

FINAL DRAFT – FOR CONSIDERATION AT THE OCTOBER 30, 2008 MEETING
OF THE HIGHLANDS COUNCIL

**PROCEDURES FOR HIGHLANDS
REDEVELOPMENT AREA DESIGNATIONS**

October 2008

1.1 Purpose and scope

The Highlands [Water Protection and Planning Act \(Highlands Act\)](#), [the Highlands Regional Master Plan](#), and New Jersey Department of Environmental Protection (NJDEP) Highlands Rules (N.J.A.C. 7:38) mandate the application of protection standards for Highlands resources in the Preservation Area. Any activities defined as major Highlands development but not exempted under the Act must meet these standards through a Highlands Preservation Area Approval (HPAA) from NJDEP. In certain instances, however, NJDEP can issue a HPAA with a waiver providing limited relief from specific standards.

One waiver provided by the Highlands Act allows certain brownfield sites and previously developed areas to be redeveloped, through NJDEP approval of an HPAA with Redevelopment Waiver. The Highlands Rules mandate that the Highlands Council must first designate an appropriate [Highlands Redevelopment Area](#). This document outlines the procedures by which the Highlands Council will designate [Highlands Redevelopment Areas](#). Following such a designation, an application may be submitted to NJDEP for the HPAA with Redevelopment Waiver.

(a) The following establishes the procedures for an applicant requesting a Highlands Redevelopment Area designation and the standards by which the Highlands Council determines that an area within the Preservation Area is appropriate for such a designation. It is intended to assist applicants with early identification of potential appropriate redevelopment areas.

Applications may come before the Council via different means: 1) when one or more individuals are proposing a Redevelopment Area on one or more contiguous properties that they control; 2) when a municipality is proposing multiple contiguous properties for a proposed Redevelopment Area; and 3) when a municipality is partnering with a landowner or group of landowners to identify a Redevelopment Area. The Council staff will consult with County officials as deemed appropriate.

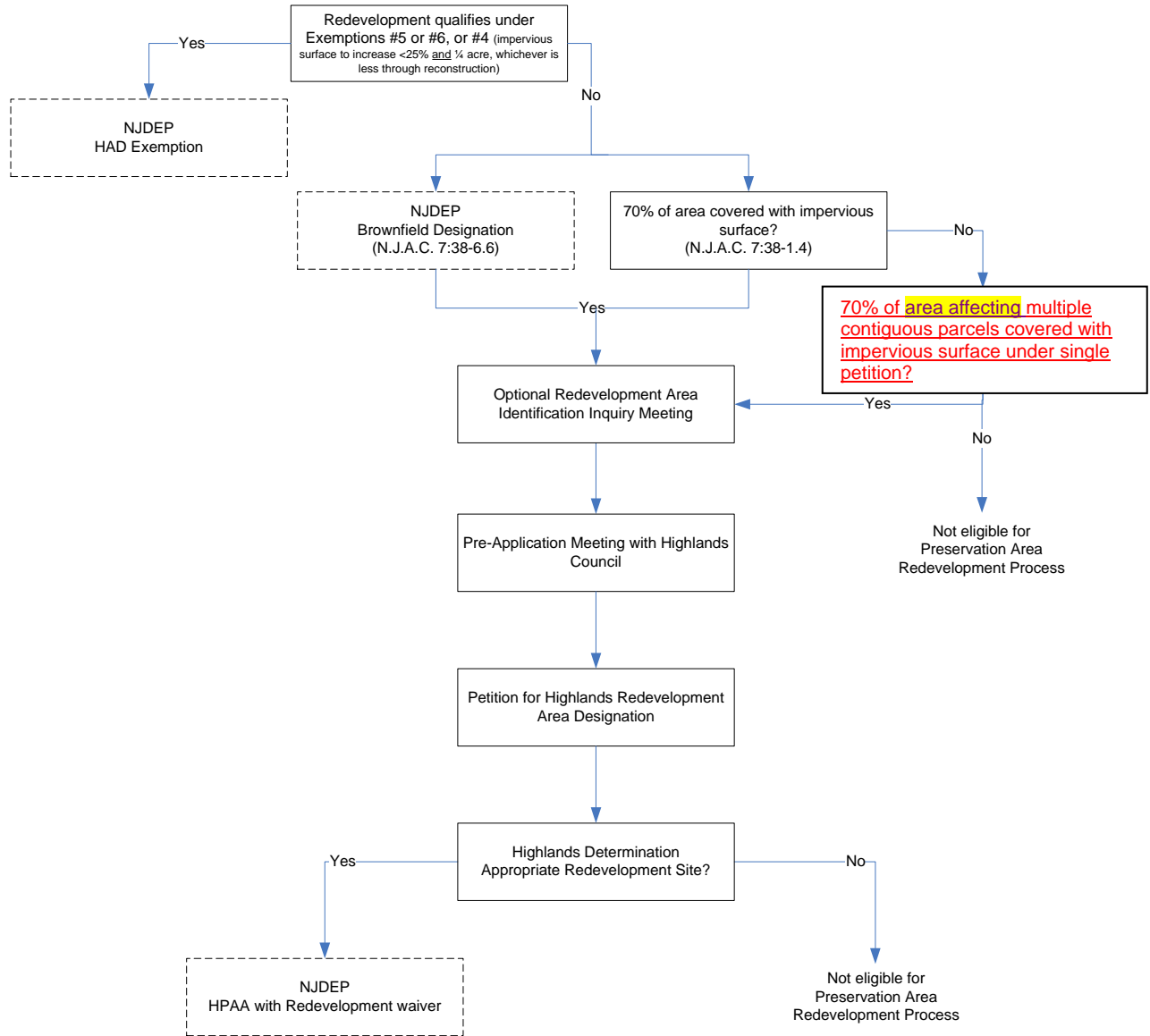
The flow chart on the following page identifies the process for an applicant requesting a Highlands Redevelopment Area designation in the Preservation Area. As depicted in the flow chart, if the proposed redevelopment does not meet the requirements of a Highlands Act Exemption, the next step is for an interested party to pursue a Redevelopment Area designation as per (b) below.

(b) The Highlands Council may identify an area as appropriate for redevelopment if the area satisfies the requirements presented herein and is either:

1. A Highlands brownfield site designated by the Department of Environmental Protection pursuant to N.J.A.C. 7:38-6.6;
2. A site at which at least 70% percent of the area is covered with impervious surface as that term is defined in N.J.A.C. 7:38-1.4.

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**New Jersey Highlands
Preservation Area Redevelopment Process**



1.2 Definitions

Highlands Brownfield – Any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been or there is suspected to have been, a discharge or contaminant that meets the designation of a brownfield site pursuant to N.J.A.C. 7:38-6.6. There are three tracks under which a site may serve as a Highlands Brownfield, provided that the contamination onsite is not the result of a current or previous agricultural use:

1. Track One addresses sanitary landfill sites;
2. Track Two addresses sites that may have already met the NJDEP remediation requirements and legally disturbed areas as of August 10, 2004; and
3. Track Three addresses sites with suspected or confirmed onsite contamination that have not yet received a No Further Action letter.

Highlands Redevelopment - A process to rebuild, restore or enhance a previously developed area that is appropriate for economic investment and community development in accordance with the ~~Smart Growth principles of the~~ Redevelopment Program presented in the Regional Master Plan. Redevelopment activities may include the removal and replacement of existing structures, adaptive reuse or infill of additional structures within areas which are substantially developed or surrounded by development, or conversion to recreational sites, parks, natural resources conservation, or other dedicated open space purposes.

Highlands Regional Master Plan – The Regional Master Plan (RMP) including all supporting technical documents, or any revisions thereof approved or adopted by the New Jersey Highlands Water Protection and Planning Council pursuant to N.J.S.A 13:20-8.

Highlands ~~Area Resource~~ Areas - Those features of the Highlands that merit special protection pursuant to N.J.S.A. 13:20-1 et seq. and the protection policies and objectives of the Regional Master Plan including, but not limited to: Highlands open waters and buffers; flood hazard areas; steep slopes; forested areas; rare, threatened or endangered species habitat; rare or threatened plant habitat; areas with historic or archaeological features; and unique or irreplaceable land types.

Highlands Preservation Area Approval – A Highlands Preservation Area Approval (HPAA) means a permit from the NJDEP to engage in a regulated activity in the Highlands Preservation Area issued pursuant to the Highlands Act.

Highlands Preservation Area Approval with Redevelopment Waiver – The Highlands Act features a provision that may allow for a waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Area. A redevelopment waiver applies when a site is a NJDEP brownfield-designated site (N.J.A.C. 7:38-6.6) or when the Highlands Council identifies a site at which at least 70 percent of the area thereof is covered with impervious surface (N.J.A.C. 7:38-6.7). A request for a waiver must be submitted along with an HPAA application, as set forth in N.J.A.C. 7:38-6.1. Thus, an applicant must obtain a *Highlands Preservation Area Approval with Redevelopment Waiver*.

Highlands Redevelopment Area – Means land areas designated as such by the Highlands Council that are brownfields, grayfields, and/or other previously developed areas within the Highlands

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~~Region. The portion of a parcel or parcels of land for which a Highlands Redevelopment Area designation is approved by the Highlands Council.~~

~~**Highlands Redevelopment Area Designation** – A Highlands Council designation that an area within the Preservation Area is appropriate for redevelopment under N.J.S.A. 13:20-9.b and 11.a(6)(h).~~

Highlands Resource Area Determination (HRAD) – A process to identify and/or verify the location of any Highlands resource area features that are subject to the protection requirements under N.J.A.C: 7:38. The HRAD is not a permit, but rather a process intended to confirm the presence, absence or location of a Highlands resource area on or adjacent to a site.

Impervious Surface – Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes, but is not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements. (Section 3 of the Highlands Act) To be considered an impervious surface, the structure, surface or improvement must have the effect of reducing or preventing stormwater absorption.

Interested Party – A person who owns or is under contract to purchase a property eligible for designation of a Highlands Redevelopment Area, or the municipality or county within which a proposed Redevelopment Area is located.

Preservation Area – That portion of the Highlands Region so designated by N.J.S.A 13:20-7b.

Smart Growth – A strategic approach that utilizes comprehensive planning to guide design, development, and revitalization of communities. Smart growth principles support sound land use decisions and serve as an advocate for informing future land management decisions that consider environmental protection needs in the context of efficient land development. In order to accommodate local and regional economic development of the Highlands Region, Goals 6J, 6K, 6L and 6N of the RMP encourage growth to occur in locations that have limited environmental constraints, represent existing developed areas that have access to infrastructure, encourage compatible redevelopment, allow the application of compact development concepts, and are in accordance with community character. The Highlands Act refers to the prohibition and limitation of construction and development within the Preservation Area and the revocation of previously approved water and sewer service areas that lack existing infrastructure, in support of this preservation goal. The Highlands Act recognizes the State Development and Redevelopment Plan goal to encourage development patterns that are consistent with existing infrastructure and land use development and discourages scattered piecemeal development patterns. Therefore, infrastructure investments in the Highlands serve to support public health and safety, environmental resource protection and efficient land development in support of local and regional conditions.

1.3 General Approach

As shown in the flow chart above, the first step is to determine if the proposed redevelopment would meet the requirements of Exemption #4, #5 or #6 of the Highlands Act (Section 30).

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- Exemption #4 provides for: “The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agriculture or non-horticultural use.”
- Exemption #5 provides for: “Any improvement to a single family dwelling in existence on the date of enactment of this act, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system.”
- Exemption #6 provides for: “Any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of this act, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.”

Each of these three exemptions addresses redevelopment of or improvements to specific classes of existing development – single family dwellings, religious facilities, schools, hospitals and non-agricultural buildings in general. In each case, designation of a [Highlands](#) Redevelopment Area by the Highlands Council is not necessary and would be inappropriate because no waiver is required from the NJDEP Preservation Area regulations or the Regional Master Plan, based on the exemption. Applicants for such projects should directly apply for a Highlands Applicability Determination regarding the exemption (N.J.A.C. 7:38-2.4).

If the proposed redevelopment project is not exempt, then a petition for [Highlands](#) Redevelopment Area designation may be submitted to the Highlands Council regarding either NJDEP-designated brownfields or existing impervious surfaces greater than 70 percent. These procedures include an informal process by which petitioners may receive guidance from the Highlands Council on the viability of a Redevelopment Area designation and the information requirements for a formal petition. The formal process involves submittal of a petition, staff review by the Highlands Council staff, staff recommendation to the Highlands Council, and final determination by the Highlands Council with provision for public review and comment. Upon approval of a Redevelopment Area designation, an application for Highlands Preservation Area Approval with Redevelopment Waiver may be submitted to the NJDEP for consideration under N.J.A.C. 7:38-6.1.

There are several critical implications regarding Redevelopment Area designation:

1. The [“Highlands](#) Redevelopment Area²” may be part of a parcel, all of a parcel, part or all of multiple contiguous parcels in common ownership, or part or all of multiple parcels not in common ownership for which a combined Redevelopment Area petition has been submitted.
2. The Highlands Council anticipates that many Redevelopment Area designations will be defined as including less than entire parcels, with the remainder of the parcel restricted from further development due to environmental constraints. The NJDEP identification of a brownfields site and the extent of existing impervious surfaces both provide the basis for

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determining the maximum extent of a Redevelopment Area by the Highlands Council, but site constraints may result in designation of a smaller area.

3. The Highlands Council may determine that a proposed Redevelopment Area is inappropriate despite meeting the initial criteria, based on the likelihood that the designation will promote redevelopment incompatible with the goals of the Highlands Act and the Regional Master Plan.
4. Within a Redevelopment Area designated by the Highlands Council, NJDEP may grant a waiver from strict application of the Highlands Preservation Areas Rules under N.J.A.C. 7:38-6.6 and 6.7. However, those rules provide for brownfields that “The proposed redevelopment meets the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible, taking into consideration cost and existing technology” (Section 6.6), and for sites meeting the 70 percent impervious surface threshold that “The proposed redevelopment meets the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible while still addressing the identified redevelopment need” (Section 6.7). Therefore, the NJDEP waiver will protect environmental resources wherever feasible.
5. The Highlands Council and NJDEP also may restrict aspects of a project to avoid secondary impacts. Specifically, under N.J.A.C. 7:38-6.4(i), ~~which~~ provides: “In cases where the Department determines to approve a waiver in accordance with this chapter, the approval will include specific conditions to restrict any activities that might otherwise occur as a result of the waiver. These conditions include but are not limited to conservation restrictions, resolutions from a municipal utilities authority restricting sewage flows, physical limitations on sewer lines and/or pump stations and other mechanisms necessary to preclude secondary impacts that may otherwise result from the approved activities.” In general practice, the Highlands Council intends to require conservation restrictions on those undeveloped # portions of an affected property, including contiguous parcels in common ownership, that is not subject to redevelopment or remedy of contaminated areas.

1.4 Redevelopment Area Designation Inquiry Meeting

(a) For all parties seeking information about the potential for designation of an area as a Highlands Redevelopment Area, it is recommended that a *voluntary* informal redevelopment area inquiry meeting be convened with staff of the Highlands Council prior to proceeding with a more comprehensive pre-application meeting and petition for redevelopment. This meeting also serves as an opportunity to assist interested parties in the identification of Highlands Council and other data and technical resources that may be available in support of a petition application. An applicant requesting an inquiry meeting shall do so in writing and is encouraged to provide as much information regarding the proposed Highlands Redevelopment Area as possible, using Section 1.5 as a general guide.

1.5 Request for Pre-application Meeting

(a) For all applications requesting a Highlands Redevelopment Area Designation, a pre-application meeting with staff of the Highlands Council is required. (Please note that this pre-application meeting is not the same as required for an application to NJDEP for an HPAA with Redevelopment

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Waiver.) The Highlands Council may invite municipal and county planning representatives as appropriate. The applicant shall submit a request to the Highlands Council for a pre-application meeting and the following information in writing (with copies sent to the affected municipality and county) so that the Highlands Council staff may provide the greatest degree of guidance regarding the specific request for Redevelopment Area designation:

1. A description of the proposed Highlands Redevelopment Area including block and lot number designation of the properties, and street addresses where applicable;
2. A map showing the boundaries of the affected properties and the proposed Highlands Redevelopment Area;
3. Acreage of the proposed Highlands Redevelopment Area and of the affected properties;
4. Existing local zoning and land use of the properties;
5. A description of existing structures on the subject site, including historic structures;
6. A list of any encumbrances on the properties comprising the proposed Highlands Redevelopment Area, including but not limited to easements, deed restrictions, and covenants;
7. A description of the proposed redevelopment project to be located within the proposed Highlands Redevelopment Area;
8. A map from the Highlands Council's [Consistency Review Application or Property Search Tool](#) indicating the affected properties and any Highlands Resources on those properties, to the extent available from the ~~Property Search Tool~~ [Council's website](#); and
9. A description of how the subject site conforms to Section 1.1(b) above. For areas other than brownfields, (i.e., a site which includes at least 70% impervious surface), and application must include a delineation of the existing impervious surface supporting the minimum 70% calculation. For brownfield sites, an applicant must obtain and provide a brownfield designation from the NJDEP.

(b) After receipt of a request for a pre-application meeting and supporting information submitted in accordance with Section 1.5 above, the Highlands Council shall contact the applicant and the applicable constituent municipality (and county, as deemed appropriate) to schedule a pre-application meeting. As part of this meeting, the Highlands Council will identify any known Highlands Resources that may constrain the designation of a Redevelopment Area.

(c) Any statements or recommendations made by any representative of the Highlands Council in the context of a pre-application meeting shall be considered non-binding on the prospective applicant, the constituent municipality and county, and the Highlands Council, and shall confer no legal rights.

(d) A summary of the issues discussed during the pre-application meeting will be made available to the public via the staff recommendation report described in Section 1.7.

1.76 Petitions for Highlands Redevelopment Area Designation

(a) Any interested party may petition the Highlands Council to approve designation of a Highlands Redevelopment Area, providing the site meets the requirements presented herein and having satisfied the requirements for a Pre-Application Meeting under Section 1.5, above.

(b) All petitions for a Highlands Redevelopment Area designation shall be submitted to the Highlands Council in writing, and signed by the Interested Party. Such petitions shall include the information required in Section 1.5 above and those items required by NJDEP as listed in NJDEP's Highlands Preservation Area Approval (HPAA) Pre-Application Checklist (NJDEP issues the HPAA with Redevelopment Waiver; but only after the Highlands Council issues the Redevelopment Area Designation). A copy of NJDEP's HPAA Pre-Application Checklist is located in Appendix A and can be downloaded from NJDEP's website at <http://www.nj.gov/dep/highlands/process.htm>.

1.87 Preliminary Determination

(a) Highlands Council staff shall determine if the Petition for a Highlands Redevelopment Area Designation is administratively complete in accordance with Section 1.5 above and will report those findings to the Council, the NJDEP Divisions of Land Use Regulation and Watershed Management, any directly affected municipality and county, and the public.

(b) For any petition that is deemed administratively complete, the Highlands Council shall review the proposed area for redevelopment against the Highlands RMP Resource Protection and Smart Growth standards and policies for each relevant LUCM Zone. All GIS data layers utilized in Highlands Council reviews are available at the Highlands Council website: http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html.

There are RMP goals, policies, and objectives related specifically to the issue of future land use within each LUCM Zone, that will further guide the Council's review of proposed redevelopment areas. It is the policy of the Council to promote compatible development and redevelopment within the Existing Community Zone and to promote the restoration and redevelopment of brownfields, particularly those located in or adjacent to transportation corridors or transit stations. In the Conservation Zone, it is the policy of the Council to limit the use and development of lands to agricultural use and development, redevelopment of existing developed areas, and environmentally-compatible low density land uses. It is the policy of the Council to limit new human development in the Protection Zone to redevelopment, exempt activities, and environmentally-compatible low density new land uses and to ensure that any future development or redevelopment is subject to standards and criteria which protect the land and water resources of the zone from any potential adverse impact.

(c) The Highlands Council staff shall ~~present~~prepare a draft report, including a preliminary consistency determination of the proposed area for redevelopment with the goals, policies, and

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objectives of the RMP, with recommendations ~~to the Highlands Council~~ to approve, deny, or approve with conditions the proposed Redevelopment Area, based on the criteria set forth below:

1. At least 70% percent of the proposed Redevelopment Area is impervious surface, or the site is a brownfield designated by NJDEP
2. The proposed Highlands Redevelopment Area will not result or contribute to impairment of any Highlands resource located on or adjacent to the Highlands Redevelopment Area, either through exclusion of such areas or through conditions on the designation that ensures their protection, or will minimize through similar means the disturbance of those resources to which the waiver would specifically apply.
3. The proposed Highlands Redevelopment Area is found to be substantially consistent with the resource protection and smart growth standards of the Regional Master Plan in accordance with and will advance the intent and purpose of the Highlands Act with regard to designated Redevelopment Areas. The Act allows a waiver of any provision of a Highlands permitting review on a case-by-case basis for a redevelopment proposal, conditioned upon the finding that it meets the requirements of the narrative criteria described in Section 36 of the Act (N.J.S.A 13:20-34). These criteria include the following: 1) would have a de minimis impact on water resources and would not cause or contribute to a significant degradation of surface or ground waters; 2) would cause minimal feasible interference with the natural functioning of animal, plant and other natural resources; 3) will result in minimum feasible alteration or impairment of the aquatic ecosystem; 4) will not jeopardize the continued existence of endangered animal or plant species; 5) is located or constructed as to neither endanger human life or property nor otherwise impair public health, safety and welfare; 6) would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes; and 7) meets all other applicable NJDEP standards, rules, and regulations and State laws.
4. There is sufficient water supply and wastewater capacity to serve the proposed Highlands Redevelopment Area, from on-site systems, from adjacent areas already served by public water and wastewater systems, or through a limited extension of public water or wastewater systems that will not cause or contribute to secondary growth effects in the intervening area. As per the Highlands Preservation Area rules at N.J.A.C. 7:38-2.5, the extension of any existing public water system to serve development in the Preservation Area is prohibited except where a proposed project receives a HPAA pursuant to N.J.A.C. 7:38-6 (with sections 6.6 and 6.7 specifically applying to Redevelopment Areas).
5. Such other unique or mitigating criteria as the Highlands Council staff deems appropriate based on policies and objectives of the RMP.
6. The proposed Redevelopment Area is compatible with existing municipal zoning or the Redevelopment Area designation is conditioned upon municipal rezoning.

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(d) The Highlands Council staff may consult with the NJDEP Divisions of Land Use Regulation and Watershed Management regarding the draft recommendations.

(e) The Highlands Council staff ~~shall provide to the public and may share with~~ the applicant the draft report and recommendations prior to presenting the recommendations to the Council, and shall solicit comments for a period of not less than 10 business days. This will afford the public and the applicant an opportunity to provide additional data and information to the staff prior to a final Council determination.

(f) The Highlands Council staff shall present a final report with recommendations to the Highlands Council to approve, deny, or approve with conditions, with public notice on the Council's Web site at www.highlands.state.nj.us at least 10 business days before the Council meeting at which the recommendation will be considered. The petitioner shall give public notice by publication of a legal notice in the newspaper of record for the municipality where the project is located, at the petitioner's expense, at least 10 business days before the Council meeting.

1.98 Final Determination

(a) The Highlands Council shall approve, approve with conditions, or deny an application requesting a Highlands Redevelopment Area identification within 90 days of deeming the requirements of Section 1.7 above complete, or for good cause, within such additional period of time as the Highlands Council shall notify the applicant in writing is required to complete its review. The Highlands Council's final determination shall be based upon all information submitted to the Highlands Council, any site visit conducted, the criteria set forth in Section 1.7 above, and public comments received prior to or at the Highlands Council meeting at which the recommendation will be considered. The Highlands Council's final determination shall include written findings of fact and conclusions based thereon, and shall be considered effective 10 business days after delivery of the meeting minutes to the Governor, unless vetoed by the Governor pursuant to N.J.S.A. 13:20-5.j.

(b) In cases where the Highlands Council determines that a proposed Highlands Redevelopment Area is appropriate for redevelopment, the final determination may include specific conditions to restrict any activities that might otherwise occur as a result of the final determination. These conditions may include, but are not limited to, deed restrictions, resolutions from a municipal utilities authority restricting sewage flows, physical limitations on sewer lines and/or pump stations and other mechanisms necessary to preclude secondary impacts that may otherwise result from the identification of the Highlands Redevelopment Area.

(c) After receiving an approved Highlands Redevelopment Area identification from the Highlands Council, the applicant may submit an application for an HPAA with Redevelopment Waiver to the Department of Environmental Protection in accordance with N.J.A.C. 7:38-6.6 or N.J.A.C. 7:38-6.7.

APPENDIX A
NJDEP'S HPAA PRE-APPLICATION CHECKLIST

(Available at: <http://www.nj.gov/dep/highlands/docs/hpaachk.pdf>)