



2009 Plan Conformance Grant Program **Module 6. Municipal Highlands Regulations**

Prepared by State of New Jersey Highlands Water Protection and Planning Council in Support of the Highlands Regional Master Plan

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2009 PLAN CONFORMANCE GRANT PROGRAM
MODULE 6: HIGHLANDS REGULATIONS

1.0 Introduction

A critical aspect of Plan Conformance is the adoption of municipal regulations that implement required policies and objectives of the Regional Master Plan (RMP) regarding both new development and existing land uses. The regulation of new development through a Highlands Land Use Ordinance is a requirement of Basic Plan Conformance and is the subject of this revised guidance. The prevention of pollution and public health threats from existing land uses will be a component of full Plan Conformance in the years 2010 and beyond, and will be addressed by future guidance.

To facilitate municipal conformance with the RMP, the Highlands Council has developed a model Highlands Land Use Ordinance, including Submission Checklist requirements. The model ordinance has been revised based on comments from municipal professionals, and is available on the Highlands Council Web site at:

www.highlands.state.nj.us/njhighlands/implementation/plan/.

Module 6 requires the preparation of **draft** municipal regulations that address these provisions. Municipalities may use the model ordinance, which is specifically developed to address the required Basic Plan Conformance provisions of the RMP and is tailored to apply only to developments that are not exempt from the Highlands Water Protection and Planning Act. The ordinance addresses the requirements for Basic Plan Conformance, and also includes other provisions that are necessary for a complete ordinance structure. The ordinance is prepared in a format applicable for direct municipal use.

The Highlands Council **strongly** encourages the direct use of the model Highlands Land Use Ordinance, which is meant as a supplemental ordinance that will apply only to non-exempt development in the municipality and only to those aspects of the non-exempt development that trigger RMP Plan Conformance issues. The underlying municipal zoning will still be applicable to both existing land uses and exempt development. The underlying municipal ordinances (both zoning and other development review provisions) will still be applicable to non-exempt development to the extent that they are more restrictive than or address issues not covered by the Highlands Land Use Ordinance.

Municipalities may also use existing ordinances, amendments to existing ordinances, or new ordinances, to the extent that they either meet or exceed the RMP requirements. Finally, municipalities may use the model ordinance for some provisions and independently-developed ordinances for other provisions. Modification of existing municipal ordinances to address Plan Conformance issues will require that the issues of applicability, exemptions and so forth be addressed specifically for each modified ordinance. However, to the extent that municipalities use ordinances other than the model ordinance, the petition for Plan

Conformance must demonstrate that all required RMP policies and objectives, as reflected in the provisions in the model ordinances, are met through the municipal ordinances.

NOTE: The Highlands Council, in its August 2009 guidance on Module 6, included two model ordinances for adoption by the local Board of Health, regarding septic system maintenance and the management of potential contaminant sources within critical ground water areas. In both cases, the intent of the RMP is to ensure protection of water resources, including public water supplies, from potential contamination. Comments from municipal professionals emphasized that Boards of Health would need time to establish such programs, and that each ordinance would need to be phased in to ensure efficient administration; proposed revisions were also suggested. Given these needs, the Highlands Council has determined that the two ordinances are best addressed as requirements of Full Plan Conformance (rather than Basic Plan Conformance), subsequent to Council approval of a municipal petition for Plan Conformance. The Implementation Plan and Schedule approved by the Highlands Council would provide sufficient time for the phasing process, and would be linked to further Plan Conformance grants to provide the reasonable costs for developing these programs. As such, these two ordinances are no longer being required under Module 6 or the Petition for Plan Conformance (see Module 7 guidance). They remain requirements of the RMP for Plan Conformance, however. Revised model ordinances will be made available to assist in development and implementation of these programs. In addition, the model Highlands Land Use Ordinance has been modified to require that **new** potential contaminant sources implement best management practices to minimize the potential for pollution.

1.1 Highlands Land Use Ordinance

This model ordinance addresses all requirements that a municipality will impose on development (as defined by the Municipal Land Use Law) that are not exempt from the Highlands Act. These requirements are derived from nearly every RMP Goal in Chapter 4. The ordinance will be adopted as an overlay ordinance, so that existing land uses and exempt development activities are still subject to the underlying municipal zoning and development review requirements. The ordinance will apply to the area of the municipality for which Plan Conformance is approved (i.e., at least the Preservation Area). It addresses the following critical concepts:

- **Permitted, Prohibited and Conditional Land Uses**
- **Designation of Highlands Area Districts**, including the RMP Zones, Sub-Zones, Resource Areas and Special Protection Areas.
- **Density and Intensity of Development**, including the septic system yield requirements, water availability, and minimum densities and intensities for development supported by extensions of public wastewater and water supply utilities (where there is municipal desire to extend utilities to support growth, and the extension is feasible consistent with the RMP).
- **Highlands Resource Area Regulations**, addressing all of the relevant goals, policies and objectives for resource protection, including: forest resources; Highlands Open Water buffers and riparian areas; steep slopes; critical habitat; carbonate rock areas; lake management areas; water conservation and deficit mitigation; prime

ground water recharge areas; wellhead protection areas; Agricultural Resource Areas; historic, cultural and archeological resources; and scenic resources. In each case, the ordinance includes findings, applicability, requirements and whether a referral to the Highlands Council is required prior to municipal action.

- **Highlands General Regulations**, including provisions for low impact development, stormwater management, affordable housing, the Special Environmental Zone and Highlands agricultural and conservation priority areas.
- **Planned Residential Development**, which addresses the cluster development requirements of the RMP.
- **Development Review Procedures**, which addresses checklist requirements, application and notice requirements, conservation deed restrictions, etc.
- **Appeals, Waivers and Exceptions**, which addresses the circumstances under which a municipal development review board can or cannot act with or without prior action by the Highlands Council or (for Major Highlands Development in the Preservation Area) NJDEP.

2.0 Detailed Scope of Work

Highlands Land Use Ordinance

Municipalities shall review their current land use ordinance(s), including submission checklist requirements, against the Highlands model ordinance and determine what provisions of the model ordinance are not reflected in the current municipal ordinance(s). Municipalities may submit to the Highlands Council one of the following three options:

NOTE: The Highlands Council **strongly** encourages the direct use of the Highlands Land Use Ordinance (Option 1, below). Use of existing municipal ordinances (Options 2 and 3, below) will be highly complex for any municipality. The Highlands Land Use Ordinance is meant as a supplemental ordinance that will apply only to non-exempt development in the municipality and only to those aspects of the non-exempt development that trigger RMP Plan Conformance issues. The underlying municipal zoning will still be applicable to existing land uses and exempt development. The underlying municipal ordinances (both zoning and other development review provisions) will still be applicable to non-exempt development to the extent that they are more restrictive than or address issues not covered by the Highlands Land Use Ordinance. Modification of existing municipal ordinances to address Plan Conformance issues will require that the issues of applicability, exemptions and so forth be addressed specifically for each modified ordinance.

1. A mark-up of the Highlands model land use ordinance in Microsoft Word (or compatible word processing program), showing any wording modifications proposed by the municipality, with the whole of the resulting document to be proposed as a supplement to its existing ordinance(s); or

2. Draft amendments in Microsoft Word (or compatible word processing program) to the municipality's existing ordinance(s) showing the wording proposed to be adopted; or
3. Any combination of options (1) and (2), such that draft amendments to existing ordinances address some issues, while Highlands model ordinance provisions cover other issues.

For all options, there may be sections that are not relevant to the municipality, such as requirements related to agricultural resources for a municipality that has no agricultural lands, or related to septic system yields where the entire municipality has existing sewer service. The municipality shall provide a summary of any provisions that are not relevant and therefore not proposed for adoption. For option 1 or 3, such provisions should be shown as deletions in the Highlands model ordinance. To reduce document complications related to deletion of sections for Module 6, municipalities should not delete the section title so that the numbering of all following sections will not change. Section titles and text for deleted sections (e.g., where a municipality includes no wellhead protection areas) should be modified as follows:

Example Edit

§ 1.1 WELLHEAD PROTECTION ~~(NOT APPLICABLE)~~

~~§ 1.1.1 Findings~~

~~Protection of ground water resources that directly provide water to potable water supply wells is vital to the public health, safety and welfare of the community. It is also of primary importance to ensure continued availability of clean drinking water to all that rely upon it. Through regulation of land use, physical facilities and other activities within Wellhead Protection Areas (WHPAs), the potential for ground water contamination can be reduced by preventing the introduction and migration of pollutants into ground water sources that supply water supply wells.~~

Where the second option is selected, the municipality shall include its existing ordinance(s) and a detailed summary of where the provisions equivalent to the Highlands model ordinance are to be found including municipal ordinance citations in either the existing ordinance or the proposed amendment. This summary may be provided as a separate document, as annotated comments in the Highlands model ordinance, or both, but regardless of the method used, should be explicit, including municipal ordinance citations.

Where the third option is selected, the requirements for both the first and second options must be followed to address all relevant Highlands model ordinance requirements.

2.1 Schedule for Completion, Deliverables

Deliverables will include ordinance language and (for use of the second or third options described above) a summarization of how the proposed ordinances and amendments other than the Highlands model ordinance will meet the requirements of the Highlands RMP. All deliverables shall be in Microsoft Word® or compatible word processing program.

For any help or guidance as you work on these documents please contact Judy Thornton at (908) 879-6737 or judith.thornton@highlands.state.nj.us.

Municipalities will be expected to complete this Plan Conformance Module Task no later than **December 8, 2009**, and to submit the results with the Petition for Plan Conformance (Module 7). This date is mandatory for all Preservation Area lands. Instructions for submitting the Petition for Plan Conformance, which will include this ordinance, will be sent by the Highlands Council under Module 7.

3.0 Full Plan Conformance

The Highlands Council wishes to advise municipalities regarding RMP requirements for municipal ordinances beyond those addressed in Module 6. There are several provisions that will be included as requirements in the Highlands Implementation Plan and Schedule (see Module 7 instructions regarding this document) that will be addressed in 2010 and beyond as conditions of Highlands Council approval of Full Plan Conformance. They include:

1. **Septic System Maintenance Ordinance** – As discussed in Section 1.0
2. **Potential Contaminant Source Ordinance** – As discussed in Section 1.0
3. **Highlands Land Use Ordinance Amendments** – based on additional planning and ordinance development regarding the following topics:
 - Cluster Development in Agricultural Resource Areas – to refine requirements for and optimize the location and design of development using cluster or open space subdivision (lot averaging) techniques, including planning for wastewater management
 - Density Variances – Implications of RMP Policy 7E6 regarding approval of bulk density variances.
4. **Expansion of NJDEP-approved Sewer Service Areas in the Existing Community Zone and Lake Community Sub-Zone** – The Highlands Council has determined that it should address RMP provisions regarding land use density and intensity requirements for residential and non-residential development, respectively, through the wastewater management planning process of the NJ Department of Environmental Protection, N.J.A.C. 7:15, to ensure optimum use of land and wastewater capacity, where municipalities opt for sewer-based growth beyond those areas currently approved for sewers and in conformance with the RMP