



**Comments  
Of  
The Association of New Jersey Environmental Commissions (ANJEC)  
Re:  
Draft RMP Addendum Procedures for Highlands Redevelopment Area  
Designation**

**January, 2019**

**Prepared by:**

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**Introduction**

The Association of New Jersey Environmental Commissions (ANJEC) is pleased to submit the following comments with regard to the Highlands Council's draft Addendum Procedures for Highlands Redevelopment Areas. We own no real property within the Highlands Region. Our comments are presented in the spirit of constructive criticism to assist the staff and the Council with this important matter.

As an organization that exists to assist the many local environmental commissions and committees that have formed in New Jersey since the enabling statute authorized them in 1969, we are always concerned about how commissions respond to planning challenges.

## **Overarching Concerns**

Because the proposal, if adopted, will determine where and how Highlands Redevelopment Areas are sited and approved, it was necessary to spend considerable time reviewing the Regional Master Plan and the Highlands Water Protection and Planning Act to determine what role redevelopment areas are expected to play in achieving the purposes of the Act and how redevelopment areas fit into the RMP. Only when the planning objectives of designating redevelopment areas are understood can a valid evaluation of the proposal take place.

However, problems, conflicts and sometimes vague concepts were encountered, primarily within the Goal, Policies and Objectives for Highlands Redevelopment Areas. These problem are beyond the scope of these comments but played a background role in evaluating the proposal.

## **The “Trashed Area” Problem**

ANJEC wishes to express its concern about the planning idea that runs through the entire redevelopment discussion, which indicates that the areas have been selected because they are deficient of valuable natural resources and are therefore, almost by definition, “suitable” for more intense development. Sometimes this imputed “suitability” is carelessly conflated with “sustainable.”

The simple fact is that these areas as defined (brownfields, grayfields, and areas with greater than 70% impervious cover) have historically and are currently negatively impacting the surrounding less developed areas.

In fact, natural processes (e.g. precipitation) produce far greater damage in these areas than they would if they took place in more naturalistic environments. These damages are not linear in their effects. For example, deforestation of a formerly forested slope may increase the erosion rate 100 times. This should be a matter of concern to the Council as the impacts of climate change become more strongly felt in the near future. Furthermore, in most preexisting developed areas, infrastructure to compensate for this damage is rudimentary at best: for example, the use of roadways as stormwater conduits, and open ditches and poorly maintained piping systems without run-off volume control or water quality enhancement.

A cursory list can suffice to make the point that these areas already create a substantial environmental burden on their surroundings:

- Forests almost entirely removed (increased run-off, erosion, thermal pollution, heat islands)
- Increased soil erosion
- Invasive species (plants and animals) present in higher percentages than in more natural areas
- Soils compacted
- Soils contaminated
- Groundwater recharge reduced/ run-off increased
- Impervious surface percentage large (>70%)
- Floodplains developed, filled and heavily paved
- Stream channels culverted, piped or walled
- Stormwater run-off increased
- Natural riparian conditions destroyed: Pollutant removal, thermal control, ecosystem functions, aquatic ecosystems damaged, terrestrial ecosystems damaged
- Stream channels and banks degraded by increased frequency of high flows and extreme low flows (converted to “flashy” conditions, “urban stream syndrome”)
- Air and water temperature extremes greater
- Surface and groundwater polluted by metals, toxic chemicals, TSS, TDS, bacteria
- Higher water consumption
- Greater wastewater demand
- Increased air pollution from stationary and mobile sources
- Removal or degradation of plant and animal natural wildlife habitats

## **Locational Suitability Fallacy**

There is a persistent tendency in the RMP to find that previously developed areas are suitable for redevelopment and other development to absorb the “needs” of the region. The “needs of the region” remain undefined from a planning perspective that appears to only consider private for-profit development as such. This position ignores the simple fact that neither environmental planning nor comprehensive regional planning played a role in selecting these locations for development. It is quite possible – even likely - that existing development has taken place in exactly the wrong places from an environmental perspective. Specifically, dense development of flood prone areas, development on steep slopes, clear cutting of forests, filling and draining of wetlands, locating transportation routes and facilities along rivers and streams, and pollution of surface and ground waters all were integral to siting initial historic settlement areas. These effects elaborated over time and increased in scale and extent.

It is possible to envision a planning process that not only repairs and restores the environmental functions of previously developed areas, or creates new development in previously undeveloped spaces. There is a rich literature in the Garden City Movement, the English New Town efforts and others to serve as a framework for this thinking.

Historically, land use decision making took place in a context that had little or nothing to do with environmental planning, but the impacts of these decisions (legacy impacts) continue today.

- By 1735 the native peoples were eliminated from the Highlands and shortly thereafter, higher predators were eliminated.
- Floodplains and soils that would support agriculture were cleared of forests, initially to provide charcoal for iron ore smelting.
- Rivers and streams were dammed and water power sites developed, forming mill hamlets and sizable villages.
- Wildlife, both terrestrial and aquatic, was trapped, hunted and fished for fur and food.
- Streams were culverted and later piped.
- Roads and railroads followed water courses.
- New Jersey's largest lake and the source of the Musconetcong River, was diverted to support the Morris Canal, primarily for coal shipment.
- Pennsylvania anthracite replaced New Jersey charcoal in the iron industry and wood as a home heating source.
- Exotic and invasive species were introduced, deliberately and by accident.
- Shallow groundwaters were exploited for potable supplies, eventually polluted and the resulting development supported with water imported from the Highlands.
- Wetlands were routinely filled.
- Soils were compacted, allowed to erode and mixed with wastes.
- Forests were removed, sometimes several times, throughout the Highlands, with maximum deforestation occurring barely 150 years after initial settlement.
- Solid waste, toxic waste and toxic chemical products were introduced.
- Underground minerals, particularly iron, were extracted.
- Pipelines and electric transmission lines scarred the landscape.
- Inexpensive paving was applied throughout the region, but especially in population centers during the mid-20<sup>th</sup> Century.
- State and Interstate highways (I – 80, I -287 and I -78) were subsidized and constructed.
- Suburban sprawl became the dominant pattern of land use after WWII
- All of these activities and natural resource impacts took place in areas settled by humans.

The damages caused by these activities and uses remain with us in inhabited and sometimes abandoned areas. Some of these areas have historic significance, illustrating our relationship to the land in the past.

## **The need for a Comprehensive “Restoration Policy” (Including Redevelopment Areas)**

Given the concept that one of the goals of the Highlands planning process is to allow for the “restoration” of the natural functions of the region, especially those closely related to water quality and quantity (NJSA 13:20-10, b (1) and c (1), NJSA 13:20-30 b (2) NJSA 13:20-32(b)) the external impacts of these highly disturbed areas must be **avoided, mitigated, corrected and secured to the greatest extent possible during any redevelopment. In sum, as an overall planning goal, disturbed natural functions should be restored, not exacerbated, or compounded by new permitted impacts.**

In the Highlands current planning process, a heavy burden is placed upon designated redevelopment areas, and it is rational to expect policies that carry out these expectations. For example:

- “*The Redevelopment Program helps interested parties, municipalities, counties, state, and federal agencies understand where redevelopment opportunities are targeted by the RMP....”*
- “*Redevelopment is the preferred method for accommodating growth and economic development in the Highlands Region”*
- “*The Program also outlines incentives and technical assistance that can be provided by the Highlands Council”.*
- “*Redevelopment is a tool that will help achieve residential, retail, service, office and industrial needs and achieve general economic sustainability in the region.” (RMP, p.326)*

The first sentence indicates that the Redevelopment siting process will identify areas where redevelopment opportunities are “targeted;” an unfortunate choice of socially aggressive word.

The second indicates that of all the possible growth management techniques available, the Highlands Council has selected redevelopment as the “preferred method” to accommodate growth and “economic development”.

The third passage indicates that once designated or even before designation, “incentives and technical assistance” can be provided to redevelopment areas.

## **Regional Needs Undefined**

There is an indication that residential, retail, service, office, and industrial “needs” will be accommodated within redevelopment areas. Thus the potentially wide variety of land uses envisioned will require considerable efforts to design and execute successful redevelopment (according to the RMP definition) , even if the sites are adequate and not compromised by previous environmental assault.

Integrating these areas into existing communities will require substantial effort and maintenance. Such tensions are already felt in the so called “donut hole” municipalities, where a more dense core is surrounded by another municipality that is suburban or rural in nature (e.g. Chester Borough, Mendham Borough, Clinton Town). The denser core is often viewed as a source of environmental impacts upon the natural resources of its surroundings

- ***There is no objective analysis or presentation in the RMP or the proposed procedure of just what these “needs” are or may be (how many dwelling units, what prices, what ratio or number of affordable units, what scale of retail services (neighborhood, highway, small retail, big box or mall retail), heavy industry, light manufacturing, food processing, mining, paper, chemicals, warehousing, airports, etc. etc.) and how they might be distributed in targeted redevelopment areas within the Highlands Region.***
- ***ANJEC also notes that public “needs” such as health care facilities, schools, educational institutions, churches, facilities for police, firefighting, and rescue squads, municipal buildings,***

*libraries, cultural resources, parks and recreation space, and essential natural resources such as water supplies, and groundwater recharge protection -- are not part of the presentation.*

Without such an analysis, the default assumption is that the definition of “need” will be met by profit seeking applicants with speculative motives, rather than by comprehensive planning. If this view is allowed to drive the redevelopment area designation process, we will “achieve” more “business as usual” development in an inefficient auto-dependent sprawl pattern that will continue to press outward on less developed surroundings, enlarging – rather than reducing - the external environmental impacts. Maintaining this process without proper guidelines is contrary to the letter and intent of both the Highlands Act and the RMP.

Without extending the inclusions to embrace significant components that are present in a fully functioning community, the newly designated redevelopment areas will be a far cry from the “vibrant communities” favored by contemporary planners.

- *Overall, there is lack of sufficient definition and focus to support the appropriate delineation of redevelopment areas under the current RMP even if the selection process were procedurally “perfect.”*

### **Lack of a Working Definition of “Sustainability”**

At various points in the RMP, the concept of “economic development” seems to have morphed into something much more potentially complex - “general economic sustainability.” Apart from the 1987 Brundtland Report definition, the RMP offers no new thinking on the subject of economic sustainability or of sustainability as a practical planning policy tool.

- *Clarification or at least an updated more current working definition of economic sustainability is necessary before specific sites are chosen for redevelopment.*

Considerable thinking has taken place on the subject of sustainability since 1987, including the notion of the “triple bottom line” concept. Much of this thinking moves beyond “economic sustainability” and includes both environmental and social issues. The term “sustainability” should be more clearly defined in the proposed Highlands Redevelopment process.

### **Comprehensive Environmental Planning**

The Highlands Water Protection and Planning Act in particular recognizes the importance of *environmental planning* as an integral part of what has been termed “comprehensive planning,” affecting land use decision making in the Highlands Region. The Act was abundantly clear in prescribing a regional (comprehensive) planning approach as opposed to actions “*that cannot be left to the uncoordinated land use decisions of 88 municipalities, seven counties, and a myriad of private landowners;....*”

Importantly, the Act also introduced the notion of region-wide carrying capacity planning, empowering both the Highlands Council and the NJDEP to conduct planning and administration in the region. Although the Act recognizes the need for economic activity, growth and development, these take second place to protecting of Highlands Resources, particularly drinking water supplies.

- **Thus any and all policies designed to encourage growth or economic development must take place in the overall regional framework established by the Regional Master Plan (RMP).**

The Act and the RMP both rely heavily on municipalities, through the **Conformance Process**, to execute and administer Highlands goals, policies and objectives, *within the overall framework established by the Act, the NJDEP Rules (Preservation Area only), revised environmental resource inventories and revised municipal master plans and land use ordinances.* These all are expected to “conform” or align with the Act, the RMP and the NJDEP Rules.

Importantly, the Highlands Land Use Ordinances (LUO) adopted during conformance provide a firm basis for this process to move forward, regulating **all new development (including that proposed in redevelopment areas except where development is exempt or otherwise excepted)**. Exempt types of development are regulated by the municipalities’ non-Highlands ordinances which may be revised at any time.

**It is important that the designation of redevelopment areas take place within the comprehensive planning framework established by conformance.**

- **Municipalities in the Planning Area that choose not to complete the conformance process should be ineligible to have redevelopment areas designated within their jurisdiction until conformance is completed by adding the Highlands ERI, modifying the municipal master plan and adopting the LUO package and completing an inclusive build out analysis.**

Unfortunately, the overall response to the invitation to conform has been limited in geographic extent, and is particularly poor in urban areas, and in smaller more developed municipalities as well as lightly developed rural areas. This condition is not expected to change quickly since municipalities have had over 10 years to conform and many have not.

- **ANJEC remains concerned about encouraging growth and redevelopment in municipalities that have not conformed to the RMP, and have not modified their environmental resource inventories, master plans and adopted the ordinances contained in the LUO; all of which are proper steps to bring environmental planning to “comprehensive planning”.**

There is a pervasive assumption throughout the redevelopment program that land areas defined as brownfields, grayfields, distressed or underutilized spaces and those with impervious coverage (70% or greater) are suitable for redevelopment. The presumption seems to be that the natural systems in these areas are so heavily damaged as to be valueless. Piling on more population, impervious cover, non-point pollution sources, point source discharge, consumptive and depletive water demand, and energy consumption is justified because what was once there has been largely destroyed.

Allowing individual landowners to initiate the redevelopment designation process is the antithesis of comprehensive planning. ANJEC recognizes that this mechanism may be considered a defense against “takings” claims by individual landowners but feels that this is not necessary provided that planning can demonstrate an objective, comprehensive approach.

- **ANJEC strongly recommends that designation of redevelopment areas should take place only during or subsequent to conformance..**

## Missing RMP Elements

As previously communicated to the council, ANJEC remains concerned that the RMP does not address several essential elements related to redevelopment, Highlands centers and other “growth inducing” aspects of the plan.

**Energy:** Although authorized by the Act, the Council has not seen fit to propose the addition of an energy section to the RMP. Impacts from large scale energy projects (pipelines, electric transmission lines, and their appurtenances) continue to threaten Highlands Resources. Large utility scale fossil fuel and renewable energy projects (solar, wind) also have the capability to negatively impact Highlands Resources, especially forests, migratory birds, and scenic values.

Additionally, call for “sustainability and “economic sustainability” within the Highlands itself have implications for decentralized generation and efficiency improvements.

## Comments on Specific Sections

### 2.1 Designation Criteria

#### p.2.,para 1:

A full, formal consistency Determination should be mandatory to assure that all permitted redevelopment activities are consistent.

It is unclear what effect “rescinding the Highlands Redevelopment Area designation” may have or how it will affect outcomes.

#### p.2, para. 2

The “certain instances” under which the Highlands Council can issue waivers from the strict provisions of the RMP and the DEP can issue an “HPAA with waiver” should be fully enumerated.

#### P.2, para 3

a (1) and (2): Individuals should not be permitted to file for redevelopment area designation. The designation process should take place during and after conformance proposed by a municipality only.

b (1) and (2): The current definition of “brownfield” is vague. Release of pollutants should be required to be documented either by existing violations or on-site testing. Assuming that a site “may have” released pollutants is not sufficient. Conversely some sites have been found to be brownfields but have not been properly remediated. A redevelopment designation should not be granted until remediation is completed. A prime example of this problem is the former Fenimore dump in Roxbury Twp. High impervious cover percentages will have produced and will continue to produce excess stormwater and reduced groundwater recharge. Redeveloping these areas should require restoration of the hydrologic balance.

### **p.3 (chart)**

Representatives of the municipal environmental commission and the municipal planning board should be included in the “Optional Redevelopment Area Inquiry Meeting”, the “Pre-Application Meeting with Highlands Council” and the municipal environmental commission should be given the opportunity to provide comments on the petition to both the municipality and the Highlands Council, prior to Highlands Council Review. Subsequent process modifications should be made in the following sections to reflect these changes.

### **p.4, (a) 3.1 General Approach,**

**4(f): Conservation Restrictions:** Restrictions applied must be conservation easements under the NJ Conservation and Historic Preservation Restriction Act. They must be filed with the deed, exist in perpetuity, be mapped by metes and bounds and GPS and copies of the recorded easements must be filed with the municipality, the Highlands Council and the NJDEP, and landowner(s). The easement must include rights of entry and enforcement to the municipality, the Highlands Council and the NJDEP. Enforcement and penalties must be specified.

### **p.5, para. 1,**

**4.1 Pre Application Meeting:** The applicant (municipality) should be required to demonstrate that the area proposed for disturbance is free of conservation easements of other encumbrances such as restrictive covenants or other negative deed restrictions.

**para 2:** Municipal Environmental Commissions must be included in the Pre-application meeting.

### **p. 6, 4.1.1 Pre Application Submittal Requirements**

**para 1:** Waiver of “any item” is too broad. Waivers should only be granted for cause, expressed in writing by the Council staff.

- (a) A list of all property owners within 200’ to be noticed.

(b) The submitted plan should include existing stormwater facilities, wells, septic systems, sewer lines, water lines, natural gas lines and electric service.

(d) Land uses within 200' should be included as well as a map showing the adjoining master plan designations, including those of adjoining municipalities if within the 200' distance.

(g) A conceptual site plan is sufficient at this stage. However, a full site plan and check list meeting municipal (post conformance) requirements must ultimately be submitted prior to granting redevelopment status.

(h) (2)(iii) : Add violations issued or outstanding

**p.7, 5.1.1**

(d) Currently, the NJDEP has new stormwater rules out for public comment. These rules will become effective one year after adoption. Applicants submitting after the effective date should be required to comply with all aspects of these rules unless more effective protection is provided by the Highlands LUO. The proposed rules mandate a green stormwater infrastructure, eliminating the "maximum extent practicable" loophole in the existing rule.

(e) Conformed municipalities should be able to request a local public hearing and notice accordingly. The Environmental Commission should be noticed.

**Proposed RMP Amendment -**  
***Draft: Highlands Redevelopment Area Designation Procedures***  
**Comments of Wilma Frey, Senior Policy Manager**  
**New Jersey Conservation Foundation**  
**January 22, 2019**  
**New Jersey Highlands Council, Chester, NJ 07930**

Chairman Richko, Executive Director Plevin and Members of the Council:

Thank you for the opportunity to comment.

In December, the Council voted to authorize the six required public hearings before the “Procedures for Highlands Redevelopment Area Designation” can be adopted as an Addendum to the Highlands RMP.

Redevelopment areas, according to the Highlands Act and the DEP Highlands rules, “shall be either a brownfield site designated by the DEP or a site at which at least 70% of the area...is covered with impervious surface.”

A brownfield under NJ state law (N.J.S.A. 58:10B-23.d) is *“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 of a contaminant.”*

[The NJDEP “Site Remediation Program” website states: “It is a local, state and national priority to put these sites back into productive reuse. Facilitating successful real estate investment projects on brownfield sites is critical to improving the environment and economy of New Jersey.”]

Given that the overriding impetus and goal of the Highlands Water Protection and Planning Act was and is the preservation and protection of the Region’s critical water supply, forests and other natural resources, as well as its historic, scenic and outdoor recreational values, we have several concerns about the proposed procedure to designate Highlands Redevelopment Areas, which we note below.

In addition, given that by definition a brownfield site is likely to contain some degree of contaminants, we urge extreme caution in approving any proposal that includes residential, school, hospital or other similar proposed uses. In the Highlands, it may well be that simply permitting brownfield sites to grow back to forest may be their most appropriate use.

**1. Our first concern with the Procedure is the allowance of “possible waivers from strict application of the Regional Master Plan in the Planning Area or from strict application of the DEP Highlands Rules in the Preservation Area,” and specifically, how and by whom the appropriateness and approval of such waivers will be determined.**

**2. A second concern regards the opportunity for public comment.** A 10-day comment period is offered for public review of the draft staff analysis report on a proposed Highlands Redevelopment Area. This proposed comment period is inadequate, because the only meaningful opportunity for public comment on the proposal, during which public input could inform or influence staff recommendations, will be while the staff is still deliberating their own conclusions. ***We urge a 45-day public comment period on the draft recommendations report, to enable the public to provide thoughtful, considered and well-informed comments.***

Comments provided subsequent to release of the staff report, during the Council’s consideration of the matter, would occur too late in the process to be likely, regardless of their quality, to be accorded serious consideration or incorporation into the Council’s decision.

**3. The requirements and methodologies for notification to the public are inadequate.** Advertisement in newspapers of record is no longer sufficient, as a small and diminishing sector of the public subscribes to newspapers. Council notices, such as this proposed redevelopment areas, should be required to be posted on the affected county and municipality’s websites, in addition to posting on the Council’s own website. The Council should send press releases, via email and paper mail, to the relevant county and municipal officials, including Freeholders, County Planning Board and staff, Mayor, Township Committee, Planning/Land Use Board, Environmental Commission, Public Health and others. The public, and local residents, deserve a fair opportunity to consider and voice their opinion as to whether a proposed redevelopment would be a good new neighbor, or not.

**4. We recommend that notification of individual property owners by certified mail should extend to property owners within 2000 feet of the proposal, as many areas of the Highlands are lightly populated.**

**Comments directly addressing specific language in the Draft Procedures document:**

**Re 4.1 PRE-APPLICATION MEETING:** We suggest that the Highlands Council consider inviting, not only “municipal and county planning representatives and representatives of the NJDEP,” but also local residents and public interest organizations.

**Re: 4.1.1 Pre-Application Submittal Requirements:**

(b) The required “plan of the proposed Highlands Redevelopment Area” should be dimensioned and to scale. ***Cultural resources*** should be requested, as well as environmental, and

environmental resources should include geology, soils and scenic resources. The plan should require delineation of the **topography** (contour lines) – which the applicant can access from the Council’s Lidar maps.

***A critical additional requirement at pre-application is complete information about all existing infrastructure serving the site (or the lack thereof):*** water, sewer/septic capability, roads of any kind, rail, and any other transportation access, and energy supply, eg. level of electricity transmission, gas lines, etc. We would generally not be supportive of redevelopment proposals that would require construction of any extensive or greater than insignificant additional infrastructure – electric lines, gas lines, roads, sewers, water lines, etc., especially in the Preservation Area, the RMP Protection Zone, or in any Environmentally Sensitive Subzone.

**Re: 6.1 PRELIMINARY DETERMINATION**

**(c) 2.** “The proposed Highlands Redevelopment Area and proposed development will not result in or contribute to impairment of any Highlands Resource located on or adjacent to the Highlands Redevelopment Area.” We are concerned that impairment may be permitted by “substantial minimization” of disturbance, without a definition of what this may mean.

**(c) 4.** This section contains a requirement that “there is sufficient water supply and wastewater capacity to serve the proposed development.” We strongly recommend that there should be an additional requirement that ***“There is sufficient transportation infrastructure capacity (roads, rail, bus, etc.) to serve the proposed development,” and “there is sufficient electricity and energy infrastructure to serve the proposed development, without additional construction required.”***

**Re: 6.1 (e).** “Highlands Council staff shall provide to the public and 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.”

Our comment: While we fully agree with the intent of this paragraph – affording the public an opportunity to provide additional data and information to the staff prior to a final Council determination,” we feel that 10 business days is an inadequate timeframe to accomplish the stated purpose. **We urge a 45 day public comment period.**

**Re: 6.1.(g)** Notification to individual applicants and surrounding property owners is proposed to be 10 business days before the Council meeting at which the recommendation will be considered. ***Again, this time period is inadequate for a proposal that would substantially and***

***materially change the lives of local citizens. The notice should be, at a minimum, 30 days prior to the Council meeting.***

We will be submitting comments in writing, with almost certainly some modifications, by the comment deadline of February 11, 2019. We thank you for considering our suggestions, and would be happy to work with the Council on this issue going forward.

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Comments by George Cassa, representing NJ Highlands Coalition, concerning proposed RAD Addendum for presentation at January 22, 2019 Highlands Council Hearing

The NJ Highlands Coalition notes that while the draft RAD Procedures Addendum and cover memo do not identify affordable housing as a recommended component of a Highlands Redevelopment Area, it does appear that RADs may have been central to some important recent affordable housing settlements, including those in Chester Boro and High Bridge, as well as affordable housing planning in Lebanon Boro, and Clinton Township. If so, this would represent important progress in defining the Highlands Council's role in administering affordable housing under the 2015 Mt Laurel IV decision.

The participation of the Highlands Council and Fair Share Housing Center in consultation with the municipal governing body is implicit in the agreements for these 4 towns, even if not expressly stated as such. This is significant because FSHC's settlement is tantamount to substantive certification via the Superior Court, subject to a final fairness hearing.

Any Housing Element/Fair Share Plan that has been approved by the Superior Court is deemed to have been substantively certified under the Fair Housing Act. Thus, the settlements for these four Highlands municipalities, which are apparently based on Highlands Redevelopment Areas which have presumably been deemed acceptable by both the Highlands Council and FSHC, are effectively immune from Builder's Remedy challenges.

If this is in fact true, then the draft RAD should be revised to include a statement to that effect. We believe it would be very useful to those Highlands municipalities that can satisfy the RAD criteria to understand that it may be possible to receive substantive certification without the consequences of a 4 to 1 multiplier for market rate units by voluntarily collaborating with the Council and FSHC.

Further, we also encourage the Council to consider the possibility of applying a bonus credit multiplier as an additional incentive to encourage construction of affordable housing units in a Highlands Redevelopment Area. We believe the Council could develop this concept as an "innovative affordable housing mechanism" under the authority granted in paragraph 1(b) of Executive Order 114 to further the resource protection standards of the RMP.

Respectfully submitted,

  
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HIGHLANDS REDEVELOPMENT AREA DESIGNATION PROCEDURE  
AMENDMENT.

ON BEHALF OF THE NEW JERSEY COALITION I AM GRATEFUL FOR THE OPPORTUNITY TO HAVE A VOICE IN THESE PROCEEDINGS. HIGHLANDS RESOURCES ARE A COMMUNAL ASSET THAT MUST BE PRESERVED AND MANAGED UNDER THE HIGHEST ENVIRONMENTAL STANDARDS.

TO THAT END, AMENDMENTS TO THE REGIONAL MASTER PLAN MUST BE CONSISTENT WITH THE OBJECTIVES OF THE HIGHLANDS WATER PROTECTION AND PLANNING ACT – THAT IS TO SAY THAT AMENDMENTS ENHANCE RESOURCE PROTECTION, IN PARTICULAR THE WATER PROVIDED TO 6.2 MILLION PEOPLE ON NEW JERSEY!

REDEVELOPMENT IN THE HIGHLANDS MUST BE CONSIDERED IN THE CONTEXT OF THE WHOLE REGION. DIFFERENT LOCATIONS WILL OFFER DIFFERENT OPPORTUNITIES AND CONSTRAINTS AND WE TRUST THE COUNCIL AND STAFF TO KEEP THESE IN MIND WHEN DETERMINING WHERE REDEVELOPMENT IS APPROPRIATE IN THE HIGHLANDS.

REGARDING THE PROCEDURE THE SPECIFIC PROCESS. THE PERIOD ALLOTED FOR PUBLIC COMMENT AT ONE STAGE IN THE PROCESS IS ONLY 10 DAYS. 10 DAYS IS INSUFFICIENT FOR CONSTRUCTIVE PUBLIC PARTICIPATION

WE RECOMMEND THAT A MINIMUM PERIOD OF 30 DAYS BE ADOPTED FOR ANY PUBLIC COMMENT WITH THE OPTION TO EXTEND IF NECESSARY. THAT WILL ALLOW FOR USEFUL MULTI-STAKEHOLDER INPUT IN SUCCESSFULLY GOVERNING THE HIGHLANDS.

**NEW JERSEY HIGHLANDS COALITION**

508 MAIN ST. BOONTON

NEW JERSEY, 07005

973 588 7190

George Stafford  
NJ Highlands Coalition

Highlands Redevelopment Area Designation procedure amendment.

On behalf of the Coalition we are grateful for the opportunity to have a voice in these proceedings. Highlands resources are a communal asset that must be preserved and managed under the highest environmental standards.

To that end, beyond the procedure the specific process regarding redevelopment area designations is not as transparent. The period allotted to public comment then is only 10 days. We recommend a period of at least 30 days with the option to extend if necessary.

A 10 day period does not allow constructive public participation.

Such a short period could be interpreted as protecting the applicant in the expediency when in fact decisions on land use and redevelopment in the region have serious consequences and warrant serious multi-stakeholder participation through an approved procedure.

In addition, I will reiterate the comments made by my colleague Zachary Cole at the hearing in West Milford. Amendments to the RMP must be consistent with the objectives of the Highlands Water Protection and Planning Act - meaning that any amendments enhance resource protection, in particular the water provided to 6.2 million people on New Jersey!

Redevelopment in the Highlands must be considered in the context of the whole region. Different locations will offer different opportunities and constraints and we trust the Council and Staff to keep these factors in mind when determining where redevelopment is appropriate in the Highlands.

**New Jersey Highlands Coalition**  
508 Main St. Boonton  
New Jersey, 07005  
973 588 7190



## New Jersey Highlands Coalition Comments on the *Draft RMP Addendum - Highlands Redevelopment Area Designation Procedure*

February 11, 2019

Contributors: *George Cassa, Zachary Cole, Wilma Frey, Bill Kibler, Dave Peifer, Julia Somers, Elliott Ruga*

### **Chairman Richko, Executive Director Plevin, Members of the Council and Staff:**

On behalf of the members of the New Jersey Highlands Coalition, we support and applaud the Highlands Council actions towards more transparent government, and appreciate the commitment from the Council staff to provide more public notice and hearings. This is the most effective way to invite adequate public participation to ensure the most appropriate and successful outcomes.

#### **1. *Redevelopment, Sustainability and the Highlands Act:***

Our review of the Regional Master Plan chapters addressing redevelopment raised some observations and concerns regarding the context of this proposed procedural amendment. First, it quickly became apparent that key definitions are lacking in the original language, such as a clear definition of what kind of development (if any) municipalities in the Highlands should be seeking, and at what scale it could occur. Further, there is a persistent underlying perception that redevelopment can and should be used to pursue economic growth in the region, with the concepts of “economic development” and “sustainable development” frequently conflated. The reality of some - perhaps even the majority - of sites is that they should never have been developed in the first place. For example, much development in the Highlands historically was located along the riparian corridors of waterways – locations recognized today as critical to the protection of water quality and supply, as well as other ecosystem values. Today, redevelopment of such sites can *unacceptably* continue to degrade critical environmental resources and burden the surrounding area without tangible increased benefits, and contravene Highlands Act initiatives aiming for a sustainable Highlands region, from both environmental and economical standpoints.

The evaluation of a site for potential redevelopment should consider carefully the constraints and opportunities of the specific site. For example, sites where adequate supporting infrastructure is already in place are preferable to sites where new construction of infrastructure would be required. We recommend that the Council and staff prioritize environmental restoration over redevelopment in instances where a restored environment would better serve the goals of the Highlands Act, and meet the public needs of the State, the Highlands Region, and/or the local community. For example, a site may in fact have significant importance for water quality/supply, carbon sequestration, flood protection, ecosystem health, or for public passive or active recreation or may contain previously unrecognized historic, archaeological or scenic resources.

The draft procedure document, in the sections “Designation Criteria” and “General Approach,” refers to the importance of upholding the goals and objectives of the Highlands Water Protection and Planning Act. We support reference to the original language of the Regional Master Plan regarding redevelopment in the Highlands region, and criteria for determining appropriate sites. It is imperative that the Highlands Act mandates for natural resource protection be the principal factor in determining the appropriateness of proposed redevelopment area uses and designations, not the pursuit of economic growth, nor meeting the objectives of other state initiatives for affordable housing energy development – while these objectives are very important for New Jersey, in the Highlands, resource protection must remain paramount.

Through amending the procedures for a Redevelopment Area Designation, the Highlands Council and the NJDEP have an opportunity to clarify an ambiguity in the language of the Redevelopment Area Exemption #4, as stated in the Highlands Act. The Act states “The **reconstruction** of any building or structure for **any reason** within 125% of the footprint of the lawfully existing impervious surfaces on the site...” (Emphasis added). As the Highlands Act does not define **reconstruction**, the fact that it can be for **any reason** does not include “**for any purpose**”, and this distinction is important. Indeed, the Appellate Division in Christ Church v. NJDEP in 2010, urges, *“that the DEP promulgate regulations defining the terms under review here to avoid the type of ambiguity we confronted in deciding this case. Such regulations would not only assist future applicants but would prevent judicial review from being dependent on the unique facts presented. The existing regulatory void carries an undue propensity for ad hoc adjudication.”* We suggest that, by deferring to the plain language of the Act, **for any reason** refers to whatever circumstances exist that make redevelopment now an option, i.e., a fire, an abandoned property, an obsolete enterprise, etc. It should be clarified that this does not mean the redevelopment can be for **any purpose**, which would be quite a ridiculous interpretation, as if the Legislature intended that, say, a former school building could be reconstructed as a

nuclear generating station. It must be clarified that ***reconstruction*** means there is consistency of purpose, or in land use, between the original structure and use, and the redevelopment.

Finally, when a location is considered for redevelopment, we urge the Council and staff to evaluate the site in the context of the entire Highlands Region, under a clear strategy that is consistent with the Highlands Act and with the goals, policies and objectives set out in the Regional Master Plan. In addition, we urge requiring the incorporation of new technology and green design principles. It is in the interest of the whole Highlands Region, as well as the State of New Jersey, that redevelopment sites that are successful in meeting local community needs, are also sustainable and enhance the Region, and thereby the State.

## **2. Permitting and Waivers:**

The first issue raised in the proposed amendment is in Section 3.1 Item (d) referencing “possible waivers from strict application of the Regional Master Plan in the Planning Area or from strict application of the DEP Highlands Rules in the Preservation Area”. Policy 7G2 in the RMP clarifies the circumstances under which a waiver would be granted. However our concern is that more information should be provided to understand how and by which entities waivers will be granted, as well as the procedure for what happens if an area is denied designation, or the application is rescinded.

At this time the “instances” under which waivers from the DEP and RMP provisions could be issued are vague, and should instead be listed in full. Waivers from an established permitting procedure should be rare and granted only in extenuating circumstances.

As a remedy for the potential misapplication of these waivers, we recommend that waivers for Redevelopment Areas would only be granted to municipalities that have joined in the Regional Master Plan conformance program, thereby ensuring that the remainder of the municipality would remain subject to the planning protocols approved as part of Plan Conformance, including the Highlands Land Use Ordinances. Further, all sites seeking Redevelopment Area Designation status should be subject to a full Consistency Determination prior to consideration of approval.

## **3. Application procedure and public notification:**

**Re 4.1Pre-Application Meeting:** The Highlands Council should consider extending invitations not only to “municipal and county planning representatives and representatives of the NJDEP,”

but also to local environmental, open space and historic commissions, concerned local residents and public interest organizations.

**Re 4.1.1 Pre-Application Submittal Requirements:** Waivers for “any item” is insufficient information for the procedure to provide clear guidance as to the circumstances in which this would be acceptable. The procedure should include a protocol for explaining circumstances where a waiver for a required item listed would be issued.

Under Item (b), **Cultural resources** should be added in the requested information. Further, the **environmental resources** information should stipulate the inclusion of water resources, geology, soils and scenic resources, and provide accurate 2-foot increment topography of the proposed site.

**Proposed additional pre-application requirements:** Pre-application should include complete information about all existing infrastructure serving the site, or the lack thereof: water, sewer and septic capability, roads of any kind and any other transportation access, and details of all energy supply sources and infrastructure. Redevelopment proposals that require construction of additional infrastructure – electric lines, gas lines, switching stations, roads, sewers, water lines, ground water withdrawal, etc., especially in the Preservation Area, the RMP Protection Zone or any Environmentally Sensitive Subzone, should be carefully scrutinized to determine the environmental, local community and broader impacts of the potential infrastructure construction and utilization.

This concern extends to the section Preliminary Determination 6.1 Item (c) numbers 1 and 2 where we strongly recommend the inclusion of the stipulation that ***“There is sufficient existing transportation infrastructure capacity (roads, rail, bus, etc.) to serve the proposed redevelopment,” and “there is sufficient water supply and sewer capacity and sufficient existing electricity and energy infrastructure to serve the proposed redevelopment, without additional construction required.”***

**Re 6.1 Preliminary Determination:** Regarding Section 6.1 Item (e), a public comment period of ten days is completely unacceptable for any *meaningful* or constructive participation from the public and concerned stakeholders. We urge the Council to adopt a minimum 45 day public comment period for this procedure.

We also recommend the Council explore possibilities for broadening publicity of applications beyond the Council website to official municipal websites, and local news outlets, both print and digital.

#### **4. Affordable Housing: (George Cassa)**

The NJ Highlands Coalition notes that while the draft RAD Procedures Addendum and cover memo do not identify affordable housing as a recommended component of a Highlands Redevelopment Area, it does appear that RADs may have been central to the recent Chester Boro, High Bridge affordable housing settlements, as well as affordable housing planning in Lebanon Boro, and Clinton Township. If so, this would represent important progress towards defining the Highlands Council's role in administering affordable housing under the 2015 Mt Laurel IV decision.

The participation of the Highlands Council and Fair Share Housing Center (**FSHC**) in consultation with the municipal governing body is implicit in the agreements for these four towns, even if not expressly stated as such. This is significant because FSHC's settlement is tantamount to substantive certification via the Superior Court, subject to a final Fairness Hearing.

Any Housing Element/Fair Share Plan that has been approved by the Superior Court is deemed to have been substantively certified under the Fair Housing Act. Thus, the settlements for these four Highlands municipalities, which are apparently based on Highlands Redevelopment Areas which have presumably been deemed acceptable by both the Highlands Council and FSHC, are effectively immune from Builder's Remedy challenges.

If this is in fact true, then the draft RAD should be revised to include a statement to that effect. We believe it would be very useful to those Highlands municipalities that can satisfy the RAD criteria to understand that it may be possible to receive substantive certification without the consequences of a 4:1 multiplier for market rate units by voluntarily collaborating with the Council and FSHC.

New Jersey Highlands Coalition  
508 Main St. Boonton, NJ 07005

Tel: 973.588.7190 (ext.13)  
[zac@njhighlandscoalition.org](mailto:zac@njhighlandscoalition.org)



# Township of Holland

IN  
HUNTERDON COUNTY

61 Church Road  
Milford, New Jersey 08848  
Phone (908) 995-4847 ext 210  
Fax (908) 995-7112

[www.hollandtownshipnj.gov](http://www.hollandtownshipnj.gov)

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February 6, 2019

New Jersey Highlands Council  
100 North Road (Route 513)  
Chester, NJ 07930-2322  
comments@highlands.nj.gov

Re: Comments on the Procedures for Highlands Redevelopment Area Designation

Highlands Council,

The Holland Township Committee respectfully submits the following comments on the Procedures for Highlands Redevelopment Area Designation

### **Comments by the Holland Township Committee**

The governing body of The Township of Holland thanks the Highlands Council for this opportunity to comment on the new procedures. Holland has conformed both its Preservation Area and Planning Area, so we take a keen interest in these changes.

We have one major difficulty with the new procedures and that is with the stipulation that when the staff releases their draft report and recommendations they then “solicit comments for a period of not less than 10 business days.” (This is on page 12, item (e) of the draft Procedures.) **We believe a 10-day comment period is inadequate.**

In the case of municipal applications, we feel that our residents deserve more than 10 days to read the draft recommendations and fashion comments.

The bigger problem is with applications in which an individual proposes a Highlands Redevelopment Area on one or more contiguous properties that the applicant controls. **The Township’s ability to comment on such an application by an individual within 10 business days is constrained by the Open Public Meeting Act.**

Our practice is to have any such comments approved by our five-person Township Committee. We meet on the first and third Tuesdays of each month. There is often a long period between the second monthly meeting and the first meeting of the next month. For example, our Committee met on January 15, 2019. We didn’t meet again until February 5. That’s 21 days between meetings.

We might have to schedule a special meeting to approve the comments we submit. With the requirement that such a meeting be publicly noticed, we would have to advertise. Because our

newspaper of record is a weekly, we would probably have to advertise in the daily *Express-Times*, which is far more expensive.

We appreciate that the Council wishes to move quickly on these designations, but under the requirements of the Open Public Meeting Act, municipalities have difficulty moving swiftly within our schedule of meetings separated by as much as three weeks. We feel that it is especially important that our municipality have adequate time to comment on recommendations regarding a project proposed by an individual that could have a significant impact on our community.

**We suggest that you at least double the comment period to 20 business days.**

Respectfully,



Daniel T. Bush, Mayor  
Township of Holland

## **Corey Piasecki**

---

**From:** jean public <jeanpublic1@gmail.com>  
**Sent:** Saturday, December 15, 2018 12:38 PM  
**To:** Highlands; comments; INFORMATION@sierraclub.org; The Pew Charitable Trusts; info@njpirg.org  
**Cc:** INFO; media; humanelines; PETA Info; info  
**Subject:** [EXTERNAL] Re: Public Notice: Public Hearings Scheduled

public commenton redevelopment standards for highlands lands which should have preservaiton and protection as the sine qua non

1. it is necessary that properties not in common ownership shall not be added on to expand the development. no expansions should be allowed.
2. notice to adjoining properties is essential and any violation of such notice should shut down the applicatoin.
3. all nj citizens who have asked to be on a list to know about changes and redevelopments like this process shall be notified of all hearings on such redevelopment,not just locals. people all overnj are interseted in protecting this property because of water concerns. the general public should be notified, especially ifthey are on notice with this agency as wanting to be kept up to date on the doings ofthis agency
4. the notices cant be 200 ft anymore. the massive rainstorms that nj is experiencing and that are expected to magnify mean that the effect ofwater movement and flooding affect more than just 200 ft from redevelopment. the notices should go to property owners within 1000 ft immediately.not more this sneaky 200 ft rule. the effect on property owners nearby with noise, water, air, congestion mean that even more than 1,000 ft is required. maybe it should be notice to 2,000 ft of the redeveloipment. congestion is getting worse and worse in new jersey.you are not an island in your development anymore. what you do with tha property is very much affecting nearby property owners and most of the time they dont even hear about applications when it is onlyu 200 ft notice.
5. using only lot and block designations for properties shuts out most nj general public from knowing what you are talking about. most public in nj recognizes house numbers and street names in their neighborhood. most nj citizens do not memorize their lot and block so that the indication of a property being changed shoulalways include the number and street of the property. doing less is hiding what you are doing.
6. i can cite where a property was 5 houses away and the water flow increased substantially on another property. water does not stay in one place.
7. the projected impact on the areas trees and wildlife/animals should be a concern in any such plan - a major concern in whether redevelopment is allowed.

this commenis for hte public record on the highlands proposed redevelopment plan. jean publiee jean public1@gmail.copm

On Fri, Dec 14, 2018 at 12:33 PM <[highlands@highlands.nj.gov](mailto:highlands@highlands.nj.gov)> wrote:

The Highlands Council has scheduled six public hearings to solicit public comment on the draft Procedures for Highlands Redevelopment Area Designation (“Redevelopment Procedures”) before the Highlands Council can adopt the Redevelopment Procedures as part of the Highlands Regional Master Plan. A public comment period regarding the procedure will coincide with the timing of the hearings. Complete details are available in the public notice.

A copy of the draft procedure and the public notice as well as the meeting schedule are available via the link below.

[www.nj.gov/njhighlands/master/amendments/](http://www.nj.gov/njhighlands/master/amendments/)

\*\*\*\*\*

You are receiving this email because you have subscribed to Highlands Council email updates. To unsubscribe, visit the subscription page of the Highlands Council website and follow the directions ([www.nj.gov/njhighlands/news/subscribe.html](http://www.nj.gov/njhighlands/news/subscribe.html)). If you have questions regarding this email or the Highlands Council in general, please direct them to [highlands@highlands.nj.gov](mailto:highlands@highlands.nj.gov).

The Highlands Council may occasionally use this subscriber list to forward information and requests from municipalities and counties within the Highlands Region where sharing such information could potentially advance the goals of the Highlands Regional Master Plan.

My name is Jeff Snedeker and I am Bethlehem Township resident in Hunterdon County. We are pleased that NJDEP recognized and revoked the Municipal Exemption # 4 granted to a proposed Industrial facility in Bethlehem Township Block 34, Lot 12. This is the first time that an exemption has been revoked by the NJDEP. I would like to hand out what I had prepared for the public comment review in this case for your later review. I never had a chance to show my findings and what I believe are the major faults in this specific application. It is my opinion industrial and commercial applications should not be handled by municipalities. These should only be handled at the state level. Bethlehem residents have been fighting this application for about one year at a heavy financial cost.

In summary the presentation has the following main points:

Exemption 4 approval was granted based on bogus data provided by the applicant. This site has a cumulative increase in impervious surface that exceeds the maximum permitted  $\frac{1}{4}$  acre when the 1994 Site and Erosion Control Plans and Google Earth data is reviewed against what the applicant provided on the application for Exemption 4. Due diligence was not done by

Bethlehem Township to ensure the accuracy of the application. Also it seems there is no substantial monetary damages assigned to an applicant that falsifies the information on an application.

The site plan also does not fit into the criteria of reconstruction as demonstrated by the April 4, 2016 decision brought on by the NJDEP versus D.R. Mullen Construction Co which clearly states new construction is not allowed as it pertains to exemption 4. The site plan contains numerous new construction and never should have been approved under exemption 4.

The site is defined by the Highlands Council as a Forest Resource Area and thus any disturbance more than 20-feet from the edge of the exempt impervious cover is not exempted. If any disturbance extends beyond this limit, the subject project/activity should have been disqualified from exemption 4. This requirement is found in the August 16, 2007 NJDEP determination of Christ Church, Rockaway Township, New Jersey

The NJ Highlands Exemptions and Grandfathering states that the exemptions do not alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or

ordinances. Bethlehem Township Ordinance 102-24 Nonconforming lots, structures and uses was ignored for the concrete batch plant is being enlarged by over 260% so variance relief is needed to expand the concrete batch plant and no such variance exists.

The public was denied their right to a review and comment process of the approval of exemption 4 for this applicant by Bethlehem Township's own ordinance. This review process never took place. The appeals process is a major safeguard to the whole Highlands Exemption approval process and it was not adhered for it never took place. All the above issues could have presented over a year ago so this exemption would have most likely been disqualified. *Also it took us much later*

→  
Thank you for allowing me to present the above issues the residents of Bethlehem Township have experienced with exemption 4 issues over the last year.

*Also it took much longer than 10 days  
to prepare the material for the public  
comment process that never occurred.  
At least 30-60 days are needed  
to prepare*

**Date:** February 11, 2019  
**To:** Chairman Richko, Executive Director Plevin, Council Members and Council Staff  
[comments@highlands.nj.gov](mailto:comments@highlands.nj.gov)  
**From:** Wilma Frey, Senior Policy Manager, New Jersey Conservation Foundation  
**RE:** Redevelopment Procedures

**New Jersey Conservation Foundation**  
**Additional Comments**  
**Re: Draft RMP Addendum Procedures for**  
**Highlands Redevelopment Area Designation**

Thank you for the opportunity to submit comments in addition to those we submitted at the January 22 public hearing. Our January comments generally focused quite specifically on the details presented in the Draft Procedures for Highlands Redevelopment Area Designation. At this time, we would like to take a somewhat broader and longer view of the proposed procedures. We wish to credit Dave Peifer, who was until his recent retirement, the Highlands Project Director at the Association of New Jersey Environmental Commissions, for helping to stimulate a broader view of these issues. The proposal, if adopted, will determine where and how Highlands Redevelopment Areas are sited and approved.

**Comprehensive Environmental Planning is necessary for the appropriate designation of Redevelopment Areas.** The Highlands Water Protection and Planning Act was abundantly clear in prescribing a regional (comprehensive) planning approach as opposed to actions "that cannot be left to the uncoordinated land use decisions of 88 municipalities, seven counties, and a myriad of private landowners;..." The Act also introduced the concept of region-wide carrying capacity planning for both the Highlands Council and the NJDEP to conduct planning and administration in the region. ***It is critical that any and all policies designed to encourage growth or economic development must take place in the overall regional framework established by the Regional Master Plan.***

The Plan Conformance Process is the vehicle by which the Highlands Act and the Regional Master Plan are executed by municipalities in the Planning Area, through revised municipal master plans, land use ordinances (**LUO**) and environmental resource inventories (**ERI**).

***It is important that the designation of redevelopment areas take place within the comprehensive planning framework established by conformance.*** Municipalities in the Planning Area that choose not to complete the conformance process should be ineligible to have redevelopment areas designated within their jurisdiction until conformance is completed by adding the Highlands ERI, modifying the municipal master plan and adopting the LUO package and completing an inclusive build out analysis.

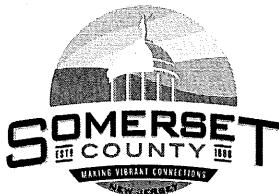
New Jersey Conservation remains concerned about encouraging growth and redevelopment in municipalities that have not conformed to the RMP, and have not modified their environmental resource inventories, master plans and adopted the ordinances contained in the LUO; all of which are proper steps to bring environmental planning to “comprehensive planning.” ***New Jersey Conservation strongly recommends that designation of redevelopment areas should take place only during or subsequent to conformance.***

### **The “Degraded Area” Problem**

Potential redevelopment areas, which are defined as brownfields, grayfields and areas with greater than 70% impervious cover, tend to be viewed as degraded areas that can therefore be utilized and “redeveloped” with equally intense or even more intense uses. Some of these areas are likely currently affecting surrounding less developed areas and creating substantial environmental impacts, including increased runoff and erosion from deforested slopes and compacted and possibly contaminated soils, reduced groundwater recharge due to larger impervious surfaces, thermal pollution and heat islands from removal of forests replaced by impervious surfaces, and many other impacts. Redevelopment could easily intensify existing problems created by the sites, as well as generating additional impacts such as increased needs for energy, water, sewer and transportation infrastructure.

**Legacy Impacts:** The RMP tends to find that previously developed areas are suitable for redevelopment. However, previous development in some cases has taken place in exactly the wrong places from an environmental perspective. For example, historically, development was located on transportation routes along rivers and streams, in the riparian zones that we today recognize as critical environmentally sensitive locations. Development on coastlines adjacent to wetlands and shores of lakes as well as the ocean, is also recognized as destroying ecosystems while producing development vulnerable to flooding. The critical water quality/water supply functions of the Highlands' forests were not recognized or valued by the iron industry when it located its mines, logged the hillsides bare, built charcoal smelting furnaces and generated worker housing and towns in the steep, hilly terrain. The impacts of these decisions (legacy impacts) continue today.

**A comprehensive Highlands “Restoration Policy” is needed that includes potential Redevelopment Areas.** Given that one of the goals of the Highlands Act and the planning process is to allow for the restoration of the natural functions of the region, especially those closely related to water quality and quantity, *the off-site impacts of highly disturbed Redevelopment Areas must be avoided, mitigated, corrected and secured, to the greatest extent possible during any redevelopment. As an overall planning goal for the Highlands Region, disturbed natural functions should be restored, not exacerbated, or compounded by new permitted impacts.*



# COUNTY OF SOMERSET PLANNING BOARD



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January 18, 2019

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Ms. Lisa Plevin, Executive Director  
New Jersey Highlands Council  
100 North Road (Route 513)  
Chester, NJ 07930-2322

## Re. Draft Procedures for Highlands Redevelopment Area Designation

Dear Ms. Plevin:

On behalf of the Somerset County Planning Board, thank you for opportunity to review the draft procedures for Highlands Redevelopment Area Designation. Somerset County applauds the Highlands Council on creating the draft procedures and for providing multiple opportunities for public feedback.

Somerset County finds the draft procedures to be overall very clear, definitive and straightforward. We also applaud how the procedures strongly encourage pre-application meetings which should be very helpful towards minimizing potential guesswork in the application process and for assessing the feasibility of a redevelopment application. We also think it is very appropriate that redevelopment area designation applications involving two or more contiguous properties can only be submitted by a municipality. Also noteworthy is that the procedures encourage Low Impact Design and make reference to NJDEP's Best Management Practices [eg., 5.1.1 (d)] will help foster good design that lessens or minimizes adverse impact on natural resources.

Somerset County offers the following comments for your consideration:

Under 3.1 General Approach, Page 5, (c) "Extent to which proposed area includes new development", the reference to "...may disturb Highlands Resources..." we recommend that you include a definition of what is meant by "Highlands Resources" and include a link to where applicants can find information describing what exactly constitutes "Highlands Resources" which they can take into consideration and determine early in the process how they may need to adjust their project proposal.

Also, under 7.1 Final Determination, on page 13, section (a) the last sentence indicates that if no action is taken within 90 days the application shall remain active with no "automatic approval of the application." While we can appreciate why this needs to be stated, this would seem to leave open the possibility that a decision on an application can potentially be postponed indefinitely. We recommend including some provision to give the applicant, whether it be an individual or a municipality, some predictability and framework; ie, in instances where a decision is not made within the 90 days the Highlands Council will notify the applicant and articulate the reason for the delay which could be due to the need for a certain critical document or written

### - Mission Statement -

The County of Somerset is committed to excellence and innovation in public service, promoting the well-being of all residents and communities by providing effective, efficient and responsive leadership.

response from another entity or stakeholder that the Council has deemed essential in order to make an informed determination regarding a pending application.

We hope these comments are helpful and again want to laud the Council for undertaking this important initiative. If there are any questions, please contact me at (908) 231-7178 or lane@co.somerset.nj.us.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Walter C. Lane".

Walter C. Lane, AICP/PP  
Director of Planning

Cc: Somerset County Board of Chosen Freeholders  
Somerset County Planning Board

**Proposed RMP Amendment -**  
***Draft: Highlands Redevelopment Area Designation Procedures***  
**Comments of Wilma Frey, Senior Policy Manager**  
**New Jersey Conservation Foundation**  
**January 22, 2019**  
**New Jersey Highlands Council, Chester, NJ 07930**

Chairman Richko, Executive Director Plevin and Members of the Council:

Thank you for the opportunity to comment.

In December, the Council voted to authorize the six required public hearings before the “Procedures for Highlands Redevelopment Area Designation” can be adopted as an Addendum to the Highlands RMP.

Redevelopment areas, according to the Highlands Act and the DEP Highlands rules, “shall be either a brownfield site designated by the DEP or a site at which at least 70% of the area...is covered with impervious surface.”

A brownfield under NJ state law (N.J.S.A. 58:10B-23.d) is *“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 of a contaminant.”*

[The NJDEP “Site Remediation Program” website states: “It is a local, state and national priority to put these sites back into productive reuse. Facilitating successful real estate investment projects on brownfield sites is critical to improving the environment and economy of New Jersey.”]

Given that the overriding impetus and goal of the Highlands Water Protection and Planning Act was and is the preservation and protection of the Region’s critical water supply, forests and other natural resources, as well as its historic, scenic and outdoor recreational values, we have several concerns about the proposed procedure to designate Highlands Redevelopment Areas, which we note below.

In addition, given that by definition a brownfield site is likely to contain some degree of contaminants, we urge extreme caution in approving any proposal that includes residential, school, hospital or other similar proposed uses. In the Highlands, it may well be that simply permitting brownfield sites to grow back to forest may be their most appropriate use.

**1. Our first concern with the Procedure is the allowance of “possible waivers from strict application of the Regional Master Plan in the Planning Area or from strict application of the DEP Highlands Rules in the Preservation Area,” and specifically, how and by whom the appropriateness and approval of such waivers will be determined.**

**2. A second concern regards the opportunity for public comment.** A 10-day comment period is offered for public review of the draft staff analysis report on a proposed Highlands Redevelopment Area. This proposed comment period is inadequate, because the only meaningful opportunity for public comment on the proposal, during which public input could inform or influence staff recommendations, will be while the staff is still deliberating their own conclusions. ***We urge a 45-day public comment period on the draft recommendations report, to enable the public to provide thoughtful, considered and well-informed comments.*** Comments provided subsequent to release of the staff report, during the Council’s consideration of the matter, would occur too late in the process to be likely, regardless of their quality, to be accorded serious consideration or incorporation into the Council’s decision.

**3. The requirements and methodologies for notification to the public are inadequate.** Advertisement in newspapers of record is no longer sufficient, as a small and diminishing sector of the public subscribes to newspapers. Council notices, such as this proposed redevelopment areas, should be required to be posted on the affected county and municipality’s websites, in addition to posting on the Council’s own website. The Council should send press releases, via email and paper mail, to the relevant county and municipal officials, including Freeholders, County Planning Board and staff, Mayor, Township Committee, Planning/Land Use Board, Environmental Commission, Public Health and others. The public, and local residents, deserve a fair opportunity to consider and voice their opinion as to whether a proposed redevelopment would be a good new neighbor, or not.

**4. We recommend that notification of individual property owners by certified mail should extend to property owners within 2000 feet of the proposal, as many areas of the Highlands are lightly populated.**

**Comments directly addressing specific language in the Draft Procedures document:**

**Re 4.1 PRE-APPLICATION MEETING:** We suggest that the Highlands Council consider inviting, not only “municipal and county planning representatives and representatives of the NJDEP,” but also local residents and public interest organizations.

**Re: 4.1.1 Pre-Application Submittal Requirements:**

(b) The required “plan of the proposed Highlands Redevelopment Area” should be dimensioned and to scale. ***Cultural resources*** should be requested, as well as environmental, and

environmental resources should include geology, soils and scenic resources. The plan should require delineation of the ***topography*** (contour lines) – which the applicant can access from the Council’s Lidar maps.

***A critical additional requirement at pre-application is complete information about all existing infrastructure serving the site (or the lack thereof):*** water, sewer/septic capability, roads of any kind, rail, and any other transportation access, and energy supply, eg. level of electricity transmission, gas lines, etc. We would generally not be supportive of redevelopment proposals that would require construction of any extensive or greater than insignificant additional infrastructure – electric lines, gas lines, roads, sewers, water lines, etc., especially in the Preservation Area, the RMP Protection Zone, or in any Environmentally Sensitive Subzone.

#### **Re: 6.1 PRELIMINARY DETERMINATION**

**(c) 2.** “The proposed Highlands Redevelopment Area and proposed development will not result in or contribute to impairment of any Highlands Resource located on or adjacent to the Highlands Redevelopment Area.” We are concerned that impairment may be permitted by “substantial minimization” of disturbance, without a definition of what this may mean.

**(c) 4.** This section contains a requirement that “there is sufficient water supply and wastewater capacity to serve the proposed development.” We strongly recommend that there should be an additional requirement that ***“There is sufficient transportation infrastructure capacity (roads, rail, bus, etc.) to serve the proposed development,” and “there is sufficient electricity and energy infrastructure to serve the proposed development, without additional construction required.”***

**Re: 6.1 (e).** “Highlands Council staff shall provide to the public and 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.”

Our comment: While we fully agree with the intent of this paragraph – affording the public an opportunity to provide additional data and information to the staff prior to a final Council determination,” we feel that 10 business days is an inadequate timeframe to accomplish the stated purpose. **We urge a 45 day public comment period.**

**Re: 6.1.(g)** Notification to individual applicants and surrounding property owners is proposed to be 10 business days before the Council meeting at which the recommendation will be considered. ***Again, this time period is inadequate for a proposal that would substantially and***

***materially change the lives of local citizens. The notice should be, at a minimum, 30 days prior to the Council meeting.***

We will be submitting comments in writing, with almost certainly some modifications, by the comment deadline of February 11, 2019. We thank you for considering our suggestions, and would be happy to work with the Council on this issue going forward.

Wilma Frey  
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New Jersey Conservation Foundation  
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Far Hills, NJ 07930  
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Thank you for the opportunity to speak this evening in support of the proposed amendment for the Redevelopment Area Designation procedure. The Highlands RMP chapters on *Community Character - Development and Redevelopment*, and *Land Use Capability Zones - Future Land Use* contain strong language regarding redevelopment in this region and the criteria for determining appropriate sites. However, it is imperative that natural resource protection as mandated under the Highlands Act be the principal factor in determining redevelopment area designations, not the pursuit of economic growth, or meeting the objectives of other state initiatives such as affordable housing or energy development--while these objectives are important for New Jersey, in the Highlands resource protection is paramount.

Building on that, I would just like to draw your attention to a couple of important points. Redevelopment, like a new development must not happen to the detriment of the natural resources in the Highlands - in particular the water that 6.2 million New Jersey Residents depend on! When a site is being considered for redevelopment we urge the Council and its very capable staff to always evaluate the site in the context of the whole region, and have a clear strategy that is consistent with the Highlands Act and the provisions set out in the RMP.

The evaluation of a site for redevelopment should also consider the constraints and opportunities of the specific site. Just as an example, a location with an existing road is better suited for redevelopment than a location where that supporting infrastructure would have to be built in addition to the redevelopment.

Finally, consideration of open space, passive recreation, and new technology -- green design principles should be incorporated as much as possible into redevelopment proposals, so these sites are ultimately turned into sustainable projects that enhance the region as a whole, rather than putting it and those who depend on it at risk. Guidelines for these aspects

are already included in the RMP, it is just a question of following them and implementing them correctly.

In addition to this the Coalition will submit more detailed written comments for the Council to consider.

Thank you.

Zachary Cole  
Outreach & Education Director

**New Jersey Highlands Coalition**  
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## County of Sussex

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February 14, 2019

Ms. Lisa Plevin, Executive Director  
New Jersey Highlands Council  
100 North Road (Route 513)  
Chester, NJ 07930-2322

Re: Redevelopment Procedures

Dear Ms. Plevin:

The Sussex County Division of Planning and Economic Development appreciates the opportunity to provide comment on the proposed *"Procedures for Highlands Redevelopment Area Designation"* Regional Master Plan (RMP) amendment. Division staff reviewed the draft Procedures and attended the Public Hearing held on January 15, 2019 at the Sussex County Technical School.

The draft Procedures outline the process by which a property owner or municipality can apply to the Highlands Council for a Highlands Redevelopment Area designation. Upon approval of a Redevelopment Area Designation, the New Jersey Department of Environmental Protection (NJDEP) and the Highlands Council may waive certain provisions of the NJDEP Highlands Rules (N.J.A.C. 7:38-6.1) and the RMP.

The Division respectfully offers the following comments as they relate to county planning responsibilities.

**Application Notice:** The draft procedures do not require notice to be sent to the County Planning Board for either individual or municipal applicants. From a county planning perspective, we recommend that copies of any Redevelopment Designation application along with notice of the Highlands Council Public Hearing on the application be sent to County Planning Board's at least 10 days prior to the hearing date. At a minimum, County Planning Boards should be noticed for applications along a county ROW or those that affect county drainage facilities.

**Preliminary Determination:** Highlands Council staff must prepare a preliminary determination report on the proposed Highlands Redevelopment Area and proposed development. Part of this report must include verification that there is sufficient water supply and wastewater capacity to serve the proposed development. However, it is unclear how this determination will be made. For this reason, local utility authorities should be noticed in order to confirm that existing wastewater or water supply capacity exists.

Very truly yours,  
**SUSSEX COUNTY**



Autumn Sylvester, P.P.  
Principal Planner, Division of Planning and Economic Development

cc      Gregory V. Poff II, County Administrator  
Bill Koppenaal, P.E., Administrator, Department of Engineering & Planning/Sussex  
County Engineer