

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

**Cluster/Conservation
Design Development**

Issue Overview

Aggressive agricultural and open space preservation programs have preserved a significant amount of land in the Highlands Region. Permanent protection of open space and agricultural resources typically occurs through fee simple acquisition or easement acquisition by leveraging public tax dollars. Increases in land value and budgetary funding constraints make it nearly impossible to preserve such resources with public tax dollars alone. Municipalities need several planning tools in their toolbox to achieve their desired resource protection goals and the requirements of the RMP. Planning mechanisms that do not require public funding for compensation, such as clustering techniques, shall be made available to retain agriculture and environmental resources. The Highlands Act recognizes that development, redevelopment and economic growth in certain areas of the Region are in the best interests of the State, providing innumerable social, cultural, and economic benefits. Locally, the need exists for a certain amount of growth to meet affordable housing obligations, take advantage of infill/redevelopment opportunities, increase the local tax base, and provide for general economic health.

However, communities throughout the region and New Jersey express concern about the tax implications of future growth, and the impact growth will have on existing community character. Sprawling suburban development under conventional zoning is incompatible with agricultural, environmental and historic resources; it fragments habitat, and does little to protect these resources. This type of development does not meet the requirements of the RMP or the goals of the New Jersey State Development and Redevelopment Plan (SDRP), which both seek to direct growth into compact, walkable, mixed-use centers and preserve significant resources in the environs. Development located in the environs is inefficient in that it requires new infrastructure, such as transportation, water, wastewater, and community facilities, which only increase traffic congestion and ultimately the cost of government services. Planning for more appropriate future growth requires the use of innovative tools, such as clustering, to preserve critical resources and retain community character.

Some of the key objectives of the Highlands Act are to minimize the impact of human development on the Highlands ecosystem and to maintain the rural, historic and scenic character of the region. When designed appropriately cluster development furthers these objectives by guiding future growth away from lands with high resource values or limited capacity to support growth to lands which are appropriate for development and able to accommodate it. Cluster development can moreover result in the preservation, usually in perpetuity, of significant resources.

Under the New Jersey Municipal Land Use Law (MLUL) clustering can be accomplished through contiguous or non-contiguous Planned

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

Developments pursuant to N.J.S.A. 40:55D-65. A clustering program can also be implemented under a TDR program pursuant to the 2004 State TDR Act or the Highlands Development Credit (HDC) Program. The Highlands Act requires the Highlands Council establish a regional TDR Program, which the RMP addresses through the HDC Program (see Part 7. Landowner Equity).

Planned Developments are defined in N.J.S.A. 40:55D-6 to include residential clusters. Prior to 1996 only contiguous cluster developments were permitted. Contiguous clustering takes one parcel and groups new development on a small portion of that parcel, while preserving the remainder of the parcel. Non-contiguous clustering is now permitted pursuant to MLUL amendments, effective January 5, 1996 (P.L. 1995, c.364). Clustering provisions may be adopted into a municipal zoning ordinance pursuant to N.J.S.A. 40:55D-65(c), which includes allowance for “the clustering of development between non-contiguous parcels.” Such ordinances must establish standards for the type of clustering, whether contiguous or non-contiguous, as well as the permitted density and intensity of development. The zoning ordinance also sets forth the design, bulk, and location of the buildings, as well as the percentage of the lot or development area to be set aside for preservation and development purposes.

Essentially, cluster development permits smaller lots than required by the zone, as long as there is no increase in the number of lots that would be permitted under the zoning. The remaining parcel would be held in common by the lot owners for conservation or open space purposes, including agriculture, in accordance with standards set forth at N.J.S.A. 40:55D-43. These standards allow the open space set aside to be dedicated to the municipality or another government agency. If the land is not dedicated to either of these, the developer must “provide for an organization for the ownership and maintenance of any open space” (N.J.S.A. 40:55D-43), and the organization cannot be dissolved or dispose of the open space without first offering it to the municipality.

Typically the developer would create a Homeowner’s Association to retain ownership and maintain the property. In this instance under §40:55D-43(b) the municipality or officer designated by ordinance to administer the cluster development can monitor the property to assure it is retained properly. If the property is deeded to the municipality, the municipality is responsible for monitoring the property’s maintenance. If the open space is set aside for agricultural purposes, it can be sold “in fee” to the Homeowner’s Association and then leased to a local farmer. A more viable option for the farming community is for the farmer to retain ownership and sell only the “development rights.” Should the farmer retire the parcel can be sold to a younger farmer at an affordable price to keep the agricultural industry viable in the community.

Lot-averaging is also permissible under N.J.S.A. 40:55D-40, which allows for standards in a subdivision ordinance that deviate from conventional subdivision standards for lot areas, dimensions, yards and setbacks. The

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

degree of flexibility is not specified but may include “standards encouraging and promoting flexibility, economy and environmental soundness in layout and design” (§40:55D-40(b)). A municipal lot-averaging ordinance allows for creation by subdivision of non-uniform lots which, when considered *on average*, must conform to the minimum lot size and dimensional requirements of the underlying zoning. This provides flexibility in land development in order to retain concentrated environmental or agricultural resources in contiguous areas on the largest of the remaining parcel(s). The resource areas remain in private ownership, but are protected by conservation easements or other forms of deed restriction.

When implemented appropriately cluster development should conserve land, reduce infrastructure costs, maintain landowner equity, reduce the cost of government services, and reduce the costs to the builder, which in turn reduces costs to the home buyer. The cluster should permanently protect a significant portion of the project area by clustering development within a small portion of the tract. If the new development is located adjacent or accessible to existing infrastructure, such as transportation, water, wastewater, and public facilities, this will reduce impervious surface and costs to construct or extend new infrastructure. The builder will save and filter the savings down to the home buyer. The municipality will save in terms of providing services to the new development. For example, added maintenance for new roads and facilities will be reduced. The limited impervious surface will also protect resources and enhance water and soil quality.

Program Summary

Preserving and enhancing undeveloped lands in the Highlands Region is one of the primary components of the Highlands Act. However, existing funding constraints to protect open space and agricultural land, coupled with the need to provide for some growth, require planning tools, such as clustering to protect significant resources and allow for limited growth. Cluster development shall balance these multiple needs, including, but not limited to maximizing the protection of environmental and agricultural resources, accommodating limited development and considering existing community character. To accomplish these objectives, when municipalities are considering the use of cluster development, they shall be encouraged to take a holistic approach to planning for the entire municipality through the Plan Conformance process.

A holistic approach will include a capacity and resource analysis to determine the potential for future growth and the need for resource protection for the entire municipality. An evaluation of existing infrastructure, including but not limited to transportation, water, sewer, and community facilities will be necessary to investigate the possibility of locating future growth adjacent to existing infrastructure. This will maximize the protection of resources and reduce costs associated with development not only for the builder and subsequent homebuyers, but for the governmental jurisdiction(s) having ultimate authority for the care

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

and maintenance of the infrastructure systems. For instance, to the maximum extent possible, a cluster development that is situated adjacent to an existing village shall be designed to use existing infrastructure and consider the existing community character of the village.

Implementation of cluster development shall require municipal development plans and regulations that meet the requirements of the RMP. The Highlands Council will provide grants, technical assistance and planning assistance to municipalities for cluster development planning. Projects involving cooperative planning by neighboring municipalities will be encouraged. The Highlands Council will create Cluster Development Conformance Standards that include a model cluster ordinance and relevant master plan provisions. The Council will also create Cluster Development Design Guidelines for cluster development to guide municipalities, local development review, and Highlands Project Review. Cluster development design guidelines shall be incorporated into cluster zoning ordinances. To a certain extent the traditional rural village settlement in New Jersey resembles single-family cluster development, but conventional zoning will not produce this type of development. When designed appropriately cluster development will produce the desired effect of traditional rural settlement, which enhances the quality of life in the community, and the region as a whole.

Cluster development requirements are provided below in the policies and objectives of the RMP. These policies and objectives are necessary in order to meet the resource management and protection requirements of the RMP, and to maximize the preservation of the Highlands resources. The term "cluster project area," introduced in the policies and objectives below, refers to all of the individual parcels involved in the cluster development.

Regardless of the Highlands LUCM Zone, the use of clustering must preserve at least 80 percent of the total cluster project area in perpetuity in agricultural use or for environmental protection. A set aside of 80 percent for preservation will prevent the fragmentation of existing ecosystems and agricultural land. The preservation of contiguous areas of open space and agriculture will sustain and enhance these resources. Preservation of up to 90 percent of the cluster project area will be achieved where feasible. Clustering does not have a specific targeted lot size for the developed portion of the cluster, because each project area will require specific design parameters based on the presence of environmental or agricultural resources, and specific development layouts for existing and proposed infrastructure. Such infrastructure includes, but is not limited to, transportation (roads, transit), utilities (water and wastewater), community facilities and communal open space.

The cluster design should incorporate a tighter lot size, as appropriate, to meet the resource management and protection requirements of the RMP, to maximize the preservation of the Highlands resources, and to minimize impervious surfaces. Cluster development yields are based on the septic system density requirement of the RMP relevant to the LUCM

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

Zone in which the cluster project area is located in, except where specifically allowed by the Highlands Council through the use of HDC purchases where wastewater infrastructure is available consistent with RMP policies and objectives. Higher development yields than those permitted within the requirements of the RMP, shall not be allowed in any Highlands LUCM Zone. Water and wastewater availability, expansion, or creation for cluster development shall be wholly dependent on the Highlands LUCM Zone that the cluster project area is located in. The cluster design development plans and regulations shall also consider existing community character, and should incorporate smart growth design principles, and Low Impact Development (LID). The cluster development shall be buffered appropriately to protect resources, and minimize conflicts with existing agricultural and environmental resources and new development. Clustering is mandatory in the Agricultural Resource Area, regardless of the LUCM Zone, for residential development, and shall be designed in such a way that maximizes the preservation of the agricultural resource, and sustains or enhances the viability of the agricultural industry in the municipality and the region as a whole. While the policies and objectives for the Cluster Program that follow are extensive, they are necessary to clarify when and how cluster development shall be considered and implemented. Cluster development shall meet the resource management and protection requirements of the RMP and maximize the preservation of resources in the Highlands Region.

**RMP Policies and
Objectives Addressed**

Objective 1A2d. To prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b.

Objective 2B9e. Give highest priority for the use of Net Water Availability for non-agricultural water uses to clustered or compact development, Highlands Redevelopment Areas as designated by the Highlands Council, and Receiving Zones that result in the preservation of agricultural and environmentally sensitive lands.**Objective 2J4a.** Prohibit new, expanded or extended public water systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below, and will maximize the protection of sensitive environmental resources including avoidance of Open Water buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands within the Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat Areas. The extension or creation of such systems shall follow the requirements in Objective

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

2J4b (parts 2 and 3). The applicable purposes are:

1. To address a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety. Such needs shall have highest priority for allocation of existing system capacity;
2. To serve a designated Highlands Redevelopment Area;
3. To serve a cluster development that meets all requirements of Objective 2J4b; or
4. To avoid the taking of property without just compensation.

Objective 2J4b. Clustered development served by public water supply within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met:

1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas pursuant to Policy 3A5;
2. Extension of an existing public water system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity;
3. Creation of a new public water system will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity;
4. The clustered development preserves at least 80 percent of the cluster project area in perpetuity for environmental protection or agricultural purposes. To the maximum extent feasible the developed portion (i.e., not including wetlands, open water buffers, and recreational lands) occupies no more than 10 percent of the cluster project area if served by a public or community on-site wastewater system;
5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).

Objective 2J4d. All development within the Highlands Region, in areas that are not served by public water systems, shall be at a density that can be supported by on-site wells. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area will be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

perpetuity, the cluster development in combination with the Agriculture Retention/Farmland Preservation Plan required by Objective 2J4b shall provide for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.

Objective 2K3c. Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below, and will maximize the protection of sensitive environmental resources including avoidance of Open Water buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of the Agricultural Resource Area, Steep Slopes, Prime Ground Water Recharge Areas, and Critical Habitat Areas. The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3). The applicable purposes are:

1. To address a documented existing or imminent threat to public health and safety from a pattern of failing septic systems (where the failing systems cannot reasonably be addressed through rehabilitation or replacement) or highly concentrated septic systems, where the threat is of sufficient scale to justify a public wastewater collection and treatment system or community on-site treatment facility and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety. Such needs shall have highest priority for allocation of existing system capacity;
2. To serve a designated Highlands Redevelopment Area;
3. To serve a cluster development that meets all requirements of Objective 2K3d; or
4. To avoid the taking of property without just compensation.

Objective 2K3d. Clustered development served by a public wastewater collection and treatment system or community on-site treatment facility within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met:

1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas;
2. Extension of an existing public wastewater collection and treatment system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity;
3. Creation of a community on-site treatment facility will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity, where the proposed

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

system is designed, permitted and constructed at a capacity limited to the needs of the clustered development, and 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

4. The cluster development preserves at least 80 percent of the cluster project area in perpetuity for environmental protection or agricultural purposes. To the maximum extent feasible the developed portion (i.e., not including wetlands, open water buffers, and recreational lands) occupies no more than 10 percent of the cluster project area if served by a public or community on-site wastewater system.
5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA NRCS, TSP, appropriate agent or NJDA staff, and approved by the local SCD.

Objective 2K3e. Allow the expansion or creation of wastewater collection systems within the Existing Community Zone of the Planning Area, other than the Environmentally-Constrained Sub-zone, to serve lands which are appropriate for designated TDR Receiving Zones, infill or redevelopment, to meet needs equivalent to those provided at Objective 2K3c within the Existing Community Zone, or to serve new areas for development that meet all other requirements of the RMP. The highest priority for allocation of excess or additional wastewater treatment capacity is to areas where there are clusters of failed septic systems that are located within or adjacent to Existing Areas Served. TDR Receiving Areas, where designated, affordable housing projects (where the affordable units exceed 10% of the total units), infill and redevelopment shall have higher priority for capacity than other developments requiring expansion of sewer service areas within this Zone.

Objective 2K3f. All development within the Highlands Region, in areas which are not served by public wastewater collection and treatment system or community on-site treatment facility, shall be at a density that can be supported by septic systems under Goal 2L. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area shall be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development and the Agriculture Retention/Farmland Preservation Plan required by Objective 2K3d in combination shall include provisions for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

area including the preserved agricultural lands.

Objective 2L2e. New residential development using septic systems where lot-averaging, clustering or conservation 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 or any more stringent requirement as required by N.J.A.C. 7:15.

Policy 3A5. Where it is not feasible to preserve agricultural lands within the Agricultural Resource Area (ARA) by such methods as fee simple acquisition, easement acquisition, or a TDR Program, require mandatory clustering through Municipal Plan Conformance, local development review and Highlands Project Review for residential development in an ARA. Cluster development within the Planning Area that incorporates public or community on-site wastewater utilities shall meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation area shall meet the requirements of Policy 2I1 and Objectives 2I1a and 2I1b, and where reliant on septic systems shall meet the requirements of Objective 6G1b.

Objective 3A5a. Implement regulations requiring that cluster or conservation design development proposed within an Agricultural Resource Area support the preservation of farmland, avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry, protect Important Farmland Soils, and meet resource management and protection requirements of the RMP.

Objective 3A5b. Implement regulations requiring that all cluster or conservation design development proposed in an Agricultural Resource Area be buffered appropriately with existing natural resources, such as hedgerows or trees, or with new buffers to avoid conflicts between non-agricultural development and agricultural activities, and to protect existing agricultural uses and sensitive environmental resources.

Objective 3A5c. Implement regulations requiring that all land preserved in perpetuity for environmental protection or agricultural purposes as a result of clustering be subject to a conservation easement enforceable by the Highlands Council and at least one of the following: the appropriate municipality, for agricultural purposes the County Agriculture Development Board or the State Agriculture Development Committee, and for environmental purposes Green Ares or a qualified non-profit land trust organization.

Objective 3A5d. Where the preserved land in the cluster project area is dedicated to agricultural purposes support continued agricultural viability of the agricultural land and require the implementation of best management practices through the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan, including

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or New Jersey Department of Agriculture (NJDA) staff, and approved by the local Soil Conservation District (SCD).

Policy 3C1. To prohibit through Plan Conformance, local development review and Highlands Project Review the development of additional water and wastewater infrastructure in a Agricultural Resource Area (ARA) within the Conservation and Protection Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the preservation of agricultural lands with the ARA.

Objective 6A3b. Map Adjustments proposed to change Protection and Conservation Zones or the Environmentally Constrained Sub-Zones may be approved by the Highlands Council where it finds that the petition does not result in unintended or deleterious impacts on the LUCM Zone or RMP policies and objectives applicable to adjacent or nearby lands, and the petitioner demonstrates that the petition meets all of the following criteria:

1. Demonstrates that all other means to apply policies in an area that are different than those prescribed by the Zone designation are inadequate to address the planning considerations underlying the petition, including techniques such as:
 - Waivers under the Highlands Act
 - Exemptions from the Highlands Act
 - RMP Updates Program
2. Provides a no net loss of Highlands resources and resource values within a municipality and as appropriate any HUC 14 subwatershed, including but not limited to, water availability, water quality, critical habitat and agriculture, such that all Map Adjustments provide results that are equal to or exceed on a whole the resource protection provided by the RMP;
3. Uses Highlands Development Credits or reduces the equivalent development yield so that there is no net increase in land use intensity;
4. Complies with the intent of the Highlands Act and the RMP to protect environmental resources and employ smart growth principles in development projects, and demonstrates that Highlands resource protection and smart growth planning principles have been addressed.
5. Where the petition is for the creation or extension of Existing Community Zones, the Map Adjustment also creates a meaningful opportunity to provide affordable housing; improves the balance of housing and employment; and promotes the use of alternative modes

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

of transportation, including transit, such as being located proximate to Highlands Baseline Transportation and Transit features.

Policy 6B1. To limit through Plan Conformance, local development review and Highlands Project Review, to the maximum extent permitted by law, development and use of undeveloped lands that are critical to protect, restore, or enhance sensitive environmental resources of the Highlands Region, including but not limited to Forests, Critical Habitat, Highlands Open Waters and their buffers, Riparian Areas, Steep Slopes, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and Agricultural Resource Areas.

Objective 6B1e. Prevent the extension or creation of water and wastewater utility services in the Protection Zone, Conservation Zone and Environmentally Constrained Sub-zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the protection of agricultural and environmentally sensitive resources.

Objective 6B3g. Cluster and conservation design development plans and regulations shall consider existing community character, incorporate smart growth design principles, and require Low Impact Development (LID) including, but not limited to: locating development adjacent to existing infrastructure such as water, wastewater, transportation, and public, and permitting smaller residential lots in order to incorporate community open space and existing natural resources into the design.

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 use cluster or conservation design development 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.

Objective 6G1b. Adopt municipal master plans and land development regulations which require that cluster development preserves in perpetuity for environmental protection or agricultural purposes at least 80 percent of the cluster project area. To the maximum extent feasible the developed portion (i.e. not including wetlands, open water buffers, and recreational lands) occupies no more than 10 percent of the cluster project area if served by a public or community on-site wastewater system.

Policy 6G2. To require conforming municipalities and counties to include site development programs, such as clustering to preserve land in perpetuity for environmental protection or agricultural purposes.

Objective 6I1a Center based development initiatives shall be planned within the Existing Community Zone at densities appropriate to the Zone, the community character and the State Development and Redevelopment Plan. Densities of five dwelling units and above are

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

encouraged, and are required in areas designated as voluntary TDR Receiving Zones where TDR benefits are sought under the Highlands Act.

Objective 6N1b. Implement flexible site development review programs that allow for adjustments, such as reduction of minimum setbacks, modification of uniform road frontage requirements, increase in maximum permitted height or non-contiguous clustering of development entitlements where necessary to mitigate or eliminate adverse impacts on Highlands natural resources.

Objective 6N3b. Limitation of site disturbance, clearing and grading to the minimum necessary to make reasonable use of the designated building envelope for the development parcel.

Objective 7H1b. Establish municipal clustering programs which allow for the clustering of development rights from willing landowners whose property is entitled to an exemption under the Highlands Act, for both contiguous and non-contiguous properties, so as to minimize the impact of such exempted development on the ecological integrity of the Highlands Region.

**Cluster/Conservation
Development General
Provisions**

Some aspects of cluster development apply regardless of the Highlands Land Use Capability Map (LUCM) Zone. The Highlands Council will provide Cluster Development Conformance Standards including a model cluster ordinance and relevant master plan provisions. The Council will also create Cluster Development Design Guidelines to guide municipalities in local development review, and for application in Highlands Project Review. Cluster development design guidelines shall be incorporated into cluster zoning ordinances. Municipalities shall include general provisions in cluster design and development plans and regulations including, but not limited to, the following:

- Cluster development shall be carefully planned and regulated in all Highlands LUCM Zones. The development and use of undeveloped lands shall be limited where it is critical to protect, restore, or enhance sensitive environmental and agricultural resources of the Highlands Region, including but not limited to Forests, Critical Habitat, Highlands Open Waters and their buffers, Riparian Areas, Steep Slopes, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and Agricultural Resource Areas.
- The cluster development shall preserve at least 80 percent of the cluster project area in perpetuity for agricultural use or for environmental protection. Where it is feasible, preservation of 90 percent or higher of the cluster project area will be achieved. All land preserved in perpetuity shall require a deed of easement enforceable and monitored by the Highlands Council and the corresponding municipality, appropriate agency, or non-profit land trust organization (see the sections below on Environmental Protection and Agricultural Preservation for appropriate entities).
- The total cluster developed area shall not exceed 20 percent of the

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

cluster project area. To the maximum extent feasible the cluster developed area shall occupy no more than 10 percent of the cluster project area, if the project area is served by a public or community on-site wastewater system.

- Cluster development yields shall be based on the septic system yields for the cluster project area unless approved by the Council for the use of HDC's where infrastructure is available consistent with RMP policies and objectives. Where a cluster is proposed as center-based development, densities in the Highlands LUCM Protection and Conservation Zones shall be at densities appropriate to the LUCM Zone.
- Clustering is mandatory for development within the Agricultural Resource Area (ARA) regardless of the underlying LUCM Zone for residential development. However, the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Subzone.
- Water and wastewater availability, expansion, or creation for cluster development is wholly dependent on the Highlands LUCM Zone in which the cluster project area is located and must meet the requirements of the policies and objectives stated above. Technical assistance shall be provided through the Plan Conformance process, local development review, and Highlands Project Review to ensure the cluster development meets the resource management and protection requirements of the RMP.
- Non-contiguous clustering provisions shall be in accordance with the New Jersey Municipal Land Use Law (NJ MLUL) and those MLUL provisions stated above in the Issue Overview, and meet the Goals, Policies, and Objectives (GPOs) of the RMP. Lot-averaging provisions shall be in accordance with the NJ MLUL and only be permitted where demonstrated to be consistent with the resource management and protection requirements of the RMP.
- All cluster and conservation design development plans and regulations shall consider existing community character and incorporate smart growth principles, and the use of Low Impact Development (LID) techniques. The cluster development design should consider existing community character with respect to architectural style, scale, massing, and arrangement. Smart growth principles shall include compact, walkable mixed-use development that uses existing infrastructure to the maximum extent feasible, including but not limited to water, wastewater, transportation, and community facilities. Among other benefits these characteristics will limit the degree of new impervious surface, reduce the cost to provide infrastructure, and permit smaller residential lots in order to incorporate community open space and existing natural resources into the design. LID shall be implemented in resource management practices, stormwater management methods, and low impact "green" construction activities (see Smart Growth and LID in Part 6. Future Land Use).

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

**Cluster Design for
Environmental
Protection**

- All buffers and setbacks shall consider and incorporate existing natural, historic, and scenic resources and community character (see the section below on Buffer Strips, Setbacks and Protection of Natural Landscape). Protection buffers on Highlands Open Waters and Riparian Areas apply regardless of the Highlands LUCM Zone.
- Site disturbance shall be restricted to clearing and grading to the minimum extent necessary to make reasonable use of the designated building envelopes for the development portion of the cluster project area.

The use of clustering in Highlands LUCM Zones with a high concentration of environmentally sensitive resources will be limited. Clustering for environmental protection purposes must meet the requirements of the policies and objectives stated above, along with the resource protection policies and objectives of the RMP. Municipalities shall include provisions in cluster design and development plans and regulations to preserve sensitive environmental resources based on provisions including, but not limited to, the following:

- At least 80 percent of the cluster project area shall be preserved in perpetuity for environmental protection. Where it is feasible, preservation of 90 percent or higher of the cluster project area will be achieved.
- All land preserved in perpetuity for environmental protection shall be subject to a deed of easement enforceable by the Highlands Council and the appropriate municipality, or NJDEP Green Acres, or a qualified non-profit land trust organization.
- When high value natural resources are preserved the deed of easement should prohibit active recreational purposes and allow only minimal passive recreational uses dependant on the nature of the resources.
- Passive recreational trails shall be allowed provided they do not disturb habitats for Threatened and Endangered species and must be natural landscape trails constructed of native pervious surface. Where feasible such passive recreational trails shall link to existing federal and State trail systems, greenways, and parks.

**Cluster Design for
Agricultural
Preservation**

Where other preservation tools such as fee simple acquisition, easement acquisition, or a TDR Program are not feasible to preserve agricultural lands, the use of clustering is strongly encouraged and is mandatory for residential development within the Agricultural Resource Area (ARA).

Municipalities shall prepare and implement cluster and conservation design development regulations in the ARA that support farmland preservation, avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry, protect Important Farmland Soils, and meet resource management and protection requirements of the RMP. Municipalities shall include

DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING

provisions in development regulations and master plan elements for cluster development including, but not limited to, the following:

- At least 80 percent of the cluster project area shall be dedicated in perpetuity for agricultural use. Where it is feasible, preservation of 90 percent or higher of the cluster project area will be achieved.
- All land preserved in perpetuity for agricultural purposes shall be subject to a deed of easement enforceable by the Highlands Council and the appropriate municipality, or the County Agriculture Development Board, or the State Agriculture Development Committee (SADC). The deed of easement shall use language similar to the New Jersey SADC Farmland Preservation Program easement. The deed of easement and a legally enforceable Homeowner's Agreement, where applicable, shall include Right to Farm (RTF) Act provisions. This RTF language will make the buyer aware they will be residing adjacent to working farms.
- The development of additional water and wastewater infrastructure in an ARA within the Conservation and Protection Zones of the Planning Area is generally prohibited, but can be approved by the Council where it meets the requirements of the Utility policies and objectives above for clustering and maximizes the preservation of agricultural lands in the ARA.
- Development in the cluster project area shall be buffered appropriately to avoid Right to Farm conflicts between the non-agricultural development and the agricultural use. Buffers shall consist of existing natural resources, such as hedgerows or trees, or new buffers similar to existing natural vegetation (see Buffer Strips below).
- The most productive Important Farmland Soils shall be given priority in determining the set aside agricultural parcel and shall be preserved to the maximum extent possible within the cluster project area.
- The cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan shall be prepared, or amended as appropriate, to support continued viability of the agricultural land being preserved and the implementation of best management practices (BMPs).
- The preserved parcel remaining in agricultural use shall be required to use BMPs on the Farm Management Unit to reduce nutrient and chemical loading rates by implementing a Farm Conservation Plan (FCP) that focuses on the protection of water and soil resources. The FCP shall be prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District. The use of USDA NRCS and Farm Service Agency cost-share programs that support BMPs shall be promoted.
- Where appropriate, community supported agriculture businesses shall be encouraged to allow homeowners to take advantage of local

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL
AT THE JUNE 12, 2008 COUNCIL MEETING**

**Buffer Strips,
Setbacks and
Protection of Natural
Landscape**

produce and enhance the viability of the agricultural industry.

All development in the cluster project area shall be designed to protect the most important resources, i.e. agriculture, open space, and/or environmentally constrained resources and shall maintain the Highlands rural, scenic, and historic character. Setback requirements shall be designed to consider and harmonize the cluster development in the cluster project area with existing development.

Existing natural resources and vegetation (hedgerows/trees, woodlands or forest, wetlands, and streams) shall be retained as buffers strips wherever feasible. In all Highlands LUCM Zones the developed area of the cluster shall be located behind an existing hedgerow (mature trees) or screened with a new buffer, such as a thickly planted berm of native trees or shrubs, that is landscaped in such a manner to resemble existing woodlands. Use of existing resources as buffers will protect natural vegetation, minimize the areas of lawn, and reduce non-point loadings associated with lawns. Natural areas preserved close to homes will enhance the value of the property, as well as protect the environment. Other natural or manmade historic features, such as rock walls, shall also be retained. All development design within the cluster project area shall meet the requirements of the goals, policies, and objectives of the RMP and shall be reviewed and approved by the Highlands Council.

-
-