



State of New Jersey

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FARMING AND THE HIGHLANDS ACT

The preservation of farmland and the promotion of agriculture in the Highlands Region are two essential objectives of the Highlands Water Protection and Planning Act ("Highlands Act"). The Legislature declared in the Highlands Act that the approximately 110,000 acres of agricultural lands in active production in the Highlands Region are important resources of the State that should be preserved, and that the agricultural industry in the Highlands Region is a vital component of the economy, welfare, and cultural landscape of the Garden State. The Legislature also declared that the maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible wherever appropriate in the New Jersey Highlands. To ensure these objectives are achieved, there are a number of provisions within the Highlands Act that address the preservation and promotion of agriculture.

Right to Farm Act – Foremost among the Highlands Act provisions addressing agriculture is the legislative directive that the Highlands Act not compromise the New Jersey Right to Farm Act ("RTFA"). The Legislature enacted the RTFA in 1983 for the express purpose of protecting commercial farms from nuisance actions to ensure the continued viability of farming in New Jersey. To achieve this objective, the RTFA creates an irrebuttable presumption that no commercial agricultural operation, activity or structure constitutes a nuisance provided that it conforms to agricultural management practices or whose specific operation or practice has been determined to constitute a generally accepted agricultural operation or practice. In addition, the operation must conform to all relevant federal or State law and not pose a direct threat to public health and safety.

The Legislature amended the RTFA in 1998 to further protect commercial farms by exempting certain activities from regulation by municipal or county ordinances, resolutions or regulations. Specifically, the RTFA enumerates those activities which a commercial farm may engage in without being subject to municipal or county regulation, provided that the operation conforms to certain defined agricultural management practices, or accepted site specific practices, and does not pose a direct threat to public health and safety.

The Highlands Act recognizes the supremacy of the RTFA by providing that nothing in Highlands Act, the Regional Master Plan to be developed and implemented by the Highlands Council, any rules or regulations adopted by the Department of Environmental Protection (“NJDEP”) pursuant to the Highlands Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the Regional Master Plan shall be construed to alter or compromise the goals, purposes, policies, and provisions of, or lessen the protections afforded to farmers by the RTFA.

The Regional Master Plan and Farming – The supremacy of the RTFA and the need to preserve farmland and promote agriculture are also addressed in the provisions of the Highlands Act concerning the development and implementation of the Regional Master Plan. The Highlands Act charges the Highlands Council with developing a master plan for the Highlands Region that will serve as a flexible blueprint for the future of the Preservation and Planning areas. The Regional Master Plan must recognize and not compromise the goals, purposes, policies, and the protections afforded to farmers by the RTFA while simultaneously seeking to preserve farmland and promote compatible agricultural uses.

As part of the master planning process, the Highlands Council must undertake a resource assessment, which includes examining farming in the Highlands Region and a review of overall policies required to maintain and enhance that resource. Additionally, the Highlands Council must identify prime agricultural areas in the Planning Area that should not be developed.

Agricultural Use & Development Excluded from NJDEP Rules – To further ensure that agriculture in the Highlands Region may continue to grow, the Highlands Act excludes agricultural use and agricultural development from regulation by NJDEP. Under the Highlands Act, certain development projects in the Preservation Area must seek approval from NJDEP before construction may begin. These projects are defined as “major Highlands developments.” The Highlands Act specifically excludes agricultural use or development from this definition such that agricultural use or development is not subject to the NJDEP’s permitting system. The result of this exclusion is that farmers may use and develop their property as is necessary to conduct their farming operations. Thus, for example, a farmer may construct a new barn that might not otherwise be permitted under the Highlands Act provided that the construction complies with other federal, state and local laws.

Agricultural Impervious Coverage – Although agricultural development is excluded from regulation under the Highlands Act, agricultural development in the Preservation Area that would increase impervious cover by certain percentages is subject to review by the local soil conservation district. If an agricultural development would increase impervious cover (either individually or cumulatively) by three percent or more of the total land area of the farm, the owner or operator is required to submit a farm conservation plan to the local soil conservation district. If the agricultural development would increase impervious cover by more than nine percent, a more detailed resource management systems plan is required to be submitted to the local soil conservation district and to NJDEP. The Department of Agriculture, in consultation with NJDEP, is required to adopt rules and regulations establishing scientific standards to guide the preparation and implementation of the farm conservation plans and resource management systems plans to be prepared by farmers.

Transfer of Development Rights – A concern expressed by some farmers in the Highlands Region is the loss of equity whereby the limitations on development in the Preservation Area will affect the development potential of their farms. Farmers often rely on this development potential as collateral in securing loans. The Highlands Act recognizes the importance of ensuring that owners of land in the Preservation Area who are prohibited from developing be compensated where appropriate.

One mechanism available for securing this compensation is the transfer of development rights (“TDR”) program. The Highlands Council is charged under the Highlands Act with creating a TDR program that will permit landowners in the Preservation Area to sell the development rights of their property to those seeking to use development rights in receiving zones located in the Planning Area and in the seven Highlands counties. In return for purchasing these development rights, the purchaser may use those rights to secure bonus density in the receiving zones. To this end, a TDR bank has been created and capitalized to ensure a market for the credits.

An example illustrates how such a TDR program would work. A farmer’s 100-acre property in the Preservation Area is zoned residential. Under that zoning the farmer could have constructed 50 single-family homes but the land was never subdivided prior to the passage of the Highlands Act. With the enactment of the Highlands Act, the farmer will be limited in the number of single-family homes that may be constructed. A TDR program permits the farmer to sever the development potential from his property and sell that development potential as development rights to a purchaser. The farmer may use the funds from the purchase as the farmer sees fit, while a conservation or agricultural restriction is placed on the property prohibiting that property from being developed in the future.

Landowner Incentives to Promote Farmland Preservation – Another mechanism for preserving owner equity is the State Farmland Preservation Program, which will continue to operate unabated throughout the Highlands Region. Under the Highlands Act, the Highlands Council is charged to work with the State Agriculture Development Committee (“SADC”) and the Garden State Preservation Trust to develop incentives for any landowner in the Highlands Region seeking to preserve land under the Farmland Preservation Program administered by SADC. Specifically, SADC has set aside an additional \$30 million to preserve farms in the Highlands. The Highlands Act also creates an incentive that would be provided in exchange for the landowner agreeing to permanently restrict the amount of impervious surface and agricultural impervious cover on the farm to a maximum of five percent of the total land area of the farm.

Farmland Appraisals – To ensure that Highlands Region landowners seeking to preserve their farmland through the State Farmland Preservation Program receive the fairest property valuation, the Highlands Act mandates that all property appraisals be assessed on the basis of local zoning, State environmental laws, and NJDEP regulations in effect as of January 1, 2004. By keying in on this date, farmland property will be assessed as if the property valuation was occurring prior to the effective date of the Highlands Act and the NJDEP’s stormwater management rules.