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HIGHLANDS COUNCIL PLAN CONFORMANCE APPROVALS

Frequently Asked Questions

1. When does a municipality or county in the Highlands Region come into conformance with the Regional Master Plan?

The Highlands Council considers that a municipality or county comes into conformance with the Regional Master Plan as soon as the Highlands Council adopts a resolution approving a municipality's or a county's Petition for Plan Conformance, with or without conditions. Such municipality or county will continue to remain in conformance with the Regional Master Plan, provided it continues to make progress satisfying any conditions set forth in the Highlands Council resolution approving its Petition for Plan Conformance and in completing steps to bring its master plan and development regulations (or, in the case of a county, its master plan and associated regulations) in a manner deemed by the Highlands Council to be consistent with the Regional Master Plan.

2. When does a conforming municipality begin to enjoy the full legal benefits under the Highlands Act for a conforming municipality?

The full legal benefits afforded under the Highlands Act do not apply until a municipality with an approved Petition for Plan Conformance revises its master plan and adopts development regulations (or, in the case of a county, its master plan and associated regulations) in a manner deemed by the Highlands Council to be consistent with the Regional Master Plan. The specific benefits that accrue at that point in time, are the strong presumption of validity under Section 22 of the Highlands Act, and legal representation of the municipality under certain circumstances, as set forth in Section 20 of the Highlands Act.

3. Once the Highlands Council has approved the Petition for Plan Conformance of a municipality or county in the Highlands Region, how long is the approval valid for?

Plan Conformance Approval is valid for a period of no more than six (6) years, or until six (6) months after the completion of a reexamination by a municipality of its master plan and development regulations pursuant to the Municipal Land Use Law, or until one (1) year after the Highlands Council adopts its six-year reexamination of the Regional Master Plan (RMP), whichever time period is shorter. These timeframes are set out in the Highlands Council Plan Conformance Guidelines adopted in 2008.

4. Does the municipality or county need to re-petition for continued Highlands Council approval?

No. However, as noted above, upon the commencement of each reexamination by a municipality or county of its master plan and development regulations and where these plans and regulations have been previously approved by the Highlands Council to be in conformance with the Regional Master Plan pursuant to the Highlands Act, the municipality or county must notify the Council and, thereafter, submit to the Council for review the Reexamination Report and/or any proposed revisions of its master plan and development regulations, so that the Council may determine conformance with the RMP. Provided any proposed modifications are deemed consistent with the RMP, Plan Conformance Approval continues.

5. Does a conforming municipality or county need to submit amendments to its master plan and/or development regulations to the Highlands Council for RMP consistency reviews, other than those associated with periodic reexaminations?

Yes. Any amendment to the master plan or development regulations of a conforming county or municipality does not take effect until the county or municipality has submitted the amendment to the Highlands Council and the Council has been determined that the amendment is in conformance with the Regional Master Plan, or the Executive Director has notified the county or municipality that the amendment does not affect the Highlands Council's prior finding of conformance. The Executive Director will certify such fact to the clerk of the county or municipality and to the Highlands Council, and provide public notice on the Highlands Council web site, at which time any such amendment will take effect in accordance with its terms and applicable law.

6. Can the Highlands Council revoke a municipal or county Plan Conformance Approval?

Yes. The Highlands Council may revoke a conformance approval granted pursuant to the Highlands Act after conducting a public hearing if the Council finds that the local government unit has taken action inconsistent with the Regional Master Plan.

7. Can a municipality or county conforming for its Planning Area lands "opt out" of a Highlands Council Plan Conformance Approval for its Planning Area, if it chooses, and if so, is there any timeframe during which it is precluded from doing so?

Yes, with respect to the opting out question; and, no with respect to the timeframe question. A municipality or county can "opt out" of Plan Conformance Approval for Planning Area lands at any time. Opting out would require formal action of the governing body of the municipality or county to repeal the ordinance adopted to "opt in." Such formal action must be conducted in accordance with all Municipal Land Use Law and/or County Planning Act requirements, and notice must be provided immediately to the Highlands Council.

8. Are there any consequences that would result from opting out of Plan Conformance for Planning Area lands?

The Highlands Act provides that the Highlands Council may require the jurisdiction to reimburse the Council or the State, as appropriate, in whole or in part, for any financial or other assistance or incentives received from the State as a benefit or result of obtaining Council approval. However, provided that the municipality or county has applied for and used such funds in a good faith effort in order to evaluate the merits of conforming with the Regional Master Plan, and further, that the jurisdiction has abided by the terms of its grant agreements with the Highlands Council, no such action would likely occur. Each case will turn on its unique circumstances, and therefore, the Council reserves its rights to assess each case individually. Also of note is that Highlands Council grants are provided on a reimbursement basis, requiring submission and review of required grant deliverables, as well as findings of administrative and technical sufficiency prior to payment of any reimbursements. The Highlands Council will consider the date of any formal municipal or county action opting out for Planning Area lands as the cut-off date for consideration of submission of such grant deliverables and may revoke any prior allocation of unexpended funds, with the exception of such funding as may be required for continued Plan Conformance for Preservation Area lands.

Other consequences of withdrawing from Plan Conformance in the Planning Area arising from the Highlands Act include loss of Highlands Council legal protections with regard to Planning Area lands, loss of Highlands Council planning assistance and future funding for Planning Area initiatives during the time period in which the jurisdiction is not conforming, and loss of any designated Highlands Centers and/or redevelopment areas , along with the state agency advocacy and priority status for state funding that exists by virtue of conformance in the Planning Area.

9. If a municipality or county takes formal action to opt out for its Planning Area lands, is it permitted to retain and utilize the materials and documents prepared and/or adopted for purposes of Highlands Plan Conformance, even after the fact?

Yes, the municipality or county is free to make use of any and all materials developed for purposes of Plan Conformance in the future of its planning and resource protection programs. The Highlands Council welcomes the use of such materials, and encourages the use of its website and the full array of technical documents on its site in support of the RMP and good planning for the future of the Highlands Region.

10. If a municipality or county opts out for its Planning Area lands, can it opt back in, in the future?

Yes, the municipality or county may re-petition for Plan Conformance Approval for Planning Area lands at any time and its Petition will be considered as a new request, without prejudice.