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RMP Program: Cluster Development Version: November 7, 2007

<p>Issue Overview</p>	<p>Conventional or Euclidian zoning relies on a minimum lot area and frontage to control density. The conventional zoning design results in the entire property being divided into streets and lots and, more recently, some land for detention/retention basins for stormwater management. It is often referred to as “cookie cutter” zoning because the lot or cookie forces the developer set up lots just as one would stamp cookies out of dough. It does not allow flexibility to protect sensitive or critical areas while also promoting sensible growth. Any land that is left undeveloped to protect the environment results in a loss in development potential – a double negative as density declines and street length per dwelling unit increases. Most communities have relied on larger lot sizes to attempt to encourage environmental protection. However, even reduced growth can be harmful if it is forced to follow a rigid system. The reliance on septic systems combined with large lots is especially prone to fragmentation of habitats and other environmental resources.</p> <p>One of the key objectives of the Highlands Act is to minimize the impact of human development on the Highlands ecosystem. In this context, clustering is a basic land management tool whereby new growth and development is guided away from lands with high resource value or limited capacity to support human development to locations which are most appropriate for development. The concept of clustering is not intended to increase development beyond levels that are sustainable given natural resource objectives of the Highlands Act, but rather to minimize the impact of sustainable development.</p> <p>Clustering comes in two basic forms: 1) clustering where development is transferred from parcels which are not appropriate or best suited for development to other parcels which are appropriate for development, a concept usually implemented through either transferable development rights (“TDRs”) or noncontiguous clustering; and 2) concentrating development in a discrete portion or portions of a development site and preserving the balance of the site in its natural condition. Both techniques are key aspects of the RMP. In the context of this program, “clustering” is used to mean both “cluster development” using the Municipal Land Use Law definition,</p>
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	<p>where the open space preserved through the clustering must be retained in ownership by a homeowners association or deeded to the municipality, <u>and</u> other methods of clustering such as lot-size averaging or Open Lands Ratio where the open space can be privately owned but deed restricted. In cluster development, the land may be leased by the homeowners association or municipality to a farmer for purposes of agriculture, used for community-based agriculture (e.g., communal gardens), or kept in open space. In other forms of clustering, the largest lot may be retained for agriculture or open space by the original owner, sold for farming, or dedicated as open space, all with deed restrictions to prevent further subdivision or development.</p>
<p>RMP Policies and Objectives Addressed</p>	<p>Objective 2B9e Give highest priority for the use of Net Water Availability for non-agricultural water uses to clustered or compact development, redevelopment sites and brownfield development sites as designated by the Highlands Council, and municipal TDR Receiving Zones that result in the preservation of agricultural and environmentally sensitive lands.</p> <p>Objective 2J4b Accommodate compact development served by existing or proposed public water systems only where such development is within or immediately adjacent to an existing service area and provides for the clustering or aggregation of development that will preserve at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes with an impervious cover of less than 3 percent, and the development impacts are otherwise consistent with the goals and requirements of the Plan.</p> <p>Objective 2K3d Compact development served by existing or expanded wastewater collection and treatment systems shall be permitted in an Agricultural Resource Area only where such development is within or immediately adjacent to an Existing Areas Served and adequate provision is made for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes with an impervious cover of less than 3 percent, and provided that the proposed development is otherwise consistent with the goals and requirements of the Plan.</p> <p>Objective 2K3f Cluster development utilizing new wastewater collection and treatment systems shall be permitted only where such development is not within or immediately adjacent to an Existing Area Served, where the system is designed and has capacity only for the cluster development, where the system does not create the potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served, and where adequate provision is made for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes with an impervious cover of less than 3 percent, and provided that the proposed development is otherwise consistent with the goals and requirements of the Plan.</p> <p>Objective 2L2e New residential development utilizing septic systems where lot-size averaging, clustering or open space subdivision design techniques are employed shall have a gross density (for all parcels involved in the development proposal) based on the nitrate dilution target appropriate for the LUCM Zone, but with the density for the developed portion of the site based on a nitrate dilution target not to exceed 10 mg/L.</p> <p>Objective 3A10c Implementation of regulations which require mandatory clustering for residential development in an Agricultural Resource Area with adequate provision for the preservation of at least 80 percent of the project area in perpetuity for environmental protection or agriculture purposes with an impervious surfaces of less than 3 percent, and provided that the proposed development is otherwise consistent with the goals and requirements of the Plan. Clustering for the purposes of this provision includes “cluster development,” lot size averaging, noncontiguous clustering, and similar methods allowed by</p>

	<p><i>the Municipal Land Use Law.</i></p> <p>Objective 3A10d <i>Implementation of regulations which require that all land preserved as farmland or natural resource area as a result of clustering be subject to a conservation easement enforceable by the appropriate municipality and the Highlands Council.</i></p> <p>Policy 3C2 To prohibit the development of additional water and wastewater infrastructure in a Agricultural Resource Area in a Conservation Zone, except where such additional infrastructure is necessary to address the needs of an existing public health concern, mandatory clustering or open space design development as approved by the Highlands Council.</p> <p>Objective 6A1e <i>Prevent the extension or creation of water and wastewater utility services in environmentally constrained sub-zones, except where the creation of such services is necessary to support clustered development that cannot feasibly be located outside the sub-zone or address a documented public health and safety issue due to failing septic systems and will maximize the protection of sensitive environmental resources.</i></p>
	<p>Policy 6D3 To encourage owners of lands which are eligible for exemptions under the Highlands Act to voluntarily offer their land for acquisition, participate in the TDR program, or engage in contiguous or non-contiguous clustering in cooperation with other exempt landowners, and comply with standards and criteria which protect the land and water resources of the Highlands Region from any adverse impacts.</p> <p>Objective 6G1b <i>Municipal and county master plans and land development regulations which require clustering or lot-averaging of non-agricultural development with a minimum of 80% of the property dedicated to agriculture and natural resources protection in order to avoid adverse impacts on agricultural uses and natural resources.</i></p> <p>Objective 6N1c <i>Flexible site development review programs, including reduction of minimum setbacks, modification of uniform road frontage requirements, increase in maximum permitted height or allowing non-contiguous clustering of development entitlements where necessary to mitigate or eliminate adverse impacts on Highlands natural resources.</i></p> <p>Objective 7G1b <i>Establish municipal clustering programs which allow landowners whose property is entitled to an exemption under the Highlands Act, for both contiguous and non-contiguous properties, to minimize the impact of such exempted development on the ecological integrity of the Highlands Region or the fiscal integrity of the municipality.</i></p>
<p>Program Summary</p>	<p>The use of clustering for new development, and particularly residential development, is a key mechanism for development siting that can reduce the environmental impacts of development and minimize the potential for conflict between the development and neighboring agricultural activities. Clustering is guided by somewhat different policies in the Protection, Conservation and Existing Community Zone, and especially within the Environmentally Constrained Sub-zones of the latter two Zones. Further, while clustering is a useful technique, its application on a project by project basis is not the best approach because an <i>ad hoc</i> approach can result in scattered clusters that do not provide for a sense of community, planned landscapes or efficient use of land. Therefore, municipalities will be encouraged and supported in the development of clustering plans that predetermine the best locations for clustered residential development that minimizes the number of total clusters, optimizes the use of utility and transportation infrastructure, improves the cost-effectiveness of land uses,</p>

	<p>and minimizes the potential for environmental impacts and landscape disruption.</p> <p>Clustering does not have a specific targeted lot size for the resulting lots, because each project will have different environmental, road frontage and utility constraints. Clustering in the Protection and Conservation Zones must achieve a dedicated, deed restricted open space (for agricultural or natural resource preservation purposes) of 80% of the total property. Clustering also does not have a specific mandatory layout. However, to minimize the creation of new roads and the fragmenting of natural ecosystems and resources, most cluster development will not actually result in the aggregation of all development into a corner of a property, which tends to also create internal lots that lack environmental amenities; more common will be “open space subdivision” layouts where existing road frontage (with appropriate buffering) is used where possible, followed by use of single-load internal roads that allow for maximum open space viewing from the homes but also place the homes at a distance from sensitive environmental features or agricultural uses.</p>
<p>Cluster Development General Provisions</p>	<p>Program Description</p> <p>Some aspects of cluster development apply regardless of the LUCM Zone. Municipalities shall include provisions for clustering based on general provisions including, but not limited to, the following:</p> <ul style="list-style-type: none"> • The total area of all building sites in a cluster development shall not exceed 20 percent of the parcel proposed for development. Where feasible based on septic system densities, availability of public utilities and site constraints, the use of more compact clustering to 90 percent or higher open space shall be encouraged for preservation of agriculture or natural resources. In the Existing Community Zone, where clustering to 20 percent of the site is not feasible based on septic system density requirements, clustering shall occur on public wastewater systems or site layout shall use lot size averaging or open space ratios to maximize the protection of open space in lieu of clustering. • Where any parcel of land proposed for clustered development is owned in common with any contiguous parcels of land, the contiguous parcels of land shall be aggregated as if they were a single parcel of land and shall be developed as a cluster development whereby all the parcels of land will be developed as a single cluster development. • All development shall be clustered on the portion of a parcel of land proposed for development which has the lowest relative level of natural resource value and minimizes the creation of impervious surfaces and the fragmentation of natural habitats, environmental resources, and continuing agricultural lands, and avoid the creation of awkward or odd-shaped parcels for the remaining open spaces. • The number of dwelling units in a cluster development shall be limited to the yield of the parcel proposed for development, if developed without use of clustering unless the use of Highlands Development Credits (HDCs) or other transfer of density is involved. • In determining which portion of a parcel of land proposed for development has the lowest level of natural resource value, due consideration shall be given to access to and from the parcel proposed

	<p>for development and the public road network, as well as potential linkages with existing developed land patterns and community facilities.</p> <ul style="list-style-type: none"> • Access roads to the building sites shall avoid lands used for continuing agricultural purposes and high value natural resources to the maximum extent possible • Cluster development using septic systems must meet a nitrate dilution model target of no more than 10 mg/L nitrates for the developed area • Cluster development using community or public wastewater and water supply services must meet the policies stated above regarding proximity to existing areas served. • In determining the relative level of natural resources value for a parcel of land, the presence of Forest Resources Areas, Critical Habitat Areas, Moderately and Severely Constrained Steep Slopes Areas, Prime Ground Water Recharge Areas and Highlands Open Waters and Riparian Areas shall be considered to be high value natural resources. • If the cluster development is located so as to be an extension of an existing village or hamlet, the setbacks or buffers from roads shall conform to the pattern of the existing community rather than the minimums of the districts above; the setbacks or buffers required for the protection of environmental constraints including but not limited to wetlands and Highlands Open Waters shall still apply.
<p>Cluster Development in the Protection Zone</p>	<p>Program Description</p> <p>The use of clustering in the Protection Zone will be constrained by the highly sensitive ecosystems in this Zone, by the low allowable densities for development based on septic systems, and by limited water availability. For this reason, clustering in the Protection Zone must be carefully planned and controlled. Municipalities with lands in the Protection Zone shall include provisions for clustering based on provisions including, but not limited to, the following:</p> <ul style="list-style-type: none"> • The portion of the parcel proposed for development which is not developed as buildings sites shall be preserved in perpetuity as open space for natural resource preservation
<p>Cluster Development in the Conservation Zone</p>	<p>Program Description</p> <p>The use of clustering in the Conservation Zone is strongly encouraged for the protection of agricultural lands and high value natural resources. Due to the potential for conflicts between clustered development and agriculture in this Zone, clustering in the Conservation Zone must be carefully planned. Where feasible, clustering sites should be planned prior to site-specific development proposals, to minimize the total number of clusters (see Municipal Cluster Development Plans, below). Municipalities with lands in the Conservation Zone shall include provisions for clustering based on provisions including, but not limited to, the following:</p> <ul style="list-style-type: none"> • In determining the relative level of natural resources value for a parcel of land, the presence of Prime Soils and lands used for active agriculture shall be considered to be high value resources in addition to those natural resources listed under Cluster Development General Provisions. • The agricultural use shall be required to use best management practices to the farm to reduce nutrient and chemical loading rates.

	<ul style="list-style-type: none"> • The portion of the parcel proposed for development which is not developed as buildings sites shall be preserved in perpetuity for use in Highlands agriculture uses or natural resource preservation, including notice within the deed of easement regarding the applicability of Right to Farm Act provisions • The standards and criteria applicable to cluster development may be adjusted during Plan Conformance, provided that the Highlands Council finds that the adjustments are consistent with the goals, policies and objectives of the RMP and that the adjustments provide comparable protection for the Highlands ecosystem.
<p>Cluster Development in the Existing Community Zone</p>	<p>Program Description Most development in the Existing Community Zone will consist of compact development using public water supply and wastewater utilities. This Zone has fewer environmental features, most of which will be addressed through buffer requirements. However, there may be opportunities for clustering on sites that have a larger than normal incidence of high value natural resource features. Municipalities in the Existing Community Zone shall include provisions for clustering based on provisions including, but not limited to, the following:</p> <ul style="list-style-type: none"> • The portion of the parcel proposed for development which is not developed as buildings sites shall be preserved in perpetuity as open space. • The standards and criteria applicable to cluster development may be adjusted during Plan Conformance, provided that the Highlands Council finds that the adjustments are consistent with the goals, policies and objectives of the RMP and that the adjustments provide comparable protection for the Highlands ecosystem.
<p>Protection of Natural Landscape</p>	<p>Program Description In all Highlands zones, the protection of natural vegetation shall be regulated to require resource protection and minimize the areas of lawn and reduce non-point loadings associated with lawns. The natural areas preserved close to homes are intended to enhance the value of the property as well as protecting the environment.</p>
<p>Setbacks from Road</p>	<p>Program Description All development in cluster developments shall be setback from existing roads to maintain the Highlands character.</p> <ul style="list-style-type: none"> • Protection Zone. A minimum of one hundred feet of undisturbed forest shall be required before lots begin. Where wetlands or other open field landscape exists next to the road the first 50 feet of forest after the open land shall be preserved as forest. • Conservation Zone. The cluster should be located behind a tree row or otherwise screened from the view from the road or seen in the background. Where this is not feasible, a landscaped buffer of 100 feet shall be required. Where practical, this should contain a berm. The buffer shall be landscaped leveling such a manner that it returns to a forested condition. • Environmentally Constrained Sub-zones. In the Conservation or Existing Community Zones of this type the Protection Zone standards

	<p>shall be applied.</p> <ul style="list-style-type: none"> Existing Community Zone. A 100 foot buffer shall be required along all roads, Where existing tree rows or forests exist these shall be retained. Such buffers shall be landscaped and maintained as a natural area with no mowing.
<p>Municipal Cluster Development Plans</p>	<p>Program Description</p> <p>As discussed above, <i>ad hoc</i> clustering, while beneficial for protecting natural and agricultural resources on each development project site, does not necessarily yield a community layout and design that provides for the highest community and environmental values. Therefore, the Highlands Council will provide grants, technical assistance and planning assistance to municipalities for the planning of clustering for their municipality. Projects involving cooperative planning by neighboring municipalities will be encouraged. The purpose of each planning grant will be to:</p> <ul style="list-style-type: none"> Identify the high value natural resources (including agricultural resources in the Conservation Zone) to be protected Identify community infrastructure, including but not limited to transportation, schools, public facilities and parks, that can provide capacity to and benefits for clustered development. Identify preferred locations for clustering that will minimize the disruption of the municipality’s natural and agricultural resources, maximize the creation of compact communities using smart growth principles, maximize the connection between existing community resources and the new development clusters, and maximize cost-effectiveness in the provision of community services and infrastructure Identify State, county and municipal planning and regulatory mechanisms to ensure that clustering within the municipality achieves maximum consistency with the preferred locations for clustering as established by the plan Identify resource needs for implementation of the clustering plan
<p>Developed Area of the Cluster</p>	<p>Program Description</p> <p>The developed area should include all amenities and essential improvements associated with the development. However, there are some exceptions to this that can enhance the value of the development without lowering the value of the cluster in meeting the preservation goals. For example, land treatment systems for waste disposal can provide nutrients to agriculture that can enhance productivity and cut the level of fertilizers that need to be applied. Similarly where stormwater management is feasible using natural site features such as overland runoff, the preserved areas may be used in this manner; engineering stormwater facilities may not be located in preserved areas. Pedestrian trails should also be exempt, provided that they do not disturb nesting habitats for threatened and endangered species. Agricultural use may include traditional agriculture, community supported agriculture businesses, and community garden plots for the home owners, all of which should be considered agricultural open space. The Council shall develop a handbook to promote environmentally sensitive design to refine the notion of developed land to exclude desirable environmental design from the developed area restraints.</p>

Modification of Standards for Cluster Design	Program Description An important reason for clustering is that it provides a means for superior design that can do a better job of protecting the environment. The Highlands Council shall emphasize resource preservation and design quality over the specific standards discussed above in reviewing implementing cluster ordinances submitted by the municipalities. Where those regulations enhance the ability of a developer to meet the goals of the Highlands, the Council shall allow for that enhanced program and approve municipal regulations that better meet the objectives of the RMP. This approach does not apply to the review and approval of individual development proposals. If a developer proposes something that is truly superior in meeting the objectives of the RMP, but is not permitted by the municipal regulations, the remedy should be through modification of the municipal regulations subject to review and approval by the Council under Plan Conformance.
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