

Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan
Agricultural Resource Area Conformance Standards
New Jersey Highlands Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory (ERI)		BASIC PLAN CONFORMANCE STANDARDS: <ol style="list-style-type: none"> 1. General: Incorporate by reference the Highlands Council maps of Land Use Capability Zones, the Preservation and Planning Areas and Agricultural Resource Areas (ARA). Identify through accompanying maps and narrative the ARAs, existing land use including all preserved farmland (including 8-year easements), preserved open space, vacant and developed land, and USDA NRCS Soil Survey Geographic (SSURGO) Database for farmland soil types and soil quality, including Prime, Statewide, Unique, and Locally Important farmland soils. 2. LUC Zones: RMP provisions apply equally to all Zones, although the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Subzone. 3. Preservation Area Special Provisions: Not applicable. 	<p>The Highlands Council will be providing mapped information in digital form through its Municipal Mapping Tool, which can be used by a municipality to meet these requirements.</p> <p>The ARA map is located in Chapter III. Part 3. Agricultural Resources of the RMP and was spatially delineated to represent the portion of the Highlands Region with the largest concentration of active farms. The <i>Sustainable Agriculture Technical Report</i> describes the ARA and the resource values used to define the ARA and the Agricultural Priority Areas (APA).</p>
		PLAN CONFORMANCE STANDARDS: <ol style="list-style-type: none"> 1. Mapping: In addition to the Basic Plan Conformance mapping requirements identify through an accompanying map Highlands Agricultural Priority Areas (APA), local priorities (Municipal and County Planning Incentive Grant areas-PIGs and Municipal/County Agriculture Development Areas-ADAs), pending farmland preservation applications within the ARAs, include all land classes, such as vacant property (Class 1) and Farm Assessed (Classes 3A and 3B). 2. Narrative: A description of the most predominant soil types and quality including the percentage, acreage, characteristics and farming methods the most predominant soils can sustain. Include a table summarizing the types of soil classifications, acreage and percentages. Include an explanation of the types of agriculture prevalent in the municipality, the amount of agriculture preserved and reference the Agriculture Retention/Farmland Preservation Plan element, which should illustrate the strategies in place to preserve agriculture. 	<p>This material is the scientific foundation of the regulation and is critical to the establishment of a legal defense. A municipality is required to develop an independent ERI for full Plan Conformance, but not for Basic Conformance.</p>
Municipal Master Plan and Agriculture		BASIC PLAN CONFORMANCE STANDARDS: <ol style="list-style-type: none"> 1. General (Background Statement): Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas 	<p>The ARA map is located in Chapter III. Part 3. Agricultural Resources of the RMP and was spatially delineated to represent the portion of</p>

¹ This column is for the municipal self-assessment. C = fully complete. P = partially complete, with a need for improvement. IP = in progress. NS = not started. NA = not applicable (e.g., for a municipality for which this component is not relevant).

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<p>Retention/Farmland Preservation Plan Element</p>		<p>and Agricultural Resource Areas (ARA) and incorporate by reference in the Agriculture Retention/Farmland Preservation Plan the definitions of ARAs in the <i>Sustainable Agriculture Technical Report</i>. Identify through accompanying maps and narrative the ARAs, existing land use including all preserved farmland (including 8-year easements), preserved open space, vacant and developed land, and USDA NRCS Soil Survey Geographic (SSURGO) Database for farmland soil types and soil quality, including Prime, Statewide, Unique, and Locally Important farmland soils.</p> <ol style="list-style-type: none"> 2. Policy Statement: Adopt by reference RMP Policies 3A4 and 3A5 and accompanying Objectives 3A4b, 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1 and 3E2 into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. 3. LUC Zones: RMP provisions apply equally to all Zones, although the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Subzone. 4. Preservation Area Special Provisions: Specifically cite and incorporate by reference the NJDA Rules N.J.A.C. 2:92 Agricultural Development in the Highlands. 	<p>the Highlands Region with the largest concentration of active farms. The <i>Sustainable Agriculture Technical Report</i> describes the ARA and the resource values used to define the ARA and the Agricultural Priority Areas (APA),</p> <p>The maps referenced in the ERI above can be duplicated for use in the Agriculture Retention/Farmland Preservation Plan Element.</p> <p>Where municipalities include clustering as a tool to preserve agricultural land in the ARA, the Cluster Program in Chapter V. of the RMP makes reference to applicable MLUL provisions.</p>
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> 1. Master Plan Requirements: Establish the promotion of farmland preservation and limit non-agricultural uses within the ARA and accord priority to preservation of farmland in the Agricultural Priority Areas (APA) as a policy of the municipality, enumerating the purposes and benefits as cited in the Agriculture Retention/Farmland Preservation Plan (AR/FPP) Element. Where it is not feasible to preserve agricultural lands within the ARA by such methods as fee simple acquisition, easement acquisition, or Transfer of Development Rights (TDR), clustering in the ARA shall be mandatory and be a policy of the municipality, enumerating the purposes and benefits cited in the AR/FPP. 2. Agriculture Retention/Farmland Preservation Plan (AR/FPP) Element Requirements: Establish importance of Agricultural Resource Areas (ARA). Use the Environmental Resource Inventory as the basis where appropriate, and then discuss the values served by preserving farmland within the ARA. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of ARA as the initial identification of significant agricultural resources in the municipality, to be supplemented and amended as needed, by on-site identification through the local farmland preservation program and the local development review process. In addition to the Basic Plan Conformance mapping requirements identify through an accompanying map and narrative Highlands Agricultural Priority Areas (APA), local priorities (Municipal and County Planning Incentive Grant areas-PIGs and Municipal/County Agriculture Development Areas-ADAs), pending farmland preservation applications within the ARAs, include all land classes, such as vacant property 	<p>The maps referenced in the ERI above can be duplicated for use in the Agriculture Retention/Farmland Preservation Plan Element.</p> <p>Where municipalities include clustering as a mandatory tool to preserve agricultural land in the Agricultural Resource Area (ARA) refer to the Cluster/Conservation Design Development Standards for Municipal Plan Conformance.</p> <p>The AR/FPP should reference the ARA land use ordinance under the Municipal ordinance discussion.</p>

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		(Class 1) and Farm Assessed (Classes 3A and 3B). The narrative on the ARA should include a description of how and why local/County priorities are consistent or differ with the ARA and the APA. The inventory of preserved farms and targeted farms within a PIG or ADA area should identify if the farm is in the ARA. The narrative should clearly illustrate short-term and long-term cost estimates to preserve farmland within the ARA, public funding constraints and the potential need for planning strategies to preserve farmland such as TDR or clustering.	
Institutional Capability		1. Planning: The Council will provide assistance should planning board and zoning board of adjustment members and staff 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 Agricultural Resource Area (ARA) ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for farmland preservation within the ARA.	The Planning Board and zoning board of adjustment should verify Agricultural Resource Areas and local preservation priorities with the Agriculture Retention/Farmland Preservation Plan Element, the Municipal Agricultural Advisory Committee (AAC), the County Agriculture Development Board (CADB) and with appropriate Municipal/County planning staff.
		2. Project Review: Municipality must have capacity to interpret digital and surveyed data on agricultural resources within the ARA, and apply the ordinance requirements to the agricultural resources identified on a property.	Same as for planning
		3. Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify agricultural resources within the ARA and related resources.	Ensure that the appropriate review body and staff have the ability to visit the site in support of project review, planning and other activities and are accompanied by an individual from the Municipal AAC and/or CADB identified above.
		4. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., hydrology studies) developed and implemented regarding Agricultural Resource Area protection and regulation, as related to Plan Conformance or RMP implementation.	
Development Review Checklists		<p>PLAN CONFORMANCE STANDARDS:</p> <p>1. General: As a minimum condition of completeness, require for all applications addressed by “Agricultural Resource Area Regulations, #4 Applicability” (see below):</p> <ul style="list-style-type: none"> a. Highlands Council consistency determination. b. Information identifying Agricultural Resource Areas (ARA) on site using GIS layers for ARAs. c. Information identifying soil quality on site, including Prime, Statewide, Unique, and Locally Important farmland soils and any preserved land (agriculture and open space) adjacent to the site. 	

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		<ul style="list-style-type: none"> d. Narrative and mapped description of the extent to which the application exhibits compliance with RMP Policies 3A4 and 3A5 and accompanying Objectives 3A4b, 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1 and 3E2. e. Where the applicant claims a Highlands Act exemption, require submittal of information necessary for municipal decision, or of a determination by the Highlands Council or the NJDA, as a condition for completeness. (See “Agricultural Resource Area regulations, #5 Exemptions” below.) f. Plans showing all Agricultural Resource Areas based on the map in Chapter III of the RMP . g. Plans showing the proposed area of disturbance for all aspects of the development, including roads, utilities, building sites, driveways, landscaped areas, and all appurtenant structures. h. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan. i. Plans showing conservation easements to be imposed through the development approval within Agricultural Resource Areas for which no disturbance will be allowed (with clear and permanent on-site monuments, such as concrete posts, that minimize the need for land clearing or obstruction of wildlife movement). The easement must be depicted on the plan of record and described in the deed with metes and bounds, including GPS coordinates using the State Plane coordinate system, naming a third party such as the municipality with easement enforcement rights. j. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. k. Architectural elevation renderings, if structures are proposed (preliminary for subdivision applications). l. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants). m. Copies of any related surveys, site plans, professional and/or environmental site assessments. n. Where clustering is a mandatory tool to preserve agricultural land in the Agricultural Resource Area (ARA) refer to the Cluster/Conservation Design Development Standards for development review. <p>2. Major Disturbances: Any application proposing to develop agricultural resources within the ARA shall also provide:</p> <ul style="list-style-type: none"> a. Environmental Impact Statement or Review submitted to the Highlands Council in support of its consistency determination. b. Hydrology, drainage and flooding analysis report or reports prepared in support of conformance with the municipal stormwater management plan and regulations adopted pursuant to N.J.A.C. 7:8, or a Flood Hazard Area 	
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		Control Act application pursuant to N.J.A.C. 7:13. 3. LUC Zones: RMP provisions apply equally to all Zones, although the majority of the ARA is within the Conservation Zone and Conservation Environmentally Constrained Subzone. 4. Preservation Area Special Provisions: Specifically cite and incorporate by reference the NJDA Rules 2:92 Agricultural Development in the Highlands.	
Land Use Ordinance: Agricultural Resource Areas		PLAN CONFORMANCE STANDARDS: 1. General: Adopt by reference RMP Policies 3A4 and 3A5 and accompanying Objectives 3A4b, 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1 and 3E2 and Highlands Act definitions at N.J.S.A. 13:20-3. 2. LUC Zones: RMP provisions apply equally to all Zones, although the majority of the ARA is within the Conservation Zone and Conservation Environmentally Constrained Subzone. 3. Preservation Area Special Provisions: Adopt by reference the provisions of the NJDA Rules 2:92 Agricultural Development in the Highlands.	
		AGRICULTURAL RESOURCE AREA REGULATIONS:	
		1. Statement of Purpose: Specify at a minimum that the purpose of the ordinance is to implement Agricultural Resource Area (ARA) RMP Policies 3A4 and 3A5 and accompanying Objectives 3A4b, 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1 and 3E2. Make a direct link between the ordinance and municipal policy as stated in the Master Plan and the Agriculture Retention/Farmland Preservation Plan. The purpose should clearly promote farmland preservation in the ARA, accord priority to preservation of farmland in the Agricultural Priority Areas and limit non-agricultural uses within the ARA to those that avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry and protect Important Farmland Soils. The purpose should declare that the protection of farmland is an important public goal and provide some assurance that the public investment in farmland assessment and easement acquisition for farmland shall be protected. The ordinance should include a map depicting the location of the ARA in relation to other zoning districts (i.e. residential, commercial).	The ARA map is located in Chapter III of the RMP and was spatially delineated to represent the portion of the Highlands Region with the largest concentration of active farms. The <i>Sustainable Agriculture Technical Report</i> describes the ARA and the resource values used to define the ARA and the Agricultural Priority Areas (APA), The ordinance should be drafted based on the Agriculture Retention/Farmland Preservation Plan for the municipality. The ordinance must allow farming as a viable use of the property, should not exclude certain people from the municipality, and must be applied fairly and consistently to all landowners in the ARA. The development of the ordinance should involve the farming community.
		2. Special Definitions: Include definitions of Agricultural Resource Areas and Agricultural Priority Areas (as set forth in the <i>Sustainable Agriculture Technical Report</i> , best management practices, and site disturbance, based on the RMP. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38	Where municipalities include clustering as a mandatory tool to preserve agricultural land in the Agricultural Resource Area (ARA) incorporate definitions where applicable.
		3. Special Standards: Specifically cite and incorporate by reference the NJDA Rules N.J.A.C. 2:92 Agricultural Development in the Highlands.	
		4. Applicability: The ordinance must apply to any project for which a permit	Where municipalities include clustering as a

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		<p>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 ultimate disturbance of agricultural resources within the ARA, other than exemptions as specified below.</p> <p>a. Highlands Applicability Determinations:</p> <ul style="list-style-type: none"> i. Major Highlands Developments – In the Preservation Area, require compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38 and with RMP Policies 3A4 and 3A5 and accompanying Objectives 3A4b, 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1 and 3E2. ii. Other Developments – Require compliance with the RMP Policies 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d where applicable for Clustering. <p>b. Municipal Requirements: Additional requirements as determined by the municipality.</p>	<p>mandatory tool to preserve agricultural land in the Agricultural Resource Area (ARA) incorporate RMP Policies where applicable.</p>
		<p>5. Exemptions: Incorporate the Highlands Act exemptions as listed at N.J.A.C. 7:38-2.3.</p> <p>a. Highlands Act Exemptions Addressed by N.J.A.C. 7:38-2.4(b)</p> <ul style="list-style-type: none"> i. Local Action: Where a municipality can conclude that a proposed project qualifies for an exemption under the NJDEP Preservation Area rules at N.J.A.C. 7:38-2.4(b) (which relate to Highlands Act (N.J.S.A. 13:20-28) Exemptions 5, 7, 9, 10 and 15), the municipality may process the application without formal determination by the NJDEP or the Highlands Council. A decision to process an application under this provision does not constitute, and the applicant may not rely upon, municipal action under this provision as constituting a municipal decision regarding Highlands Applicability Determination. ii. NJDEP or Highlands Council Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Area, respectively, may be relied upon regarding applicability of these exemptions. <p>b. Highlands Act Exemptions Not Addressed by N.J.A.C. 7:38-2.4(b)</p> <ul style="list-style-type: none"> i. Local Action: The municipality shall not consider an application complete for review that proposes the use of any other Highlands Act exemptions, unless a NJDEP or Highlands Council Applicability Determination is provided with the application in the Preservation or Planning Area, respectively. ii. NJDEP or Highlands Council Applicability Determination: A determination by NJDEP or the Highlands Council regarding applicability of these exemptions in the Preservation or Planning Areas, respectively, must be provided prior to municipal consideration of the proposed activity. 	<p>The Highlands Rules exempt or have special provisions for many single-family dwellings and agriculture/horticulture activities. Municipality may want to consider including some of these actions within the municipal regulations. The RMP does not and cannot require that municipalities be more stringent than the RMP or the Highlands Act, including exemption provisions. Because eligibility for the “legal shield” under the Highlands Act is linked to conformance with the Regional Master Plan, and the RMP cannot address exempt projects, municipalities that include exempt development in their ordinance will not benefit from the legal shield for that portion of the ordinance. However, a municipal ordinance may, under the Highlands Act at N.J.S.A. 13:20-15a(5), be more stringent than the RMP standards for non-exempt development, and still will be eligible for the legal shield.</p>

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		<p>6. Agricultural Resource Area Application: Provide for an Agricultural Resource Area application process applicable to all covered projects. Require submission of the materials required under the Development Review Checklist for review by the municipal engineer or other qualified professional. If the application is consistent with all requirements pertinent to the Highlands RMP, the ordinance may authorize the reviewing professional to grant an approval. 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 #13, 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. Completeness: Stipulate that no application for development (as defined by the MLUL at N.J.S. 40:55D-3) may be scheduled for local Board review until after it has been deemed complete by the applicable Board or completeness designee.</p>	
		<p>8. Notification to Highlands Council: Require that for any application for development (as defined by the MLUL at N.J.S. 40:55D-3) the applicant shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. Require that a copy of the complete application accompany such notice regarding any application for development involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more. Require that the applicant provide copies of any subsequent revisions to such applications to Highlands Council at the same time these are provided to the reviewing Board.</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>9. Requirements for Deed Restrictions: Require that any proposed activity requiring municipal approval under this ordinance commit to and perfect a conservation easement/deed restriction on the undisturbed agricultural resources within the Agricultural Resource Area of the property.</p>	
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		<p>11. Waivers and Exceptions: The ordinance must provide clear guidance to the reviewing Board, specifying that any waivers may be granted only in cases where the following review standards are met:</p> <p>a. Highlands Act Waiver Provisions: For applications other than major Highlands developments in the Preservation Area, and for any applicable approval in the Planning Area, no development involving a waiver may be approved by the development review board for disturbance of agricultural resources within the Agricultural Resource Areas unless the applicant has</p>	<p>NJDEP Highlands Rules may provide for certain waivers – the municipality may wish to more clearly define the limits of exceptions to the ordinance provisions where they won't conflict with the NJDEP rules or the RMP, which incorporates the same waivers with regard to the Planning Area.</p>

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		<p>received approval by the Highlands Council of a Highlands Act Waiver under the provisions of the RMP.</p> <p>b. Exception Provisions: For applications other than major Highlands developments in the Preservation Area, exceptions may be approved by the development review board for disturbance of agricultural resources within the Agricultural Resource Areas 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:</p> <ul style="list-style-type: none"> i. no alternative exists that will allow for at least a minimum practical use of the property; ii. the exception is for road or utility access to another part of the site where the actual development would occur (if applicable); iii. the exception provides relief only to the minimum extent necessary; iv. other environmental features are not damaged in the process of protecting agricultural resources within the Agricultural Resource Areas. <p>c. Additional Provisions: No exception may be approved that violates the NJ Erosion Control Standards at N.J.A.C. 2:90-1. All exceptions granted by the review board must be reported to the Highlands Council upon local approval.</p>	<p>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>Enforcement</p>		<p>1. Site Inspections: Provide a responsibility to specific municipal officials to periodically inspect the site throughout construction for compliance with the development approval, including provisions for:</p> <ul style="list-style-type: none"> a. Verification of baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. b. Sequencing of compliance inspections to ensure the protection of on-site and off-site resources, achievement of site construction and environmental impact requirements, placement of conservation easement monuments, etc. c. Verification of “as built” conditions including compliance with conservation easements, deed restrictions or other means of resource preservation. 	<p>Specific provision for site inspections is critical to the protection of the features protected by this ordinance and all other sensitive environmental features.</p>
		<p>2. Administrative Compliance: Provide for issuance of a stop-work order,</p>	<p>Standard MLUL authorities for administrative</p>

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		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.	compliance will apply to enforcement of this ordinance.
		3. Penalties: Provide for civil and criminal penalties for violations.	In most cases, standard penalty provisions under the MLUL will be sufficient.
Recommended Model or Example Ordinances (up to five, with model ordinances listed first)		1.	Model and draft ordinances are listed for informational purposes only. Specific language from each ordinance must be reviewed by competent legal and planning experts to determine what is most appropriate for use in complying with the Highlands Council standards for Plan Conformance.
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