The following general standards apply:             <ul style="list-style-type: none"> <li>i. Meet all Uniform Construction Code requirements for the use of water conservation fixtures in new or rehabilitated structures;</li> <li>ii. All new and replacement lawn irrigation systems shall have automatic controls based on rain sensors (or soil moisture), as required by the electrical subcode N.J.A.C. 5:23-3.16;</li> <li>iii. Non-potable irrigation water uses shall be designed to ensure that only the necessary amounts of water are used to achieve optimum plant growth, to the maximum extent practicable;</li> <li>iv. New commercial development shall use internal recycling or beneficial reuse of reclaimed water to the maximum extent practicable;</li> <li>v. New development shall rely on stormwater for irrigation purposes to the maximum extent practicable, including but not limited to LEED-approved methods;</li> <li>vi. Rehabilitation of water supply utilities shall reduce water losses to the maximum extent practicable, including through application of American Water Works Association/International Water Association water loss analysis methods.</li> </ul> </li> <li>c. <b>Use of Conditional Water Availability Prior to Approval of a Water Use and Conservation Management Plan:</b> When an applicant seeks water for consumptive/depletive uses that derive from a deficit HUC14 subwatershed, whether the water is from an on-site well or from a water supply purveyor, the applicant may propose the use of some or all of the remaining conditional water availability in that subwatershed, subject to a deficit mitigation plan. Adopt by reference the table <i>Scaled Mitigation Requirements</i>, as Appendix A. Each proposal for the use of conditional water availability shall address the following requirements:</li> </ul>	<p>These are the key standards for site development regarding the resources affected by the ordinance. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make the findings under 10.b and 10.c, not the NJDEP.</p> <p>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>

		<ul style="list-style-type: none"> <li>i. The proposed amount of conditional water availability sought, with confirmation from the Highlands Council that sufficient conditional water availability exists to address the propose use</li> <li>ii. Detailed justification as to the proposed use and the inability to reduce the extent to which the use is consumptive (including through measures outlined in 10.b above) or depletive.</li> <li>iii. The amount of mitigation required for the project will be that percentage set forth in the table titled <i>Scaled Mitigation Approaches</i> (see Appendix A) multiplied by the proposed consumptive/depletive use.</li> <li>iv. The applicant shall provide a detailed deficit mitigation plan, including engineering drawings where constructed mitigation facilities are proposed, of the mitigation measures that will provide the necessary mitigation. The mitigation plan shall include a detailed implementation schedule.</li> <li>v. The mitigation plan must include sufficient information to demonstrate that the mitigation measures are individually feasible and in the aggregate will meet or exceed the mitigation need.</li> <li>vi. Where recharge is used, either off site or on site, the mitigation plan must show that the facility will recharge the ground water table such that it reasonably can be expected to support aquifer recharge or to support stream flow with a travel time in excess of one month.</li> <li>vii. The mitigation plan must also include operation, maintenance and monitoring requirements to ensure that sufficient recharge is maintained over time. These requirements shall at a minimum be sufficient to comply with N.J.A.C. 7:8 stormwater maintenance requirements.</li> <li>viii. As a condition of approval, an entity responsible for implementation of the mitigation plan must be identified and approved by the municipality and Highlands Council.</li> <li>ix. Proof of acceptance of all responsibilities for implementation of the mitigation plan by the responsible entity must also be provided.</li> <li>x. Where water conservation is used, either off site or on site, the mitigation plan must include a means by which water savings will be verified over time, such as metered flows.</li> <li>xi. Any project unable to provide sufficient mitigation shall modify the project to reduce the consumptive or depletive water uses such that full conformance with the mitigation requirements is achieved based on the level of mitigation that is feasible.</li> <li>xii. The applicant shall provide a cost estimate with 10% contingency for implementation of the mitigation plan.</li> <li>xiii. As a condition of local approval for site development, the applicant shall provide an escrow fund or performance/maintenance bond (at</li> </ul>	
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		<p>the discretion of the municipality or the entity responsible for the mitigation) equal to the mitigation plan cost estimate, to be available to the municipality and secondarily, to the Highlands Council for implementation of the necessary mitigation measures should the applicant fail to properly implement the measures according to the mitigation plan schedule. This guaranty shall be established in accordance with all applicable laws and regulations, and shall remain in effect until two years after implementation of all mitigation measures. However, if the implementing entity is a public agency, the commitment must be in the form of a binding resolution or ordinance of the governing body, and the cost of implementation must be bonded to ensure sufficient resources.</p> <p>xiv. The responsible entity shall be held responsible for reporting annually to the Highlands Council and the municipality regarding implementation of the mitigation plan through the life of the guaranty, unless reporting is achieved through the Water Use and Conservation Management Plan.</p> <p>xv. The applicant shall be held responsible for establishing an ongoing system of reporting to the Highlands Council and the municipality regarding completion of the mitigation measures, prior to municipal release of the guaranty. The reporting system must operate until the relevant subwatershed is no longer in deficit, or until the reporting responsibility is absorbed into implementation of an approved Water Use and Conservation Management Plan.</p> <p>d. <b>Required Schedules for Implementation:</b> The applicant shall comply with the following requirements for implementation of deficit mitigation:</p> <p>i. <b>Implementation of Water Deficit Mitigation</b> – All implementation measures shall be completed within one year of approval if the consumptive or depletive water use is less than 20,000 gpd in the Planning Area or 10,000 gpd in the Preservation Area, on average.</p> <p>a. Implementation may be allowed to occur within a longer time period for larger amounts, up to five years from approval, but shall be required to occur no later than upon initiation of the consumptive or depletive water use, except where the Highlands Council has determined, based on a combination of high current water deficits and large proposed consumptive and depletive water uses, that off-site mitigation shall be successfully completed prior to any on-site construction. In the latter case, on-site mitigation shall be successfully complete prior to initiation of the water use but may be implemented concurrent with on-site construction.</p> <p>ii. <b>Phased Mitigation</b> – Mitigation requirements may be phased in keeping with the level of consumptive and depletive water use that</p>	
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		<p>actually occurs based on phased construction of a project.</p> <ul style="list-style-type: none"> <li>iii. <b>On-site mitigation through water conservation</b> (applicable only where the site includes existing land uses with consumptive or depletive water uses) - The applicant shall implement the measures prior to receiving a certificate of occupancy for the new construction. If conservation measures include reduced irrigation of landscaping, protective covenants (e.g., homeowner’s association by-laws) must be enacted so that these measures are enforceable.</li> <li>iv. <b>Off-site mitigation through water conservation</b> – The applicant shall contract with the off-site property owner(s), water utility or municipality for implementation, permanent operation and maintenance and routine monitoring of the mitigation measure(s).</li> <li>v. <b>On-site mitigation through recharge</b> - The applicant shall include the mitigation measures in the project stormwater management plan, stormwater operation and maintenance manual, and site design. The stormwater management plan and O&amp;M manual shall achieve permanent maintenance and routine monitoring of the mitigation measure(s) so that it continually achieves the required rate of recharge. If on-site recharge is not feasible due to site conditions, then provisions for off-site recharge must be provided.</li> <li>vi. <b>Off-site through recharge</b> - The applicant shall contract with the site owner(s) for construction, permanent operation and maintenance and routine monitoring of the mitigation measure(s) so that it continually achieves the required rate of recharge.</li> </ul> <p>e. <b>Water Use and Conservation Management Plan</b> – Where a Water Use and Conservation Management Plan has been approved by the Highlands Council for the municipality or subwatershed in which the proposed project is located, the proposed project shall comply with all requirements of that Plan, in addition to the requirements of 9.a, b and d above, but shall not be required to comply with the requirements of 9.c above.</p> <p>f. <b>Prohibitions</b> and limitations otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose, including prohibitions and limitations on site disturbance, forest clearance, infrastructure development, and site development (including additional water use).</p>	
		<p><b>10. 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><b>11. Municipal Approvals Conditioned On State Approvals:</b></p> <ul style="list-style-type: none"> <li>a. <b>General:</b> Require that the approved development achieve compliance with all applicable laws and regulations of agencies outside of the municipality’s</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</p>

	<p>jurisdiction, including where applicable, with the NJ Water Supply Allocation Program (N.J.A.C. 7:19), NJ Safe Drinking Water Construction Permits, (N.J.A.C. 7:10) and Executive Order 114.</p> <p>b. <b>Applicable to Preliminary Approvals:</b> Preliminary approval shall be conditioned such that development affecting water availability shall not occur until such time as the Highlands Council has either let lapse its right to call 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 development affecting water availability shall not occur unless the Highlands Council has either let lapse its right to call 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 development affecting water availability 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</p>	<p>disturbance based on preliminary findings does not harm resources that might be protected through a Highlands Project Review, Highlands Council “call up,” or HPAA permit process.</p> <p>The Highlands Council has “call up” rights under N.J.S.A. 13:20-17.c, allowing for a determination, “within 15 days after any final local government unit approval, rejection, or approval with conditions thereof,” on whether to review “any application for development in the preservation area.” Once a municipality comes into conformance in the Planning Area, the same approach applies. Because disturbance of regulated resources based on <u>preliminary</u> municipal approval would contradict the clear intent of the Act to allow Council review upon <u>final</u> approval, conditions on local preliminary and final approval are necessary. In addition to Council review authority for specific projects, the Council may determine that a municipal decision does not conform to the RMP as agreed to under Plan Conformance, and may act to determine that the municipality is no longer in conformance. Doing so would trigger provisions of the Act regarding loss of the legal shield, funding priorities and return of any prior funding provided by the Council.</p>
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		<p>project is eligible for a Highlands Act exemption, that the Highlands Council has determined that the building permit results in the use of conditionally available water without mitigation, satisfies required water conservation measures, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	
		<p>12. <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> <ul style="list-style-type: none"> <li>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 for use of water availability unless the applicant has received approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</li> <li>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 for use of water availability only where the applicant can demonstrate that: (a) the deviation is unavoidable and represents the minimum feasible under the particular circumstances surrounding the project proposal, and the grant of relief is reasonable, necessary, and supports the general purpose and intent of the applicable development regulations; or (b) the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. The approval of an exception must be accompanied by a detailed justification, and is subject to review by the Highlands Council. The justification must include at a minimum an explanation of how and to what extent the following conditions are addressed: <ul style="list-style-type: none"> <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 in the process of protecting water resources.</li> </ul> </li> <li>c. <b>Additional Provisions:</b> 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.</li> </ul>	<p>NJDEP Highlands Rules may provide for certain waivers – the municipality may wish to more clearly define the limits of exceptions to the ordinance provisions where they won't conflict with the NJDEP rules or the RMP, which incorporates the same waivers with regard to the Planning Area.</p> <p>Exceptions are applicable where site-specific conditions prevent complete application of a standard. Exceptions are not available for factors other than site conditions, such as any scheduling or financial constraints of the applicant. The mandatory statement of justification for an exception shall be used by the Highlands Council as the basis for its review of a municipal approval under the call-up provisions.</p>
<p><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>	<p>Specific provision for site inspections is critical to the protection of the features protected by this ordinance and all other sensitive</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>	environmental features.
		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.	Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.
		3. <b>Penalties:</b> Provide for civil and criminal penalties for violations.	In most cases, standard penalty provisions under the MLUL will be sufficient.
<b>Required Attachments</b>		1. Appendix A - Scaled Mitigation Requirements	

**Appendix A**

**Scaled Mitigation Requirements**

<b>Deficit (MGD)</b>	<b>Proposed Consumptive or Depletive Water Use (gpd)</b>				
	<b>&lt;= 1,000</b>	<b>1,001 – 5,000</b>	<b>5,001 – 10,000</b>	<b>10,001 – 25,000</b>	<b>&gt;25,000</b>
0.0001 – 0.050	125%	125%	125%	150%	150%
0.051 – 0.100	125%	125%	125%	150%	150%
0.101 – 0.250	125%	125%	150%	150%	175%
0.251 – 0.500	125%	150%	150%	175%	200%
0.501 – 1.000	125%	150%	175%	175%	200%
1.000 – 7.100	150%	175%	175%	200%	200%