

Guidance for Municipal Plan Conformance with the Highlands Regional Master Plan Cluster/Conservation Design Development Conformance Standards

New Jersey Highlands Council

COMPONENT	STATUS ¹	STANDARDS	COMMENTARY
Environmental Resource Inventory (ERI)		<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General: Incorporate by reference the Highlands Council maps of Land Use Capability Zones, the Preservation and Planning Areas, Agricultural Resource Areas (ARA), Forest Resource Area, Highlands Open Water buffers, Riparian Areas, steep slopes, Critical Habitat, carbonate rock areas, prime ground water recharge areas, Wellhead Protection Areas, and Important Farmland Soils. Identify through accompanying maps and narrative the ARAs; existing land use including all preserved farmland (including eight 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). LUC Zones: Clustering is mandatory for residential development within the ARA regardless of the underlying Land Use Capability Zone. However, the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Sub-Zone. Preservation Area Special Provisions: Not applicable. 	<p>The Highlands Council will provide 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 3 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.</p> <p>To avoid duplication, the maps referenced in the ERI for the ARA Conformance Standards can be used for Cluster Conformance Standards.</p> <p>If there are no lands within ARAs, preserved farmland, or existing farmland, these standards do not apply and may be waived.</p>
		<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> 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-PIG areas and Municipal/County Agriculture Development Areas-ADAs); pending farmland preservation applications within the ARAs; and include all land classes, such as vacant property (Class 1) and Farm Assessed (Classes 3A and 3B) within the municipality. Identify pending open space acquisitions and properties on the Recreation and Open Space Inventory (ROSI), if a ROSI exists. Incorporate and make reference to maps for sensitive environmental 	<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> <p>The <i>Sustainable Agriculture Technical Report</i> describes the APA and the resource values used to define the APA.</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).

	<p>resources where applicable including, but not limited to, the Forest Resource Area, Highlands Open Water buffers, Riparian Areas, steep slopes, Critical Habitat, carbonate rock areas, prime ground water recharge areas and Wellhead Protection Areas, all of which are addressed under separate conformance standards.</p> <p>2. Narrative: The cluster/conservation design development narrative of the RMP should be included within the ARA discussion as one of the strategies to preserve agriculture and reference the Agriculture Retention/Farmland Preservation Plan (AR/FPP), the Land Use Plan, and other applicable master plan elements (i.e. Open Space/Conservation Plans) that illustrate in depth the strategies in place to preserve sensitive agricultural and environmental resources.</p>	<p>To avoid duplication, the maps referenced in the ERI for the ARA Conformance Standards and sensitive environmental resource conformance standards can be used for Cluster Conformance Standards. ROSI and farmland preservation inventory requirements are addressed in the Land Preservation Conformance Standards.</p>
<p>Municipal Master Plan; Land Use & Conservation Plan Elements</p>	<p>BASIC PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> General (Background Statement): Adopt by reference the Highlands Council maps of Land Use Capability Zones, Preservation and Planning Areas and ARAs, if applicable. Adopt by reference all applicable Highlands Resource designations and maps of Highlands Resources and Resource Areas. The Land Use Plan should reference the definitions of the ARAs in the AR/FPP Element (see ARA Conformance Standards). Policy Statement: If an ARA is present in the municipality adopt by reference RMP Policy 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d, Policies 3C1, 6H3 and Objectives 6N1b and 7H1b into the policies, goals, objectives section of the Master Plan. Relate the policies to MLUL purposes as appropriate. The use of clustering must meet the resource management and protection and water and wastewater utility requirements of the RMP, and the policies and objectives cited above. LUC Zones: Clustering is mandatory for residential development within the ARA regardless of the underlying Land Use Capability Zone. However, the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Sub-Zone. Preservation Area Special Provisions: Specifically cite and indicate the applicability of the NJDA Rules at N.J.A.C. 2:92, Agricultural Development in the Highlands and NJDEP Highlands Preservation Area Rules at N.J.A.C. 7:38. 	<p>The ARA map is located in Chapter 3 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 ARA maps referenced in the ERI and duplicated in the AR/FPP should be cross-referenced in the Land Use Plan.</p> <p>Since clustering is mandatory for residential development within the ARA, municipalities adopting the ARA conformance standards and an ARA ordinance should also be adopting cluster conformance standards and a cluster ordinance.</p> <p>Applicable MLUL provisions for clustering, should include, but not be limited to, the provisions illustrated in the RMP Cluster/Conservation Design Development Program.</p> <p>Cluster/conservation design development in the Preservation Area must either rely on septic systems and domestic wells or receive a redevelopment waiver from the NJDEP that permits the use of water or wastewater utility services.</p>
	<p>PLAN CONFORMANCE STANDARDS:</p> <ol style="list-style-type: none"> Master Plan Requirements: Establish clustering for residential development within the ARA as mandatory where it is not feasible to preserve agricultural 	<p>The maps referenced in the ERI and duplicated in the AR/FPP should be cross-referenced in the Land Use Plan element.</p>

	<p>lands within the ARA by such methods as fee simple acquisition, easement acquisition, or transfer of development rights. Clustering to preserve sensitive environmental and agricultural resources in all Highlands Land Use Capability Zones shall be a policy of the municipality, enumerating the purposes and benefits as cited in the Land Use Plan and AR/FPP. Regardless of Land Use Capability 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. In addition to Basic Plan Conformance, adopt by reference RMP Objectives, including but not limited to, 2J4a, 2J4b, 2J4d, 2K3c, 2K3d, 2K3f, 2L2e, 6C3, 6F6a, 6H1b, 6H1d, 6I1a, and 6N3b. The use of clustering must meet all of the resource management and protection and water and wastewater utility requirements of the RMP, and the policies and objectives cited above.</p> <p>2. Land Use Plan Element Requirements: Establish importance of the use of cluster/conservation design development. Use the ERI as the basis where appropriate, and then discuss the values served by preserving sensitive environmental and agricultural resources through the use of clustering. Use these statements as the basis for Master Plan policy in keeping with the RMP. Establish the map of the ARA as the initial identification where clustering is mandatory for residential development in the municipality where other preservation tools are not feasible, to be supplemented and amended as needed, by on-site identification through the local farmland/open space preservation programs and the local development review process. The narrative shall enumerate the purposes and benefits cited in the RMP policies and objectives, in the AR/FPP for the ARA, and other applicable elements (i.e. open space/conservation) to preserve sensitive environmental and agricultural resources through clustering. Regardless of Land Use Capability 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. The Land Use Plan should clearly indicate the specific types of clustering (contiguous, non-contiguous), or other conservation design techniques (such as lot-averaging that the municipality seeks and the major goals intended to be achieved by the cluster ordinance. The Plan may itself include specific cluster design examples, and must provide reference to the municipal Cluster/Conservation Development Design Guidelines. The community vision should be clearly illustrated in the Land Use Plan discussion on clustering and accompanying design guidelines. In promoting a community vision for the municipality, cluster/conservation design development shall consider existing community character, and shall incorporate smart growth design principles and Low Impact Development techniques.</p>	<p>Since clustering is mandatory for residential development within the ARA, municipalities adopting the ARA conformance standards and an ARA ordinance should also be adopting cluster conformance standards and a cluster ordinance.</p> <p>The Land Use Plan should reference the cluster ordinance under the municipal land use ordinance discussion. The Planning Board and zoning board of adjustment should verify ARA and local preservation priorities with the AR/FPP and other relevant elements such as the municipal Open Space Plan, and with committees such as the Municipal Agricultural Advisory Committee (AAC), the County Agriculture Development Board (CADB), municipal or county open space committee staff, Environmental Commission, and other appropriate Municipal/ County planning staff.</p> <p>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. The Council will create Cluster/Conservation Design Development Guidelines for cluster development to guide municipalities. The municipality will create their own design guidelines based on community visioning and the Council model design guidelines to adopt and incorporate into land use ordinances and for reference in the Land Use Plan.</p> <p>For the preservation of sensitive environmental resources see the specific Conformance Standards, including but not limited to, Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas and Wellhead Protection Areas. For Low Impact</p>
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			Development in cluster design development see the Low Impact Development and Community Design Conformance Standards. Cluster/Conservation Design Development shall be in conformance with Executive Order #114, Section 7.
Institutional Capability		1. Planning: The Council will provide assistance should planning board and zoning board of adjustment staff and members 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 cluster/conservation design development ordinance are limited to those situations allowed by the RMP, are the minimum necessary and do not damage municipal values for environmental protection and farmland and open space preservation.	To assist board members and staff regarding this topic and the implementing ordinance the Council will provide educational and training opportunities as requested. Council will work with the municipality's professionals if requested.
		2. Project Review: Municipality must have capacity to interpret digital and surveyed data on sensitive environmental and agricultural resources, and apply the ordinance requirements to the resources identified on a property.	
		3. Site Visit Authority: Municipality staff and development review boards must have ability to conduct site visits to visually verify sensitive environmental and agricultural resources 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, CADB, Environmental Commission or open space committee identified above depending on the presence of sensitive agricultural or environmental resources.
		4. Independent Projects: The municipality must periodically and in a timely manner inform the Highlands Council of special or independent projects (e.g., hydrogeology or water quality studies) developed and implemented regarding cluster/conservation design development protection and regulation, as related to Plan Conformance or RMP implementation.	
Development Review Checklists		PLAN CONFORMANCE STANDARDS: 1. General: As a minimum condition of completeness, require for all applications addressed by "Cluster/Conservation Design Development Regulations, #4 Applicability" (see below): a. Highlands Council consistency determination. b. Information identifying ARA and sensitive environmental resources on site using GIS layers. c. For projects located within an ARA, information identifying soil quality on site, including Prime, Statewide, Unique, and Locally Important farmland	Where there are sensitive environmental resources preserved through the cluster project area; applicable NJDEP rules and standards apply; see the specific Conformance Standards, including but not limited to, the Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas

		<p>soils.</p> <ul style="list-style-type: none"> d. Identification of any preserved land or land targeted for preservation (agriculture and open space) located adjacent to the site. e. Narrative and mapped description of the extent to which the application exhibits compliance with municipal ordinances developed in accordance with all applicable RMP Goals, Policies and Objectives (e.g., Policy 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d, Policies 3C1, 6H3 and Objectives 6N1b and 7H1b.) f. Where the applicant claims a Highlands Act exemption, require submittal of information necessary for municipal decision, or of a determination by NJDEP or the Highlands Council as a condition for completeness. (See “Cluster/Conservation Design Development Regulations, #5 Exemptions” below.) g. Plans showing all on-site Highlands resources and Resource Areas including ARAs, based on adopted maps in the ERI and the Master Plan and where applicable, the environmental resources defined and covered under NJDEP Preservation Area rules at N.J.A.C. 7:38. h. 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. i. Plans showing the proposed grading, soil conservation plan, and sediment and soil erosion control plan. j. Plans showing proposed conservation easements, including for the cluster project area lands to be dedicated to environmental protection or agricultural use for which specific deed restrictions will be imposed (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 the Highlands Council and a third party such as the municipality with easement enforcement rights. Deeds of easement must be recorded with the County in which the municipality is located. k. Plans documenting baseline conditions in all areas designated for conservation easements, deed restrictions or other means of resource preservation. l. Plans showing the cluster/conservation design development project area, including but not limited to, the area set aside for preservation, the area set aside for development, the identification of buffers, setbacks and recreational trails, if applicable. Other detailed plans, where appropriate, such as those delineating public spaces, landscaping including street tree planting areas, and vehicular access and integration with available modes 	<p>and Wellhead Protection Areas.</p>
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		<p>of transportation, including pedestrian, bicycle, motor vehicle, rail or mass transit.</p> <ul style="list-style-type: none"> m. A stormwater management plan delineating Low Impact Development techniques, and integration with public spaces, existing and proposed landscape features, and buffers. n. Architectural plans indicating the proposed architectural style, scale, massing, and arrangement of buildings. Where multiple residential architectural styles are proposed to harmonize with existing community character; include examples of each design. o. A list of any encumbrances affecting the property (i.e., easements, deed restrictions, covenants). p. Copies of any related surveys, site plans, professional and/or environmental site assessments. <p>2. LUC Zones: None.</p> <p>3. Preservation Area Special Provisions: Require submittal of Highlands Preservation Area Approval (HPAA) for any project that proposes the disturbance of environmental resources defined by and covered under NJDEP Preservation Area rules at N.J.A.C. 7:38, with narrative and mapped description of the extent to which the application exhibits compliance with these rules.</p>	
<p>Land Use Ordinance: Cluster/Conservation Design Development</p>		<p>PLAN CONFORMANCE STANDARDS:</p> <ul style="list-style-type: none"> 1. General: Not applicable. 2. LUC Zones: Clustering is mandatory for residential development within the ARA regardless of the underlying Land Use Capability Zone. However, the majority of the ARA is within the Conservation Zone and the Conservation Environmentally Constrained Sub-Zone. 3. Preservation Area Special Provisions: Specifically cite and indicate the applicability of the NJDA Rules at N.J.A.C. 2:92, Agricultural Development in the Highlands and NJDEP Highlands Preservation Area Rules at N.J.A.C. 7:38 	<p>The ARA map is located in Chapter 3 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.</p> <p>For mandatory clustering in the ARA see the Land Use Ordinance section in the ARA Conformance standards.</p>
		<p>CLUSTER/CONSERVATION DESIGN DEVELOPMENT REGULATIONS:</p>	
		<ul style="list-style-type: none"> 1. Statement of Purpose: Specify that the purpose of the ordinance is at a minimum, to implement cluster/conservation design development RMP Policy 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d, Policies 3C1, 6H3 and Objectives 6N1b and 7H1b, and (if Preservation Area is present in the municipality) to ensure compliance with the NJDEP Preservation Area rules at N.J.A.C. 7:38. Make a direct link between the ordinance and municipal policy as stated in the Master Plan, the Land Use Plan and the AR/FPP. The purpose should, at minimum, include preserving sensitive environmental and agricultural resources as specified in the RMP. The ordinance should establish standards for the type of clustering, whether contiguous or non-contiguous, or for the use of other conservation design techniques such as lot-averaging, as 	<p>The Council will create Cluster/Conservation Design Development Guidelines for cluster development to guide municipalities. The municipality will create their own design guidelines based on community visioning and the Council model design guidelines to adopt and incorporate into land use ordinances.</p> <p>For the preservation of sensitive environmental resources see the specific Conformance Standards, including but not</p>

		<p>well as the permitted density and intensity of development as specified in the RMP. The ordinance should set forth the design parameters, bulk requirements, criteria for selection of the portion of the site to be developed, the percentage of the lot to be set aside for preservation, buffer requirements and other details as specified in the RMP and the municipal master plan. Municipal Cluster/Conservation Design Development Guidelines should be included in the ordinance. The ordinance should specify the requirements for conservation easements including, but not limited to, the specifics with regard to resource protection, monitoring, enforcement and the requirement for a Farm Conservation Plan where preserved areas are dedicated to agriculture.</p> <p>The ordinance should include a map depicting the location of the ARA in relation to other zoning districts (i.e. residential, commercial) and reference the ARA ordinance. The ordinance should specify that cluster/conservation design development proposed within an ARA should 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 and water and wastewater utility requirements of the RMP.</p>	<p>limited to, the Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas, and Wellhead Protection Areas. For Low Impact Development in the cluster design development see the Low Impact Development and Community Design Conformance Standards.</p> <p>The ordinance should be drafted based on the requirements in the RMP Cluster/Conservation Design Development Program, the cluster discussion in the municipal Land Use Plan and the AR/FPP. The ordinance must allow for and help secure farming as a viable use of the property and the Highlands Region, and must be applied fairly and consistently to all landowners. The ordinance should enact the community vision outlined in the Land Use Plan and where agricultural resources are involved, the development of the ordinance should involve the farming community.</p>
		<p>2. Special Definitions: Include definitions of cluster development and open space/conservation design development as set forth in the RMP, the Cluster/Conservation Design Development Guidelines, and definitions for ARAs as set forth in the <i>Sustainable Agriculture Technical Report</i> and the NJDA Rules at N.J.A.C. 2:92 Agricultural Development in the Highlands, best management practices, sedimentation, and site disturbance, and sensitive environmental resources based on the RMP. Provide references to the NJDEP Preservation Area rules at N.J.A.C. 7:38, and the NJ Erosion Control Standards at N.J.A.C. 2:90-1.</p>	<p>Definitions for cluster/conservation design development are located in the RMP Cluster/Conservation Design Development Program and the Cluster/Conservation Design Development Guidelines.</p>
		<p>3. Special Standards: Specifically cite and indicate the applicability of the NJDA Rules at N.J.A.C. 2:92, Agricultural Development in the Highlands and NJDEP Highlands Preservation Area Rules at N.J.A.C. 7:38.</p>	<p>For the preservation of sensitive environmental resources see the specific Conformance Standards, including but not limited to, the Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas and Wellhead Protection Areas.</p>
		<p>4. Applicability: The ordinance must apply to any project for which a permit</p>	

		<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 proposal of a cluster/conservation design development, 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 Policy 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d, Policies 3C1, 6H3 and Objectives 6N1b and 7H1b. ii. Other Developments – Require compliance with the RMP Policy 3A5 and accompanying Objectives 3A5a, 3A5b, 3A5c and 3A5d and Policies 3C1, 6H3 and Objectives 6N1b and 7H1b. <p>b. Municipal Requirements: Require compliance with the NJ Erosion Control Standards at N.J.A.C. 2:90-1. Additional requirements as determined by the municipality.</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 	<p>The Highlands Rules exempt or have special provisions for many single-family dwellings and agriculture/horticulture activities. A 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 RMP, 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>

		of the proposed activity.	
		<p>6. Cluster/Conservation Design Development Application: Provide for a Cluster/Conservation Design Development 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 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 in perpetuity on the undisturbed sensitive environmental or agricultural resources of the property enforceable by the appropriate entity as outlined in the Cluster/Conservation Design Development land use ordinance.</p>	
		<p>10. Cluster/Conservation Design Development Guidelines: The ordinance shall include design development guidelines that describe what cluster/conservation design development shall achieve and represent. Including, but not limited to the following:</p> <ul style="list-style-type: none"> a. Cluster design development shall be carefully planned in all Highlands Land Use Capability Zones. The development and use of undeveloped lands shall be limited where it is critical to protect, restore, or enhance the most important sensitive environmental and agricultural resources of the Highlands Region, including, but not limited to Forest Resource Area, Highlands Open Water buffers, Riparian Areas, steep slopes, Critical Habitat, Carbonate Rock Areas, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and ARAs. 	<p>The Council will create Cluster/Conservation Design Development Guidelines for cluster development to guide municipalities. The municipality will create their own design guidelines based on community visioning and the Council model design guidelines to adopt and incorporate into land use ordinances. These guidelines will describe what cluster/conservation design development shall accomplish and represent.</p> <p>For the preservation of sensitive environmental resources see the specific</p>

	<ul style="list-style-type: none"> b. Cluster development yields shall be based on the septic yields for the cluster project area, with no additional yield than allowed under municipal zoning, unless approved by the Highlands Council for the use of Highlands Development Credits where infrastructure is available consistent with RMP policies and objectives. Where a cluster development is proposed as center-based development, densities shall be appropriate to the Land Use Capability Zone. c. Where a municipality has developed a plan for the aggregation of cluster/conservation design developments to minimize the potential for dispersed clusters, the cluster design development shall conform to the municipal plan to the maximum feasible extent. d. New residential development using septic systems and water supply wells shall be designed to minimize the risk of well contamination. e. Cluster design development shall incorporate smart growth principles where feasible, including but not limited to: a of mix land uses; compact building design; walkable neighborhoods; a range of housing opportunities and choices; fostering distinctive communities with a strong sense of place; preserving critical environmental and agricultural resources; directing development towards existing infrastructure (water, wastewater, transportation, and community facilities); providing a variety of transportation choices (pedestrian, bicycle automobile, bus, rail, etc); and encouraging community and stakeholder collaboration in development decisions. f. Cluster design development shall require the use of Low Impact Development (LID) techniques such as, but not limited to: open space and landscaping requirements, water conservation, stormwater management, pervious pavements, green roofs, narrower roads, rain gardens, natural landscaping, rain barrels, re-use basins, curbless roads, swale blocks, and reverse soil compaction. g. Cluster design development shall be designed to maintain the Highlands rural, scenic, and historic character and consider existing community character with respect to architectural style, scale, massing, and arrangement of buildings. Protection of historic, cultural, archaeological, and scenic resources on the Highlands Historic and Cultural Resource Inventory or the Highlands Scenic Resource Inventory shall be considered, and the sensitive treatment of existing resources and commitment to minimal negative impacts shall be primary standards for decision-making relative to site design. h. All buffers and setbacks shall consider and incorporate existing natural, historic, and scenic resources and community character and be designed to consider and harmonize the cluster development in the cluster project area with adjacent existing development. Existing natural resources and 	<p>Conformance Standards, including but not limited to, Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas and Wellhead Protection Areas. For Low Impact Development in cluster design development see the Low Impact Development and Community Design Conformance Standards. For water and wastewater see the Utility Plan Conformance Standards.</p>
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		<p>vegetation (e.g. hedgerows/trees, woodlands or forest, wetlands, and streams) shall be retained as buffer features whenever feasible. Except where the cluster is being integrated into an existing neighborhood or center, 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 as to resemble existing woodlands. Where agricultural resources are preserved, the cluster project area shall be buffered appropriately to avoid conflicts and facilitate compliance with Right to Farm regulations.</p> <ul style="list-style-type: none"> i. 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 (i.e. the use of LID and retaining existing mature trees). j. When agricultural resources are preserved 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. k. When high value natural resources are preserved the deed of easement shall prohibit active recreational uses and facilities, and only allow minimal passive recreational uses dependent upon the nature of resources. Passive recreational trails shall be allowed provided they do not disturb habitats and shall be natural landscape trails constructed using native pervious surface materials. Where feasible, such passive recreational trails shall link to existing federal, State, and local trail systems, greenways, and parks. 	
		<p>11. <u>Disturbance Limitations:</u> The ordinance must include the following minimum requirements regarding disturbance of sensitive agricultural and environmental resources:</p> <ul style="list-style-type: none"> a. Any application proposing a disturbance as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38 by a “major Highlands development” in the Preservation Area as defined by the NJDEP Preservation Area rules at N.J.A.C. 7:38 shall not be approved by the municipality unless the applicant has received or the approval is conditioned upon subsequent NJDEP approval of a Highlands Preservation Area Approval (HPAA) for the project. b. Any application proposing disturbance of sensitive agricultural or environmental resources under this ordinance must provide documents relative to the resource being disturbed by any regulated development in the Planning Area, or of a regulated Preservation Area development not addressed by 10.a above. See the specific Conformance Standards, including but not limited to, the ARA, the Forest Resource Area, Highlands Open Waters and Riparian Areas, steep slopes, Critical Habitat, prime ground water recharge areas, carbonate rock areas and Wellhead 	<p>These are the key standards for site development regarding the resources affected by the ordinance. The provisions of the NJDEP rules should be included in the municipal ordinance either by reference or in whole. However, the municipality will make the findings under 10.b and 10.c, not the NJDEP.</p> <p>The ordinance may include provisions in addition to and/or that are more restrictive than those required pertinent to the RMP. While RMP policies must be regulated as zoning requirements (requiring variance relief for any deviation), any additional provisions may, at the option of the municipality, be treated as design standards with allowances for waivers.</p>

		<p>Protection Areas.</p> <p>c. Prohibitions and limitations otherwise that are in direct keeping with the municipal values to be protected, as stated in the Master Plan and ordinance purpose, including prohibitions and limitations on site disturbance, forest clearance, infrastructure development, and site development (including sensitive agricultural and environmental resources).</p>	
		<p>12. Reporting Requirements: Require that prior to issuance of a final Certificate of Occupancy or Approval and/or to release of any performance bonding held in relation to the project, that the applicant provide an “as-built” survey depicting the final site conditions.</p>	
		<p>13. Municipal Approvals Conditioned On State Approvals:</p> <p>a. General: Require that the approved development demonstrate compliance where applicable with the NJ Erosion Control Standards at N.J.A.C. 2:90-1.</p> <p>b. Applicable to Preliminary Approvals: Preliminary approval shall be conditioned such that land modification affecting sensitive agricultural and environmental resources shall not occur until such time as the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Preliminary approval shall also be conditioned upon review and approval by the municipal or board attorney of the language to be included in a deed restriction pertinent to any conservation easement that is a part of the approval.</p> <p>c. Applicable to Final Approvals: Final approval shall be conditioned such that land modification affecting sensitive agricultural and environmental resources shall not occur unless the Highlands Council has either not called up the approval for review, or has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and either finds that the approval meets RMP requirements or finds that the approval must be modified and the municipality has so modified the approval. Final approval shall also be conditioned upon the filing of a deed restriction, as approved by the municipal or board attorney pertinent to any conservation easement that is part of the approval. For the cluster project area; copies of the conservation easement(s) for the preserved land dedicated in perpetuity to environmental protection or agricultural purposes enforceable by the appropriate entity as outlined in the Cluster/Conservation Design Development land use ordinance. For the cluster project area where agricultural resources are preserved; provide the Highlands Council with confirmation of development and implementation of a USDA NRCS</p>	<p>The purpose of this provision is to ensure that applicants do not assume approval prior to the legal fact of final approval, and that site disturbance based on preliminary findings does not harm resources that might be protected through a Highlands Project Review, Highlands Council “call up,” or HPAA permit process.</p> <p>The Highlands Council has “call up” rights under N.J.S.A. 13:20-17.c, allowing for a determination, “within 15 days after any final local government unit approval, rejection, or approval with conditions thereof,” on whether to review “any application for development in the preservation area.” Once a municipality comes into conformance in the Planning Area, the same approach applies. Because disturbance of regulated resources based on <u>preliminary</u> municipal approval would contradict the clear intent of the Act to allow Council review upon <u>final</u> approval, conditions on local preliminary and final approval are necessary. In addition to Council review authority for specific projects, the Council may determine that a municipal decision does not conform to the RMP as agreed to under Plan Conformance, and may act to determine that the municipality is no longer in conformance. Doing so would trigger provisions of the Act regarding loss of the legal shield, funding priorities and return</p>

	<p>Farm Conservation Plan as outlined in the Cluster/Conservation Design Development land use ordinance. For the cluster project area a legally enforceable Homeowner’s Agreement where applicable.</p> <p>d. Applicability of Highlands Council Review. The ordinance must require that in the case of any development application involving the potential disturbance of two (2) acres, or more, or a cumulative increase in impervious coverage of one (1) acre, or more, the reviewing board shall provide a certified copy of the fully-executed resolution memorializing its final decision in the matter to the Highlands Council within ten (10) days of its adoption. The reviewing board must require the applicant to provide a copy of the final site plan and subdivision plats to the Highlands Council in digital format that meets the Highlands Council standards for digital submissions, where such plans and plats have been prepared in digital form. All resolutions memorializing a final decision shall include conditions requiring these submittals, and that no local decision shall be deemed final until the Highlands Council has received the information required in this paragraph.</p> <p>e. Applicable to Building Permits: The ordinance must require that no building permit shall be issued and no other land modification affecting sensitive agricultural and environmental resources shall commence until the municipal development approval is final. If the building permit is the only applicable municipal approval, the building permit shall not be approved unless the applicant has proved that the project is in compliance with the standards of this ordinance, that the project is eligible for a Highlands Act exemption, that the Highlands Council has determined that the building permit will not result in the disturbance of sensitive agricultural and environmental resources, or that the project has received an HPAA or HPAA with waiver from the NJDEP.</p>	<p>of any prior funding provided by the Council.</p>
	<p>14. 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 sensitive agricultural and environmental resources unless the applicant has 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 sensitive agricultural and environmental resources only where the applicant can demonstrate</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> <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</p>

		<p>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 sensitive agricultural and environmental resources. <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>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, 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.</p>	<p>Standard MLUL authorities for administrative compliance will apply to enforcement of this ordinance.</p>
		<p>3. Penalties: Provide for civil and criminal penalties for violations.</p>	<p>In most cases, standard penalty provisions under the MLUL will be sufficient.</p>

<p>Recommended Model or Example Ordinances (up to five, with model ordinances listed first)</p>	<ol style="list-style-type: none"> 1. American Planning Association Model Cluster Ordinance: http://www.planning.org/smartgrowthcodes/pdf/section47.pdf 2. Readington Township, NJ, Agricultural Residential Zone 3. Hillsborough Township, NJ, Planned Residential Cluster and Farmland/Open Space Preservation Development Option 4. East Amwell Township, NJ, Amwell Valley Agricultural District 5. Upper Freehold Township, NJ, Farmland/Open Space Conservation Clusters 	<p>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.</p>
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