

HIGHLANDS COUNCIL RESPONSE TO PUBLIC COMMENTS ON THE *DRAFT RMP ADDENDUM 2019-1- PROCEDURES FOR HIGHLANDS REDEVELOPMENT AREA DESIGNATION*

Summary of Recommendations

The Highlands Act requires the Highlands Council to review and update the Highlands Regional Master Plan (RMP) at least once every six years, after public hearings. The Act contemplates that amendments to the RMP will arise principally out of this six-year reexamination. The draft Procedures for Highlands Redevelopment Area Designation (Procedures) sets forth the process the Highlands Council will follow to consider applications for Highlands Redevelopment Area designation.

The Highlands Council conducted six public hearings on the draft Procedures. Public notice of the hearings was posted on the Council's website and printed in the Council's newspapers of record. The Council heard comments from interested members of the public on the draft Procedures document. The Council has also considered all written comments submitted during the public comment period, which ran through February 11, 2019. An audio recording of the public hearings and copies of the written comments submitted by the public are available on the Council's website at: www.nj.gov/njhighlands/master/amendments.

Based on public comments, the Council staff recommends the following changes to the draft Procedures:

- Extend the minimum notice requirements to 30 days.
- Require that notice of an application for Highlands Redevelopment Area Designation be provided to public utilities in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-12h).
- Require that notice of an application for Highlands Redevelopment Area Designation be provided to the County Planning Board.
- Revise section 4.1.1(b)4 to read "Any Highlands Resources" and define said resources as those existing on the Highlands Council's interactive map or those identified through Letters of Interpretation and Highlands Resource Area Determinations.
- Require that, in the event an application for Highlands Redevelopment Area Designation is not heard by the Highlands Council within 90 days of being deemed complete, the

Highlands Council will formally notify the applicant in writing of the reasons for delay and, if applicable, when the application will be considered by the Council.

A detailed response to public comments is set forth below:

Summary of Public Comments and Highlands Council Responses

1. COMMENT: Several commenters suggested that the opportunity for public comment granted in the Redevelopment Procedures (10 days) is too short. The commenters urged a comment period between 20 and 45 days.

RESPONSE: The public comment period has been amended to 30 days.

2. COMMENT: Representatives of the municipal environmental, open space, and historic commissions, the municipal planning board, local residents, and public interest organizations should be included in the Optional Redevelopment Area Inquiry meeting and Pre-application Meeting with the Highlands Council and should be permitted to provide comments on the application prior to Highlands Council review.

RESPONSE: Redevelopment Area Inquiry and Pre-application meetings may contain confidential and preliminary information that is not suitable for public release. To allow for ample time for public comment, the period has been revised to 30 days.

3. COMMENT: A commenter noted that requirements and methodologies for notification to the public are inadequate, as many constituents no longer read newspapers. The commenter continues that the Council should send notice via email and paper mail to the counties and municipal officials as well as local utility authorities.

RESPONSE: The public comment period for a Highlands Redevelopment Area Designation is noticed in accordance with the Open Public Meetings Act in the Council's newspapers of record as well as on the Council's website and via e-mail to all subscribers of the Council's email list. The municipality of the subject property, as well as surrounding municipalities within 200' of a municipal border, are notified.

The Procedures will be amended to include notification to the resident county, as well as any relevant public utilities.

4. COMMENT: Several commenters stated that Redevelopment in the Highlands will further degrade Highlands Resources, including forests, habitat, and riparian buffers. The commenters stressed redevelopment areas are typically seen as areas that are already devoid of resources, thus should be permitted to expand. However, the commenter stressed that redevelopment may in fact impact additional resources. The commenters suggested that efforts should be prioritized for restoration of the region's resources, and in some cases, where the original development adversely impacted resources, restore the site to its natural state. Similarly, the commenters state that redevelopment may produce additional runoff and should require restoration of the hydrologic balance of the site including the use of new technology and green design principles.

RESPONSE: The Highlands Redevelopment Procedures require that the proposed development be consistent with the goals, policies and objectives of the RMP, including smart growth and Low Impact Development policies and objectives, which require reduced runoff, use of native landscaping, and introduction of new technologies to enhance the environment and compensate for additional development. Any proposed Highlands Redevelopment Area and eventual proposed development must be found to be consistent with the resource protection and Smart Growth standards of the RMP and with the intent and purpose of the Highlands Act. In addition, the Highlands Council may determine that a proposed Highlands Redevelopment Area is inappropriate, based on the likelihood that the designation would promote redevelopment incompatible with the goals of the Highlands Act and the RMP.

5. COMMENT: A commenter recommended that when a decision on the proposed redevelopment is not made within 90 days, the Council, under section 7.1 of the procedures, must provide notice to the applicant and articulate the reason for the delay.

RESPONSE: The Highlands Council agrees with this comment and will make the appropriate changes to the Redevelopment Procedures.

6. COMMENT: A commenter suggested that the RMP is devoid of a regional approach to (re)development and that the Council should establish a greater comprehensive regional

(re)development approach to guide municipalities in selecting sites and uses for Highlands Redevelopment projects.

RESPONSE: The Highlands Council agrees that a comprehensive approach to regional development is necessary. However, because the parameters for designating a Highlands Redevelopment Area are defined in the Highlands Act, the ability for the Council to specify which sites should be granted a Redevelopment Area approval is limited. In the case of multi-parcel redevelopment designations, the Council works closely with the municipality to develop a comprehensive redevelopment plan that will inform future uses for the area.

7. COMMENT: Several commenters stated that individuals and non-conforming municipalities should not be permitted to participate in the redevelopment process.

RESPONSE: Highland Redevelopment Areas are statutorily defined. Conformance in the Preservation Area is mandatory, so any Redevelopment Area designated in the Preservation Area is necessarily within a conforming geography. Designation of a Planning Area Redevelopment Area would only be appropriate or necessary for a conforming Planning Area municipality.

8. COMMENT: A commenter requested clarification on the impact a Council determination to rescind the Highlands Redevelopment Area designation would have on a particular project.

RESPONSE: Should the Highlands Council rescind a Redevelopment Area Designation, the applicant would no longer be eligible to receive a Highlands Preservation Area Approval with Redevelopment Waiver and therefore may not be able to complete the project. The Highlands Council will inform the NJDEP of any rescission or expiration of any Highlands Redevelopment Area designation.

9. COMMENT: A commenter suggested that the instances in which the Highlands Council can issue waivers from the strict provisions of the RMP should be fully enumerated and such waivers should only be available to municipalities participating in the Plan Conformance process.

RESPONSE: Waivers from the provisions of the RMP for Designated Redevelopment Areas are made on a site-specific basis and must be approved by the Highlands Council. The Highlands Redevelopment Area procedures make no distinction between municipalities that are engaged in the Plan Conformance process and those that are not.

10. COMMENT: A commenter stated that the definition of the term “brownfield” is vague and should be more clearly defined to require documentation of existing violations or on-site testing. Accordingly, the Highlands Council should use extreme caution in approving any proposal that includes residential, school, hospital, or similar proposed uses. In the Highlands, the most appropriate use for these sites may be to allow them to grow back to forest.

RESPONSE: The term “brownfield” is defined by NJDEP through various administrative codes, as are any restrictions on what may be developed on a brownfield site.

11. COMMENT: Conservation restrictions must be legal easements that are properly recorded with the deed and exist in perpetuity. Similarly, an applicant must demonstrate that the proposed development area is free of any easements or encumbrances.

RESPONSE: Conservation easements will be required as a condition of Redevelopment Area approval where appropriate. Such deed restriction is required to be legal and properly recorded with the deed.

12. COMMENT: Waivers of Pre-application meeting items should only be granted for cause and expressed in writing by the Council staff.

RESPONSE: Waivers for Pre-application meeting items are determined based on site-specific circumstances. Any such waivers will be granted for cause and in writing by Council staff.

13. COMMENT: All applicants for Highlands Redevelopment Area designations should comply with the NJDEP stormwater rules unless more effective protection is provided by the Highlands Land Use Ordinance.

RESPONSE: All applicants for Highlands Redevelopment Area designations will comply with NJDEP stormwater rules and incorporate low impact design components into stormwater management in accordance with the NJDEP Stormwater Best Management Practices Manual.

14. COMMENT: Several commenters noted that the notification to individual property owners within 200' by certified mail is insufficient. It was suggested that a range of 1000' to 2000' be used.

RESPONSE: The Municipal Land Use Law (MLUL) stipulates a noticing requirement of 200' in all directions for a property that is the subject of a hearing. N.J.S.A. 40:55D-12b. Furthermore, the New Jersey courts have held that the use of mandatory language in the MLUL to describe the scope and method of notice indicates that the Legislature intended to ensure uniformity for the giving of notice under the MLUL. For these reasons, the Council finds no grounds to amend the noticing requirements beyond the 200' requirement set forth in the MLUL.

15. COMMENT: The required submission of proposed redevelopment area plan should include cultural resources, geology, soils, and scenic resources as well as the delineation of the topography.

RESPONSE: The Highlands Redevelopment Procedures require that all Highlands Resources, including those mentioned above, are identified in the pre-application submittal requirements. For clarification section 4.1.1(b)4 will be amended to read "Any Highlands Resources".

16. COMMENT: Several commenters suggested that identification of all infrastructure serving the site (including energy, roads, rail, etc.) should be included in the pre-application submittal

and the applicant should demonstrate that there is sufficient existing capacity (sewer, water, energy, transportation) to serve the proposed redevelopment.

RESPONSE: Criteria for evaluation of a Redevelopment Area Designation includes an evaluation of the existing infrastructure and its capacity to accommodate the specific development.

17. COMMENT: A commenter stated that Redevelopment Area Designations might have been central to affordable housing agreements in four Highlands municipalities, which represents important progress in defining the Highlands Council's role in administering affordable housing. Further, the commenter states that settlements for these municipalities were agreed upon by the Highlands Council and Fair Share Housing Center and are effectively immune from Builder's Remedy challenges. The commenter continues that if the above is true, the Highlands Redevelopment Area Designation Procedures should be revised to clearly state that those municipalities that can satisfy the redevelopment criteria might be able to receive substantive certification without the consequences of a 4 to 1 multiplier for market rate units by collaborating with the Council and Fair Share Housing Center. Finally, the commenter suggests the Council consider the possibility of applying a bonus credit multiplier as an additional incentive to encourage construction of affordable housing in a Highlands Redevelopment Area.

RESPONSE: The Highlands Council is not party to, nor has agreed upon any settlement agreement. In addition, it is beyond the scope of the Highlands Council to apply multipliers or provide any criteria that would grant substantive certification to a municipality. However, in accordance with the requirements of the Fair Housing Act (N.J.S.A. 52:27D-329.9), any development consisting of newly-constructed residential units must reserve for occupancy at least 20 percent (20%) of the residential units constructed for low or moderate income households, where economically feasible.

18. COMMENT: A commenter stated that the proposed Redevelopment Procedures should be used to more clearly define Highlands Act Exemption 4, specifically, the phrase "reconstruction for any reason."

RESPONSE: The Highlands Redevelopment Procedures are separate and apart from any statutorily defined Highlands Act exemption. Furthermore, Highlands Act exemptions are further defined and clarified under NJDEP Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38 2.3) and are administered by the NJDEP in the Preservation Area and the Highlands Council in the Planning Area. Further clarification of the parameters of Exemption 4 is not appropriate for the Highlands Redevelopment Procedures.

19. COMMENT: A commenter recommended that the Council clearly define “Highlands Resources” and include a link as to where an applicant can identify such resources.

RESPONSE: Highlands Resources will be identified using the Highlands Interactive Map and any other resource identification documents such as Letters of Interpretation (LOI) and Highlands Resource Area Determinations (HRAD), as applicable. The Redevelopment Procedures will be amended to more clearly define how Highlands Resources can be identified.