

Draft Redevelopment Site Designation Procedures
Summary of Public Comments and Responses – October 2008

COMMENT: Numerous comments stated strong objection to the term “substantially consistent” in terms of a proposed project’s compliance with Regional Master Plan (RMP) standards regarding resource protection and smart growth. A proposed project should be “consistent” with all standards required under the Highlands Act and RMP. To use the term “substantially consistent” allows for broad interpretation and a possible relaxation of standards, which would not be appropriate.

RESPONSE: The original purpose of the term was to recognize that the purpose of a redevelopment waiver is to allow redevelopment that does not fully comply with the normal provisions of the Preservation Area Rules at N.J.A.C. 7:38 and with the RMP. However, the Highlands Council recognizes that the term “substantially consistent” did not provide sufficient clarity. The word “substantially” was removed and the sentence in the procedures (item #3 in Section 1.7 regarding review criteria) was rewritten to say: “The proposed Highlands Redevelopment Area is found to be consistent with the resource protection and smart growth standards of the Regional Master Plan in accordance with the intent and purpose of the Highlands Act with regard to designated Redevelopment Areas.” New text was included that states that the Highlands 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). A summary of those narrative criteria was included in the text.

COMMENT: Numerous comments stated strong objection to any proposed expansion of public water and wastewater systems for redevelopment projects in the Preservation Area.

RESPONSE: The Redevelopment Area Designation procedures are aimed at identifying a suitable Redevelopment Area so that an applicant may apply for a Highlands Preservation Area Approval (HPAA) with Redevelopment Waiver. The Highlands Act at N.J.S.A. 13:20-33 allows for waivers related to redevelopment projects in the Preservation Area, including the extension of public water and wastewater systems, where the Redevelopment Area is designated by the Highlands Council. 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 (Sections 6.6 and 6.7 specifically apply to Redevelopment Areas). Reference to these Preservation Area rules was included in the procedures (item #4 in Section 1.7 regarding review criteria).

COMMENT: One comment expressed disappointment that such an important policy as Redevelopment Area Designation Procedures, which will be the cornerstone of much of the development allowed in the Preservation Area going forward, was released just a month prior to the adoption of the RMP.

RESPONSE: The Council acknowledges the comment. It should be noted that a previous draft of the document was made available to the public in May 2007. The June 2008 draft procedures document was revised based on public comment and was released for public comment well after the close of the RMP public comment period.

COMMENT: One comment expressed concurrence with the major changes from the May 2007 draft regarding site eligibility and approves of the Council's decision to remove projects eligible for redevelopment under Exemptions 4, 5, and 6 in the Highlands Act. Removing these smaller projects puts them in proper context on a site specific basis, and alleviates concerns that smaller residential sites would be grouped together and targeted by developers or municipalities as redevelopment sites. However, there was another separate comment that stated that including the various exemptions into the redevelopment area designations is not necessary because they do not directly relate to areas that will qualify as eligible for redevelopment, i.e., areas with 70% existing impervious cover.

RESPONSE: The Council acknowledges both opinions. It is the belief of Council staff that it is appropriate to remove projects eligible for redevelopment under Exemptions 4, 5, and 6 in the Redevelopment Area Designation procedures. Some small project areas will be able to meet the 70% impervious cover requirement but can more directly be addressed by exemptions from the Highlands Act. The purpose of a Redevelopment Area designation is to allow NJDEP to determine whether an HPAA with redevelopment waiver can be granted. Exempt developments do not need an HPAA at all, making the Redevelopment Area designation unnecessary.

COMMENT: One comment stated that prohibiting designation of brownfield sites without land disturbance for redevelopment is a positive step in the June 2008 procedures, as there are many small sites which may have ground water contamination, but are otherwise undisturbed.

RESPONSE: The Council acknowledges the comment.

COMMENT: One comment questioned why the Council would want to give a second staff-intensive review to a site that has already been designated as a "brownfield" by NJDEP. After that exhaustive review, the process is still not complete because Item (c) on page 10 indicates that the applicant now "may submit an application for an HPAA with Redevelopment Waiver to the Department of Environmental Protection..."

RESPONSE: The Highlands Council is legislatively mandated to identify appropriate Redevelopment Areas while the NJDEP has been granted the legislative authority to issue HPAA permits. As per N.J.A.C 7:38-6.7, (a) "In accordance with N.J.S.A 13:20-33b(2), the Department may, on a case by case basis, waive any of the provisions for an HPAA if such waiver is necessary for redevelopment of certain previously developed areas in the Preservation area identified by the Council pursuant to N.J.S.A 13:20-9b and N.J.S.A 13:20-11a(6)(h). A waiver under this section shall apply only to Department-designated Highlands brownfield sites designated pursuant to (b) below, and identified as an area appropriate for redevelopment by the Council." NJDEP designation of a brownfield is an acknowledgement of the existing contamination. The Highlands Council then

determines whether the site is appropriate for redevelopment under the RMP; this is not a duplication of the brownfield designation because it focuses on whether redevelopment will address resource protection and smart growth provisions of the RMP. NJDEP's review is then to determine the extent of the specific waivers and the application of all other regulatory requirements for the specific project proposal. The Highlands Council designation process does not involve site plan and remedial action reviews, which are appropriately addressed through the NJDEP permit review. The Highlands Council and NJDEP will coordinate on this three-step process established by the Highlands Act to minimize redundancy of submittals and reviews.

COMMENT: Several comments applauded the Council's decision to rescind the concept of defining grass as impervious cover. One comment expressed concern, however, that the switch to "barren land" might open other parcels to redevelopment without proper definition of that term.

RESPONSE: The Council acknowledges the comment. The current Redevelopment Area Designation procedures do not use the term "barren land," but instead utilizes the definition of impervious surfaces that is presented in the Highlands Act which is "any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements."

COMMENT: One comment expressed concern about the portion of the flow chart on page 2 that indicates that when it is determined that a project is not qualified under Exemption 4, 5, or 6 and the area is not covered with at least 70% impervious surface, it appears that the landowner can apply for redevelopment through a municipal redevelopment process. This process must be further clarified, as it implies that such redevelopment would be allowed at less than 70% impervious, in violation of the Act. The commenter also expressed concern that the procedures do not limit the footprint of the redevelopment site to any particular size, nor do they limit its expansion to contiguous parcels. In other sections of the Act, such as Exemption #4, such expansion is limited to 125% of the existing developed footprint, not to exceed ¼ acre of impervious cover. The commenter noted that another question that arises from this policy is whether municipalities or counties presenting a petition for redevelopment of contiguous parcels not in common ownership are required to show proof that they have willing sellers for those properties.

RESPONSE: The Highlands Act only provides for Highlands Council designation of Redevelopment Areas for sites that have 70% or more impervious cover or are designated as brownfields by NJDEP. A site that does not meet one of the two thresholds and does not qualify for an exemption will be required to obtain an HPAA from NJDEP without a redevelopment waiver. The procedures aim to identify appropriate "redevelopment areas," not development footprints. As per the Highlands Preservation Area rules at N.J.A.C. 7.38-6.7 a "waiver under this section shall apply only to *an area* if and when the Highlands Council identifies a site at which at least 70 percent of the *area thereof* is covered with impervious surface." [emphasis added] As described on Page 1 of the Redevelopment Area Designations procedures, the Council defines this "area" to be: 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 Highlands Act does not specifically limit the increase of impervious cover, but does provide for narrative standards that NJDEP must address prior to approving an HPAA with redevelopment waiver. Therefore, the Highlands Council will focus its review on the appropriate size of the designated Redevelopment Area and on identifying any resource protection and smart growth provisions of the RMP that should be addressed.

COMMENT: One comment noted that with respect to Section 1.4 (Inquiry Meeting) and Section 1.5 (Pre-application Meeting), these meetings are exploratory in nature; however, there is no mechanism for informing the public of these meetings. Since these meetings are basically “conceptual” meetings, the public should be included and allowed input; public access needs to be provided. The same commenter noted that in regard to the section - Petition for Redevelopment Area Designation - petitions should require legal notice to the public. It is suggested that petitioners must be required to publish a legal notice at least 10 days prior to any hearing in the newspaper of record for the municipality where the project is located.

RESPONSE: The Inquiry Meeting is an opportunity for all parties seeking information about the *potential* for designation of an area as a Highlands Redevelopment Area to convene with Council staff. It is a voluntary informal meeting that offers the opportunity for directly involved parties to be provided with data and technical resources that may be available in support of a petition application. Based upon the meeting, these parties may determine that the potential redevelopment designation is not practical or feasible or they may choose to proceed in the process to the more comprehensive pre-application meeting and petition for redevelopment. Proprietary information may be discussed. Public access and input would not be appropriate at such an early stage of the process. With respect to the Pre-application meeting, text was added to the procedures that states that 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. In regard to the Petition for Redevelopment Area Designation, text was added to the procedures (in current Section 1.7) that states that 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 at which the staff recommendation will be considered.

COMMENT: One comment noted that Section 1.6 was skipped; thus, the following sections should be renumbered.

RESPONSE: The Council acknowledges the comment; the subsequent sections were appropriately renumbered.

COMMENT: One comment stated that the definition of “Highlands Redevelopment” as listed in Section 1.2 (Definitions) should not include the phrase “conversion to recreational sites, parks,

natural resources conservation, or other dedicated open space purposes.” This language sends the wrong message about redevelopment and its purpose.

RESPONSE: The Council staff feels that it is appropriate to keep the phrase in as written. However, to address the commenter’s concern that this language may send the wrong message about redevelopment and its purpose, new language was added into the definition that states that the purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community.

COMMENT: One comment stated that the purpose of redevelopment should be more clearly stated in the procedures. The purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community. The commenter noted that if the redevelopment goal in the Highlands is to encourage reuse of unproductive areas and get them back on the tax rolls, then the entire Redevelopment Area Designation process should be simplified. As this June 2008 draft is written, it will discourage redevelopment. Instead, the draft as written accommodates the conversion of all previously disturbed areas covered by impervious surfaces into parks and dedicated open spaces. It was suggested that the designation procedures clarify the purpose of redevelopment, and highlight the fact that its primary purpose is to create opportunities to offset losses incurred by RMP restrictions.

RESPONSE: The Council acknowledges the commenter’s opinion. The goal of the procedures is to establish the mechanism by which an applicant may request 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. As stated in the previous response, new language was added into the definition of “Highlands Redevelopment” that states that the purpose of redevelopment is to transform an underutilized or distressed area into an economically viable and productive part of the community. Doing so will not always put property back onto the tax rolls, but if not for private sector use the land should in some way provide a significant benefit to the community (e.g., active recreational facilities, community service facilities).

COMMENT: One comment suggested that the Redevelopment Area Designations review process should include review by only one agency. Review by both the Council, Council staff, and NJDEP is redundant, duplicative, time consuming and not cost-effective.

RESPONSE: As indicated in a previous response, the Highlands Council is legislatively mandated to identify appropriate Redevelopment Areas while the NJDEP has been granted the legislative authority to issue HPAA permits. As per N.J.A.C 7:38-6.7, (a) “In accordance with N.J.S.A 13:20-33b(2), the Department may, on a case by case basis, waive any of the provisions for an HPAA if such waiver is necessary for redevelopment of certain previously developed areas in the Preservation area identified by the Council pursuant to N.J.S.A 13:20-9b and N.J.S.A 13:20-11a(6)(h).”

COMMENT: One comment stated that although this latest draft of the procedures has attempted to simplify the process, it has not succeeded. The Highlands Council should be looking for ways to simplify the process, not enlarge it.

RESPONSE: The Council acknowledges the opinion but disagrees. The draft final procedures have a more condensed set of information requirements yet these simplified requirements will still allow staff to conduct comprehensive reviews of proposed redevelopment area designations against the goals, policies, and objectives of the Regional Master Plan.

COMMENT: One comment submitted on behalf of several interested parties concluded that the current document is inadequate to meet the requirements of the Act, the RMP and the NJDEP waiver process. The comment points out that the narrative explanation of the revised procedures includes the following statement, “Public comments indicate that the requirements were onerous for a procedure that has, as its endpoint, the designation of redevelopment area.” While the “endpoint” for the Council may be the designation of a redevelopment area, it is clear that such designations must be in conformance with the RMP. It is imperative that the Council request sufficient information to support its own analysis of site suitability under the RMP. The commenter does not feel that the information requirements in the May 2007 draft were onerous.

COMMENT: One comment submitted on behalf of several interested parties suggested that substituting the DEP procedures for granting development waivers is not acceptable and does not absolve the Council of its responsibility to adhere to the Goals, Policies and Objectives of the Regional Master Plan. On the contrary, such a substitution is an abdication of the Council’s statutory responsibility to designate redevelopment areas as suitable under the RMP.

RESPONSE: The Council is strongly committed and legislatively mandated to ensure that the implementation of any redevelopment project will provide protection of natural resources, environmentally sensitive areas, open space, and agricultural lands, and will enhance and reflect community character. The Council is requiring sufficient information, in a step-wise manner (from initial Inquiry Meeting to Pre-application Meeting to Petition for Highlands Redevelopment Area Designations) to ultimately ensure that a proposed Highlands Redevelopment Area will not result or contribute to impairment of any Highlands resource located on or adjacent to the Highlands Redevelopment Area. As described in the procedures, the Council shall review a proposed area for redevelopment against all of the RMP resource protection and smart growth standards and policies. The applicant submittal requirements contained in the June 2008 draft review procedures are sufficient to enable the Council staff to conduct thorough and effective reviews of a proposed redevelopment area against the Goals, Policies and Objectives of the RMP.

Subsequent to the Council staff’s review of the required pre-application meeting materials and the conduct of the meeting itself, the interested party may petition the Council to approve designation of a Highlands Redevelopment Area. As per the Highlands Redevelopment Area Designation procedures, such petitions must include all the submittal requirements for the pre-application meeting and those items required by NJDEP as listed in NJDEP’s HPAA Pre-Application Checklist (these same materials will be required to be submitted in the next step of the process – when the

NJDEP will be reviewing the proposed HPAA with Redevelopment Waiver). This was done to ensure that the Council staff has adequate information to conduct the Highlands Council review and to avoid redundancy with HPAA submittal requirements. This does not constitute “Substituting the DEP procedures for granting development” nor does it “absolve the Council of its responsibility to adhere to the Goals, Policies, and Objectives” of the Regional Master Plan.” The Council staff will be conducting an independent comprehensive review of the proposed redevelopment area against the Goals, Policies and Objectives of the RMP using all the material submitted by the petitioner.

COMMENT: One comment submitted on behalf of several interested parties stated that the May 2007 draft included provisions that applications require evidence of municipal participation and public notice as well as statements by reputable governmental agencies identifying the presence of any natural or historical resources. In addition, the applications require the identification of several Highlands resources that may be present. These application requirements are important for three compelling reasons: 1) they inform the applicant upfront of the criteria the Highlands Council will consider in order for approval of a Highlands Redevelopment Area; 2) they require a degree of procedural transparency and public and municipal participation; and 3) they are consistent with the Goals, Policies and Objectives of the Regional Master Plan.

RESPONSE: With respect to procedural transparency and public and municipal participation, in the section titled “Request for Pre-Application Meeting” in the redevelopment procedures, it is indicated that the Council may invite municipal and county planning representatives as appropriate. Further, the Council meeting at which the Petition for Highlands Redevelopment Area Designation will be discussed is a public meeting at which municipal officials and members of the public may provide input. Further, new text was added to the procedures that states that 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 least 10 business days before the Council meeting.

COMMENT: One comment submitted on behalf of several interested parties urged the Council to return to the May 4, 2007 Draft Procedures for Highlands Redevelopment Site Approval, and provided suggestions regarding the May 4, 2007 Draft Procedures, as the June, 2008 draft was felt to be, in comparison, an abandonment of necessary standards and procedures. Various text changes were proposed to the May 4, 2007 draft (these addenda deal largely with public hearing issues, notifying municipal clerks, newspaper public notices, etc.).

RESPONSE: The Council believes that the June 2008 Procedures for Highlands Redevelopment Area Designations will effectively implement the intent of the Highlands Act and does not agree with the comment to return to the May 2007 Procedures. The suggested text changes to the May 2007 do not appear in the text of June 2008 version of the procedures.