



Part I: Highlands Council Project Review Procedures

Prepared by the State of New Jersey Highlands Water Protection and Planning Council in Support of the Highlands Regional Master Plan

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Chapter 1 – Introduction

The Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) establishes authority in the Highlands Council for review of proposed projects in the Highlands Region for their consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan (RMP). In addition, the New Jersey Department of Environmental Protection (NJDEP) Highlands Rules (N.J.A.C. 7:38-1.1 et. seq.) require that the NJDEP consult with the Highlands Council regarding RMP consistency for any permit application involving the Highlands Planning or Preservation Area.

This document sets forth Highlands Council procedures and requirements for conducting RMP Project Reviews. These protocols apply to any local government development application, Water Quality Management Plan (WQMP), Water Allocation Permit, Capital Project, or other specified project or permit requiring review by the Highlands Council to determine its consistency with the goals, requirements and provisions of the Highlands Act, RMP, and, if applicable, any Highlands Council resolution approving a Petition for Plan Conformance. This document sets forth the requirements for applications and public notices for applications that require Highlands Council review. The intent is to assist both applicants and reviewers in determining whether a Highlands Council Project Review is required in a particular case, and if so, which standards of the RMP apply.

Depending upon the type of Project Review, the Highlands Council may issue a formal Consistency Determination or may provide comments and recommendations in the form of a letter based upon a review of the project against the goals, requirements and provisions of the RMP.

It is important to note that the NJDEP reviews all applications involving any Major Highlands Development which, by definition, occur in the Preservation Area only. These include Highlands Preservation Area Approvals (HPAAs), HPAAs with waivers, Highlands resource or applicability determinations (HRAD & HAD), and exemptions from the Highlands Act. In addition, applications proposed for the Planning Area of conforming Highlands municipalities fall under the purview of the Highlands Council, and for projects that require NJDEP permitting, those permits are required to be reviewed for consistency with the Highlands Act and RMP.

Chapter 2 – Exemptions

The Highlands Act (N.J.S.A 13:20-28) provides seventeen exemptions allowing for certain activities, improvements, and development projects that are not subject to the provisions of the Highlands Water Protection Act (Highlands Act), the enhanced environmental standards of the NJDEP Highlands Rules (N.J.A.C. 7:38) or the RMP. It is important to note that these exemptions are limited to the provisions of the Highlands Act (N.J.S.A 13:20-1 to 13:20-35), and rules and regulations adopted directly in furtherance of these specific statutes. The legislation that created the Highlands Act also amended a number of other statutes that these exemptions do not apply to.

2.1 Highlands Council Exemptions

The Highlands Council issues exemption determinations for projects in the Planning Area in accordance with the Highlands Act. The NJDEP retains the jurisdiction for the review of exemptions in the Preservation Area. Highlands exemptions are applicable to Planning Area projects only in municipalities that have, through Plan Conformance, adopted ordinances implementing Highlands protections therein. Planning Area exemption determinations may also be sought by any person planning development in the Planning Area, where such ordinances may be adopted in the future. As part of the determination for Exemptions No. 9 and No. 11, the Highlands Council will conduct a Consistency Determination review. See Subchapter 4.6 for more detailed procedures regarding reviews involving Exemptions 9 and 11.

Applicants seeking a Highlands Council Planning Area exemption determination are required to complete a *Highlands Exemption Determination Application* (www.nj.gov/njhighlands/projectreview/Planning_Area_Exemption_Application.pdf).

2.2 NJDEP Highlands Preservation Area Exemptions

The NJDEP issues Preservation Area exemption determinations in accordance with N.J.A.C. 7:38. Applicants seeking such determinations are required to complete a *Highlands Applicability and Water Quality Management Plan (WQMP) Consistency Determination Application Form (Highlands Applicability Determination)* which can be found in Appendix A of this document, as well as on the NJDEP website at: www.nj.gov/dep/landuse/forms.html. In addition, the Highlands Council will provide a Consistency Determination for any NJDEP application involving an Exemption 9 or 11. See Subchapter 4.6 for more detailed procedures regarding reviews involving Exemptions 9 and 11.

2.3 Municipally-Issued Exemptions

Under a Memorandum of Understanding (MOU) with the NJDEP, the Highlands Council has developed a program to authorize municipalities with approved Plan Conformance Petitions to issue determinations regarding certain Highlands Act exemptions (1, 2, 4, 5, 6, 7 and 8), following completion of a training and certification program and adoption of an approved Highlands ordinance. Details regarding this program can be found on the Highlands Council website at: www.nj.gov/njhighlands/planconformance/guidelines/exempt.html.

Chapter 3 –Project Review Types, Processes and Requirements

The Highlands Council is responsible for reviewing a variety of project proposals to determine if they are in conformance with the Highlands Act and the RMP. The type and level of review is determined by the specifics of the proposal, including whether it has been referred by the NJDEP or by a local government agency. The resulting review document also varies.

3.1 Municipal Referrals

Most municipalities conforming to the RMP may adopt the “Highlands Referral Ordinance,” which refers certain development applications to the Highlands Council for review. The Referral Ordinance is generally intended to be an interim conformance step, prior to a municipality’s adoption of a Highlands land use ordinance.

Pursuant to the referral ordinances, municipalities direct applicants to submit their projects to the Highlands Council for review. In this review capacity, the Highlands Council evaluates the proposed project for consistency with the goals, requirements and provisions of the Highlands Act, the RMP, and with the Highlands Council resolution approving the municipality’s Petition for Plan Conformance.

3.1.1 Review Process

Prior to requesting a review by the Highlands Council, the municipality shall review the project against the Referral Ordinance to ensure that the ordinance and its requirements pertaining to referral are applicable. Projects may be excluded by either the applicability thresholds of the ordinance, by listed Highlands Act exemptions, or by certain waivers as provided therein. Once the municipality has determined that the development application requires review by the Highlands Council, it deems the application incomplete and directs the applicant to submit the project to the Highlands Council. Highlands Council staff conducts its review and prepares a Consistency Determination, which outlines its findings. See Chapter 4 for the details and process for a Consistency Determination.

3.1.2 Submission Requirements

Applicants must provide a completed and signed *Highlands Referral Ordinance Application* form, as well as the documents specified in the “Submittal Requirements” section of the form. Digital copies of plans must comply with the *Highlands Council Municipal Project Review Digital Plan Submission Standards*. Additionally, if applicable, any technical reports, studies and/or additional data that the applicant supplied to the municipality or NJDEP, whether by request or the applicant’s initiative, and any additional reports that the applicant believes will assist the Highlands Council in its consistency determination process. Copies of both the application and submission requirements can be found on the Highlands Council website at:

www.nj.gov/njhighlands/projectreview/highlands_referral_application.pdf

3.2 Call-Up of Local Government Unit Approvals

Pursuant to the Highlands Act (N.J.S.A. 13:20-17.a(1)): “Subsequent to adoption of the regional master plan, the Council may review, within 15 days after any final local government unit approval, rejection, or approval with conditions thereof, any application for development in the preservation area.” A local government unit is defined in the Highlands Act as “a municipality, county, or other political subdivision of the State, or any agency, board, commission, utilities authority or other authority, or other entity thereof.” This section of the Highlands Act invests the Council with authority to review local government decisions on development applications to determine if they are consistent with the RMP.

Pursuant the Highlands Act (N.J.S.A. 13:20-6(r)), the Highlands Council may “comment upon any application for development before a local government unit, on the adoption of any master plan, development regulation, or other regulation by a local government unit, or on the enforcement by a local government unit of any development regulation or other regulation, which power shall be in addition to any other review, oversight, or intervention powers of the council prescribed by this act.” For development applications in the conforming Planning Area municipalities, the Council conditions municipal Plan Conformance on incorporation of the same procedures for the Highland Council call-up of local government unit approvals.

3.2.1 Public Notice Requirements

In order to afford the Highlands Council an opportunity to conduct the reviews pursuant to Highlands Act (N.J.S.A. 13:20-6(r) and 17), the Highlands Act (N.J.S.A. 13:20-17(b)) requires that any application for development in the Preservation Area “provide a notice of the application to the council in accordance with such procedures therefor as shall be established by the council.” Therefore, in accordance with the Highlands Act (N.J.S.A. 13:20-17(b)), the Highlands Council hereby sets forth the following procedure:

The applicant for any application for development located in the Preservation Area, or in a conforming Planning Area municipality, that meets the public notice requirements as found under the N.J.S.A. 40:55D-12, shall provide such public notice by personal service or certified mail to the Highlands Council at least 10 days prior to the public hearing date.

3.2.2 Determination of Use of Call-Up Authority

The Executive Director shall have the authority to initiate the call up provisions in accordance with the Highlands Act (N.J.S.A. 13:20-17(a)). The Executive Director shall notify the applicant and the municipality via certified mail within 15 days of the final local government action on the project. In accordance with the Highlands Act (N.J.S.A. 13:20-17(d)), any member of the public may request at a

public meeting of the Highlands Council that the Council initiate the call up provisions of the Highlands Act, however such request shall be non-binding on the Council.

3.2.3 Public Hearing

Where the call up provisions have been initiated, the Highlands Council shall review the project at a public hearing of the Highlands Council in accordance with the requirements herein. The applicant will be provided a minimum 10-day notice of the date of the public hearing and shall have an opportunity to be heard by the Council. Any action taken by the Council must be completed 60 days from the initial notice of the exercise of the call up provisions, not including the governor's veto period.

3.3 Capital, State and Local Government Unit Projects

The Highlands Act (N.J.S.A. 13:20-16) provides that “the Council may provide comments and recommendations on any capital or other project proposed to be undertaken by any State entity or local government unit in the Highlands Region.” A local government unit is defined by the Highlands Act at as “a municipality, county, or other political subdivision of the State, or any agency, board, commission, utilities authority or other authority, or other entity thereof.” In addition, N.J.S.A 58:1B-6 and 58:5-12 were amended to include the New Jersey Water Supply Authority and the North Jersey District Water Supply Commission in this requirement.

Where these projects involve the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more, the Highlands Act requires Highlands Council review. In the Preservation Area, no such project shall proceed unless and until deemed RMP consistent by the Highlands Council. For Planning Area projects, Highlands Council review is courtesy and non-binding.

The Highlands Act provides exceptions to these review requirements for: “(1) the routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of this act and does not result in the construction of any new through-capacity travel lanes,” and “(2) the construction of transportation safety projects and bicycle and pedestrian facilities, provided that the activity does not result in the construction of any new through-capacity travel lanes” (N.J.S.A. 13:20-16.b).

3.3.1 Submission Requirements

Due to the varied nature of capital projects, it is recommended that the State entity or local government unit that is sponsoring and overseeing the proposed activities directly contact the Highlands Council to arrange a pre-application meeting.

3.4 Water Quality Management Plan (WQMP) Reviews

Planning for wastewater systems and system expansions occurs during the development of Wastewater Management Plans (WMPs) or through Water Quality Management Plan (WQMP) revisions and amendments. The New Jersey Water Quality Planning Act vests authority in the NJDEP for adoption of WMPs and WQMPs, including the important requirement that no NJDEP permit may be issued if an application conflicts with an adopted WMP. NJDEP regulations effectuating these requirements are found in the Water Quality Management Planning Rules, at N.J.A.C. 7:15.

Executive Order (EO) 114 (2008) requires that NJDEP consider Highlands Net Water Availability deficits for projects occurring in the Protection Zone, Conservation Zones, and Environmentally Constrained sub-zones. WMPs must be consistent with and, when adopted, become part of the applicable regional or area-wide WQMP. In addition, NJDEP's rules at N.J.A.C. 7:38-1.1(k) and N.J.A.C. 7:15 subchapters 2.9, 3.2, and 3.5 require NJDEP to review the Highlands RMP for the Planning Area and the Preservation Area and consider amending area-wide WQMPs to maintain consistency with the RMP.

The Highlands Council will include in its review a finding of the municipality's plan conformance status in both the Planning and Preservation Area in accordance with the Highlands Act (N.J.S.A 13:20-14 and 15.)

3.4.1 Review Process

The Highlands Council conducts WMP reviews and amendments for conforming municipalities under the goals, policies and objectives of the RMP. For non-conforming municipalities review authority is provided under EO 114 (2008), NJDEP's Rules at N.J.A.C. 7:38-1.1, and N.J.A.C. 7:15 subchapters 2.9, 3.3.2, and 3.5 and therefore only considers those RMP Goals, Policies and Objectives that specifically address the extension of public sanitary sewer.

3.4.2 Submission Requirements

The applicant must submit the following through the electronic WQMP application system on NJDEP's portal (www.njdeponline.com) in support of the application for a Consistency Determination for a WQMP amendment:

- A complete set of the items required for the NJDEP WMP review at N.J.A.C. 7:15-3.2, 3.4 or 3.5;
- A GIS shape file for the limits of disturbance, project development (inclusive of building footprints, roadways, and wastewater infrastructure) where applicable, such as project-specific amendments, and for the proposed sewer service area (if different than the parcel) and other wastewater service areas if applicable, in New Jersey State Plane Coordinates;

- Any technical reports, studies and/or additional data that the applicant supplied to the NJDEP during its review, whether by NJDEP request or the applicant's initiative, and any such reports that the applicant believes will assist the Highlands Council in its consistency determination process; and
- Information on the potable water demand and whether the project is supplied via onsite well or via Public Community Water Supply Facility.

3.5 Water Allocation Permits

The Water Supply Management Act (N.J.S.A 58:1-15.1) states that the NJDEP shall take no action related to the Water Supply Management Act inconsistent with the Highlands Act or the RMP. The NJDEP will deem no application for a water allocation permit complete until the Highlands Council has issued a determination that the permit is consistent with the Highlands Act and the RMP. The following applies to water allocation permits within both the Preservation Area and the Planning Area irrespective of the status of municipal plan conformance. In addition, a project exempt from the Highlands Act (N.J.S.A. 13:20-28) is not exempt from review under these provisions that are contained in the Water Supply Management Act.

A favorable Consistency Determination issued by the Highlands Council is required as a condition of administrative completeness for new or major modifications to water allocation permits seeking an increase in monthly or annual allocation in the Preservation or Planning Area. The favorable Consistency Determination is required as a condition for administrative completeness prior to technical review by the NJDEP. If a favorable Highlands Consistency Determination is not received with the water allocation permit application, or within 45 days of an application being deemed administratively incomplete, the water permit application will be returned to the applicant by the NJDEP.

A Highlands Consistency Determination is not required by the Council in the following circumstances:

- An increase in ONLY the maximum pumping rate;
- A water allocation permit associated with site remediation, if no transfer of water from the sub watershed is anticipated;
- Agricultural certifications submitted in accordance with DEP procedures and N.J.A.C. 7:20A.
- Aquacultural operations regulated by N.J.A.C. 7:20A.
- A major modification without an increase in allocation (annual or monthly) AND does not result in a shift of allocation to a different HUC 14 subwatershed (e.g. a new well for an existing source with no allocation increase but the new well is in the same sub watershed).
- Diversions that are temporary in nature such as dewatering or short-term permit by rule operations;
- Surface water diversions associated with a reservoir and an approved safe yield. DEP is responsible for safe yield assessments and the allocation of water within the approved safe yield.

- Existing uses that were not previously permitted, provided the requested allocation is not an increase in excess of current use. The Council will update the RMP in these cases.
- Permit renewals and minor or administrative modifications;
- Water Use registrations.

3.5.1 Review Process

The Highlands Council reviews for consistency against the RMP goals, policies and objectives applicable to Net Water Availability. These standards include but are not limited to the following: 2B4, 2B6, 2B8.

The Consistency Determination is developed after evaluating where water is coming from and ultimately discharged. Mitigation targets are set based on the consumptive/ depletive factor for that use type, and how deficit a HUC 14 subwatershed is as found in the RMP. Consistency determinations related to water allocation permits are provided in the form of a letter and report indicating the findings (i.e. consistent, consistent subject to conditions, application incomplete, etc.) in the subject area. Generally, each report contains an introduction, project description, summary of findings and recommendations/conclusions. The letter and report shall be provided to the applicant and the NJDEP indicating the findings of the Consistency Determination and any conditions attached thereto.

3.5.2 Submission Requirements

The applicant must submit to the Council a copy of the NJDEP Water Allocation permit application and all associated application materials along with a request for a Consistency Determination. The Highlands Council may contact the applicant for additional information if specific data is needed to complete the review. NJDEP applications and requirements can be found on the Department's Division of Water Supply and Geoscience website at www.nj.gov/dep/watersupply/a_allocat.html.

3.6 Highlands Applicability Determination (HAD) 9 & 11 Reviews

NJDEP determinations regarding Highlands Act exemptions 9 and 11 in the Preservation Area are made in consultation with the Highlands Council. These exemptions are as follows:

Exemption 9: The routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of the Highlands Act and does not result in the construction of any new through-capacity travel lanes of 2,640 feet or more not including tapers.

Exemption 11: The routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act.

3.6.1 Review Process

Preliminary review of exemptions 9 or 11 in the Preservation Area entails the following:

1. Review scale/scope of project. If the project is a simple replacement project (e.g., replacement of a bridge with no expansion, replacement of a utility system in the same location and remaining at the same scale and scope, proposed upgrades inside an existing building/structure, etc.) then *No Further Action* is required and the recommendation may be prepared (see 3 below). If the proposed project is a new or expanded system or facility a review is conducted using relevant GIS data to determine potential resource conflicts. If any resource conflicts are identified, the project must undergo more detailed review by Technical Staff and may require a Consistency Determination review.
2. A recommendation to NJDEP shall be prepared for signature by the Executive Director. Where the Executive Director determines that the recommendation is of sufficient complexity or impact that a vote by the full Highlands Council is necessary, the draft recommendation will be posted for public comment as required by these procedures and placed on the agenda for a subsequent Council meeting.

3.6.2 Submission Requirements

Submission requirements for **Exemption 9** include:

1. Completed NJDEP HAD form (www.nj.gov/dep/landuse/download/hc_003.pdf);
2. A site plan certified by the appropriate licensed New Jersey Professional showing the existing and proposed transportation or infrastructure system;
3. A written description of the work to be conducted and the purpose of the activity; and
4. A brief description of the State entity or local government unit that is sponsoring and overseeing the proposed activities.

Submission requirements for **Exemption 11** include:

1. Completed NJDEP HAD form (www.nj.gov/dep/landuse/download/hc_003.pdf);
2. A site plan certified by the appropriate licensed New Jersey Professional showing the existing and proposed public utility lines, rights of way, or systems;
3. A written description of the work to be conducted and the purpose of the activity; and
4. The identity of the public utility that is sponsoring and overseeing the proposed activities.

3.7 Highlands Preservation Area Approvals (HPAA) and HPAA with Waiver

A Highlands Preservation Area Approval, or HPAA, is a permit to engage in a regulated activity in the Highlands Preservation Area. In accordance with the NJDEP Highlands Rules (N.J.A.C. 7:38-1.1), the NJDEP shall consult with the Highland's Council regarding any HPAA. The NJDEP Highlands Rules require the NJDEP to "give great consideration and weight to the RMP" in making permit decisions. As part of the consultation, the Highlands Council will review and issue a Consistency

Determination related to any project requiring an HPAA or HPAA with waiver. See Chapter 4 for the details and process for a Consistency Determination.

The NJDEP issues HPAA's for Preservation Area projects that meet all criteria of the Highlands Water Protection and Planning Act Rules ("Highlands Rules," N.J.A.C. 7-38). The Highlands Rules (N.J.A.C. 7:38-1.1(i)) state that:

In its review of permits or approvals under this chapter in the preservation area, the Department shall apply the standards of this chapter and those in the RMP, to be incorporated by reference in (l) below, when adopted by the Highlands Council. Where the Department, in consultation with the Highlands Council, determines there is an inconsistency in the standards, the Department shall apply the Regional Master Plan standards insofar as they are:

1. Consistent with the purposes of the Highlands Act to sustain and maintain the overall ecological values of the ecosystem of the Highlands Region with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region; and
2. Based on, comply with, and implement the environmental standards set forth in N.J.S.A. 13:20-32.

The Highlands Act required that NJDEP establish both the Rules and the Highlands permitting review program, stipulating (at N.J.S.A. 13:20-33.b.) the inclusion of the following waiver provisions, available only on a case-by-case basis. The NJDEP included a fourth waiver in the Rules (7:38-6.4(a)4).

- (1) **Public Health and Safety Waiver.** A waiver determined necessary by the NJDEP to protect public health and safety.
- (2) **Redevelopment Waiver.** A waiver permitting redevelopment in certain previously developed areas of the Preservation Area as identified by the Highlands Council pursuant to the Highlands Act (N.J.S.A. 13:20-9b and N.J.S.A. 13:20-11a(6)(h)).
- (3) **Takings Waiver.** A waiver determined necessary by the NJDEP to avoid the taking of property without just compensation.
- (4) **100% Affordable Housing.** A waiver to permit the construction of a 100 percent affordable housing development as defined by the Council on Affordable Housing pursuant to N.J.A.C. 5:93-5.5 and N.J.A.C. 5:94-4.6.

The Highlands Council conducts project reviews for HPAA's and HPAA's with Waivers in coordination with the NJDEP. It should also be noted that overlap in review is possible. For example, review of a project by the Highlands Council may be triggered by both a HPAA application and a municipal referral ordinance, Capital Project Review or a review under the Highlands Act (N.J.S.A. 13:20-17). A completed NJDEP HPAA Application Checklist must accompany an application for an HPAA. This checklist can be found in Appendix A of this document and on the NJDEP website at: www.nj.gov/dep/landuse/download/hc_007.pdf.

3.7.1 HPAA - Health and Safety Waivers

The NJDEP has authority to issue a waiver from the Highlands Act where a project is necessary in order to protect public health and safety. To date, documented existing or imminent threats to public health and safety have been associated with contamination of domestic and/or other on-site well water supplies where the contamination is of such magnitude as to justify the extension or creation of a public water supply. The NJDEP issues such waivers only where it finds that no feasible alternative exists that would sufficiently assure the long-term protection of public health and safety. One example would be where failing septic systems affecting a water supply cannot reasonably be addressed through rehabilitation or replacement.

3.7.2 HPAA - Redevelopment Waivers

In accordance with the Highlands Act, the Highlands Council established procedures for designation of Highlands Redevelopment Areas in the Preservation Area. Such designations are necessary for any project that requires an HPAA with a waiver limiting redevelopment to brownfield areas and/or to sites having pre-existing impervious cover of 70 percent or more.

The process requires a pre-application meeting with the applicant, after which the applicant submits a petition to the Highlands Council seeking Highlands Redevelopment Area Designation. Highlands Council staff reviews the petition and provides comments and recommendations to the Highlands Council. Petitions are posted to the Highlands Council website and the Council makes a final determination following a noticed public hearing. Upon approval of a Highlands Redevelopment Area Designation, an application for HPAA with Redevelopment Waiver may be submitted to the NJDEP for consideration under N.J.A.C. 7:38-6.1.

The Highlands Council reviews Highlands Redevelopment Area Designation petitions for consistency with the goals of the Highlands Act and the RMP. As for all Consistency Determinations, the Highlands Council staff report provides its findings along with a recommendation to approve, deny, or approve with conditions.

The Highlands Council has adopted Procedures for Highlands Redevelopment Area Designations (www.nj.gov/njhighlands/master/amendments/redev/highlands_redev_procedures.pdf). That document establishes and outlines the process and requirements for Redevelopment Area Designation by the Council and should be utilized when conducting submitting such applications. *(Please note a Highlands Redevelopment Area designation is separate and apart from a redevelopment area designation under the Local Housing and Redevelopment Law).*

3.7.3 HPAA - Takings Waivers

Pursuant to the Highlands Act (N.J.S.A. 13:20-33, -34), the NJDEP adopted detailed regulations governing the review of applications for HPAA's with Waiver(s) provided to avoid takings without just compensation. Accordingly, the Highlands Rules specifically provide that the NJDEP may waive any requirement of the Highlands Rules on an individual, case-by-case basis, if necessary, to "avoid the taking of property without just compensation" (N.J.A.C. 7:38-6.4). The Highlands Rules set forth the standards by which the NJDEP determines whether a proposed project is eligible for a takings waiver (N.J.A.C. 7:38-6.8). NJDEP issuance of a takings waiver requires a determination first that the proposed development meets all standard requirements for HPAA's, as listed at N.J.A.C. 7:38-6.2(a). In addition, NJDEP must consider the following (pursuant to N.J.A.C. 7:38-6.8(c)):

1. The investments the property owner made in the property as a whole on which regulated activities are proposed and whether the investments were reasonable;
2. The minimum viable and economically beneficial use of the property as a whole; and
3. The environmental impacts of the minimum viable and economically beneficial use for the property as a whole, and the consistency of these impacts with the goals of the Highlands Act.

In accordance with N.J.A.C. 7:38-6.8(k), an HPAA with a waiver to avoid a taking of property without just compensation shall:

1. Allow only the minimum relief necessary to enable the property owner to realize the minimum beneficial economically viable use of the property as a whole, designed and built in a manner that will conserve the resources of the Highlands to the maximum extent possible; and
2. Ensure that any part of the property that the Department does not allow to be developed is protected from future development by a recorded conservation restriction containing those terms deemed necessary by the Department to preserve the undeveloped property and the mitigation plantings thereon, if any.

3.7.4 HPAA – 100% Affordable Housing Waiver

As part of the adoption of the Highlands Rules (N.J.A.C. 7:38 et seq.), the NJDEP addressed the need for a reasonable opportunity for municipalities situated entirely within the Preservation Area to provide for housing for low and moderate income households. The waiver is available only to the five (5) municipalities which are entirely within the Preservation Area: Bloomsbury, Califon, and Glen Gardner Boroughs in Hunterdon County and Ringwood Borough and West Milford Township in Passaic County.

Each waiver will be decided on a case-by-case basis and must be for a development proposal that is 100% affordable housing; no market rate housing may be included. The applicant for such a waiver must demonstrate that the project meets these criteria and no other practicable means exists to provide

for the housing need. In accordance with the Highlands Rules (N.J.A.C.7:38 – 6.9(b)), the applicant must prove that the project:

1. Has no practicable alternative that:
 - i. Would have less or no adverse impact on all Highlands resource areas on the site for which the HPAA is sought; and
 - ii. Would not have other significant adverse environmental consequences;
2. Is designed to comply with the preservation area standards; and
3. Has been designed to meet the standards for all HPAA's to the maximum extent possible.

Please note that this waiver is not contained in the RMP. Any waiver from the RMP standards to be provided under this section will be required to appear before the Highlands Council at a public hearing in accordance with the standards found herein.

3.7.5 Review Process

Preliminary review of Consistency Determinations for NJDEP consultation regarding HPAA's and HPAA's with waivers entails the following:

1. Review scale/scope of project. If the project is a simple replacement project (e.g., replacement of a bridge with no expansion, replacement of a utility system in the same location and remaining at the same scale and scope, proposed upgrades inside an existing building/structure, etc.) then *No Further Action* is required. If the proposed project is a new or expanded system or facility, review the proposed project to determine potential resource conflicts. If any resource conflicts are identified, the project must undergo more detailed Consistency Determination review by Technical Staff.
2. A recommendation to NJDEP shall be prepared for signature of the Executive Director. Where the Executive Director determines that the recommendation is of sufficient complexity or impact that a vote by the full Highlands Council is necessary, the draft recommendation will be posted for public comment as required by Chapter 5 and placed on the agenda for a subsequent Council meeting.

3.7.6 Submission Requirements

Submission requirements for NJDEP consultation regarding HPAA's and HPAA's with waivers entails the following:

1. Completed NJDEP HPAA form (www.nj.gov/dep/landuse/download/hc_003.pdf);
2. A copy of all materials submitted to NJDEP in support of the HPAA application;
3. Any plans shall be submitted in accordance with the Highlands Council Municipal Project Review Digital Plan Submission Standards (see Appendix A.)

3.8 NJDEP Permits for Conforming Planning Area Municipalities

The NJDEP Highlands Rules (N.J.A.C. 7:38-1.1(g)) state that “For all decisions in or affecting the planning area or the preservation area, the Department shall give great consideration and weight to

the RMP, to be incorporated by reference in (l) below, when adopted by the Highlands Council, and shall apply this in accordance with (h), (i), (j) and (k) below. The NJDEP Highlands Rules (N.J.A.C. 7:38-1.1(h) states “For the planning area, when consistent with its statutory and regulatory authority, the Department shall not issue any approval, authorization or permit that the Department determines, in consultation with the Highlands Council, to be incompatible with the resource protection goals in the RMP to be incorporated by reference in (l) below, when adopted by the Highlands Council.”

During such consultation, the Highlands Council will conduct a Consistency Determination based on the RMP standards for any conforming planning area municipality. A conforming planning area municipality is a municipality that has had its petition for Plan Conformance in the planning area approved by the Highlands Council and has subsequently adopted a Planning Area Petition Ordinance and any land use ordinance amendments in accordance with the Highlands Act (N.J.S.A. 13:20-15).

The review process and submission requirements will be decided on a case-by-case basis, but will generally follow those utilized for HPAAs reviews.

3.9 Project Review Status and Tracking

Highlands Council staff shall track project reviews in the project review tracking sheet which can be found on the Highlands Council website at: www.nj.gov/njhighlands/projectreview/

Chapter 4 – The Consistency Determination Review Process

The Highlands Council delegates authority to the Executive Director for the issuance and approval of Consistency Determinations under these project review procedures. The Executive Director shall provide a public listing of all Consistency Determinations issued and report regularly to the Highlands Council on all actions taken. The Executive Director may refer any of these delegated actions to the Highlands Council for review.

4.1 Highlands Council Interactive Map

One of the best tools available for reviewing a property to determine what resources may be present is the Highlands Council Interactive Map, which may be found at:

www.nj.gov/njhighlands/gis/interactive_map/

Using either the address search or Municipality/Block/Lot query functions, the reviewer may find the parcel(s) in question on a map of the Highlands Region. After selecting the appropriate parcel(s), the application can be used to display Highlands resources and other underlying attributes for the subject parcel(s) (e.g., Land Use Capability Map Zone, forest resources, net water availability, etc.). It can also be used to generate a property report, which lists and maps all applicable resources indicating their extent and location.

4.2 RMP Project Review Standards

Standards for review are provided as a component of these procedures. The standards have been developed based on the goals, policies and objectives of the RMP to clarify the review process. These standards can be found in the accompanying [Project Review RMP Standards](#) document.

4.3 Meeting(s) and Site Visit

Pre-Application Meeting

A pre-application meeting is strongly recommended to ensure an understanding by the applicant of the standards of review and submission requirements. The pre-application meeting supports the thorough review process and allows the applicant an opportunity to present the project details and receive early feedback from Highlands Council staff. Follow-up meetings, emails and/or conference calls may be necessary based on the discussions during the initial meeting and the details of the proposed project.

Site Visit

The Highlands Council staff will conduct a site visit when appropriate. A minimum of 24-hour notification of any site visit shall be given to the applicant along with an opportunity for the applicant to attend.

4.4 Consistency Determinations – Outcomes

The Highlands Council shall provide a Consistency Determination to applicants and the local land use board in the form of a letter from the Executive Director. In general, the project name, location, and main finding are included in the letter heading. The body of the letter contains a brief description of the project, the date that the application was received by the Highlands Council, as well as the dates and descriptions of any related meetings, site visits, and/or pertinent correspondence. The attached form then explains the final determination, providing the pertinent RMP policies, goals, and objectives that form the basis of the outcome and any conditions. Consistency Determinations fall within one of the categories described below.

Consistency Determination: Insufficient for Review

A Consistency Determination finding of “*Insufficient for Review*” is one for which the Highlands Council has determined that the information required to conduct the review has not been submitted or is otherwise not available. In such cases, the Consistency Determination response letter shall clearly describe the information that is lacking and provides the applicant opportunity to submit the missing components for reconsideration.

Consistency Determination: Inconsistent

A Consistency Determination finding of “*Inconsistent*” is one for which the Highlands Council has determined that the applicant’s proposal is not consistent with the goals, policies, or requirements of the Highlands Act or the RMP and is therefore not approved. Where a proposal is found inconsistent, the Consistency Determination response letter shall describe the specific areas of inconsistency, inclusive of the references to the applicable Highlands Act or RMP provisions at issue.

Consistency Determination: Consistent Subject to Specified Conditions

A Consistency Determination finding of “*Consistent Subject to Specified Conditions*” is one for which the Highlands Council has determined that the applicant’s proposal may be inconsistent with one or more of the goals, policies and/or objectives of the Highlands Act and/or the RMP, but can be modified or conditioned in a way to become consistent. In such instances, the Consistency Determination response letter describes the specific areas of inconsistency, inclusive of the references to the applicable Highlands Act or RMP provisions at issue. It then indicates specific conditions that the Highlands Council requires the applicant to meet (e.g., plan modifications) in order that the proposal achieve full consistency. The letter will further explain any follow-up steps required of the applicant to demonstrate that such conditions have been met and the timing for same. In the case of a municipal referral, all conditions attached to the Consistency Determination are required to be included in the municipal resolution of action.

Consistency Determination: Consistent

A Consistency Determination finding of “*Consistent*” is one for which the Highlands Council has determined that all aspects of the applicant’s proposal are consistent with the goals, requirements and

provisions of the Highlands Act and the RMP. Such projects may proceed through the municipal or NJDEP approval process, as applicable.

Unless a Highlands Council public hearing is required, Consistency Determinations may be issued by the Highlands Council Executive Director. In all cases, the final determination shall include written findings of fact and conclusions based thereon. All Consistency Determination response letters also offer the applicant opportunity to provide comments regarding the findings and/or to alter project specifications as necessary to achieve full consistency.

4.5 Mitigation and Waivers

Where the consistency determination review of project indicates impacts on Highland's resources, a project may seek to address those impacts through mitigation and/or a request for waivers from the RMP. The following procedure shall be followed in the design and review of projects in the Highlands Region that do not meet the RMP standards. The procedure shall apply to all Highlands resources including, but not limited to, forest, open water protection areas, critical habitat, riparian areas and prime groundwater recharge areas.

4.5.1 Avoidance, Minimization and Mitigation of Impacts

Step 1. Avoid - Adverse impacts to Highland resources are to be avoided and no adverse impacts shall be permitted if there is a practicable alternative with less adverse impact.

Step 2. Minimize - If impacts cannot be avoided, a waiver from the RMP may be required. Applicants must take all appropriate and practicable steps to minimize adverse impacts.

Step 3. Mitigate - Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts. The amount and quality of compensatory mitigation may not substitute for avoiding and minimizing impacts.

4.5.2 Mitigation

Even after avoiding and minimizing impacts, projects that will cause adverse impacts to Highlands resources typically require some type of compensatory mitigation. The Highlands Council is responsible for determining the appropriate form and amount of compensatory mitigation required. Methods of compensatory mitigation include restoration, establishment, enhancement and preservation. Mitigation for the impacts to a specific Highlands resource shall be of the same type of resource (i.e. forest impacts would be mitigated by forest restoration.)

Restoration: Re-establishment or rehabilitation of Highlands Resources with the goal of returning lost or degraded resources to their natural or historic functions and characteristics. Restoration may result in a gain in the function of the resources, the area of the resources, or both.

Establishment (Creation): The development and creation of Highlands resources where the resource did not previously exist through manipulation of the physical, chemical and/or biological

characteristics of the site. Successful establishment results in a net gain in acres and function of the resource.

Enhancement: Enhancement involves activities conducted within existing Highlands resources that heighten, intensify, or improve one or more of the resource's functions. Enhancement is often undertaken for a specific purpose such as to improve water quality, groundwater recharge, flood water retention or wildlife habitat. Enhancement results in a gain in the resource's function, but does not result in a net gain in resource acres.

Preservation: Preservation involves the permanent protection of ecologically important Highlands resources through the implementation of appropriate legal and physical mechanisms (i.e. conservation easements, title transfers). Preservation may include protection of areas adjacent to existing Highlands resources to ensure protection or enhancement of the resources. Preservation does not result in a net gain of resource areas and may only be used in certain circumstances, including when the resources to be preserved contribute significantly to the ecological sustainability of the region.

4.5.3 Waivers

Where a project cannot be designed to avoid or mitigate any impacts to Highlands resources, a waiver from the RMP standards may be required. Waivers may only be issued by the Highlands Council at a public hearing in accordance with the public hearing process found herein.

For both the Preservation Area and the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP:

1. If determined to be necessary in order to protect public health and safety;
2. For redevelopment in certain previously developed areas as identified by the Highlands Council.
3. In order to avoid the taking of property without just compensation. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible (The Highlands Council shall use the standards found in N.J.A.C. 7:38-6.8 to review any takings waiver in the Planning Area); or

4.6 Highlands Council Project Review Subject to Public Hearing

In certain instances, Consistency Determination applications require formal review by the Highlands Council at noticed public hearings. These shall include: (a) proposed Redevelopment Area Designations (Subchapter 4.7); (b) any projects requiring waivers from the requirements of the RMP; (c) any application referred by the Executive Director to the Highlands Council for full Council review at a public hearing; or (d) any project that the Highlands Council directs be subject to full Council review at a public hearing under the Council's call up authority under the Highlands Act (N.J.S.A. 13:20-17.)

4.6.1 Review and Public Comment Process

Consistency determinations requiring public hearing review are subject to all Highlands Council protocols for public hearings, including provision of both public notice and opportunity for public comment prior to final Council action.

Highlands Council staff shall prepare a draft Consistency Determination review, including the public comment and public hearing schedule, and shall post it to the Highlands Council website. A minimum 30-day public comment period shall be made available, during which public comments will be accepted.

During the public hearing, the applicant (including its professionals, if applicable) shall present the proposed project to the Highlands Council. Following the presentation, Highlands Council members and staff are given opportunity to question the applicant and offer comments, which the applicant is free to respond to. Staff shall provide a summary of its findings and recommendations, including in particular, any aspect that may differ from its draft Consistency Determination review based on the applicant's presentation. The Highlands Council opens the hearing for public comment, after which Highlands Council members deliberate and consider the application as submitted and all evidence presented during the course of the hearing. The Highlands Council renders its final decision in the matter by vote of a quorum of the full membership, in the form of a resolution containing its findings of fact, conclusions, and final determination in the matter as "consistent," "inconsistent," or "consistent subject to certain conditions."

Chapter 5 – Administrative Procedures

The following establishes the administrative procedures to facilitate comprehensive, transparent and timely reviews of applications submitted to the Highlands Council and determined to be of such scale and significance to require a formal Highlands Council public hearing review and determination.

5.1 Consistency Determination Action

Upon conclusion of Highlands Council staff review of certain projects, the review and recommended determination will be forwarded first to the appropriate Council Committee and ultimately to the full membership of the Highlands Council. After review of the project under the procedures set forth herein and the standards contained in the associated project review form, the Highlands Council shall conduct a public hearing and render its final decision by vote of a quorum of the full membership. The determination will be memorialized in the form of a resolution containing its findings of fact, conclusions, and final determination in the matter as “consistent,” “inconsistent,” or “consistent subject to certain conditions,” each as defined and discussed above.

5.2 Public Notice of Highlands Council Hearings

Public notice of any Highlands Council public hearing shall be provided by the applicant at least 10 days prior to the public hearing date. Public notice shall be provided to all interested parties on the service list maintained by the Highlands Council. Public notice shall be provided by certified mail.

5.3 Procedure for Completeness Review of Applications

The Highlands Council shall provide any applicant written notice if the application submitted does not contain sufficient information to conduct a review. The Highlands Council reserves the right to request specific additional information if at any point during the review process the Highlands Council determines that additional information is required to complete the review.

5.4 Fee Schedule

Fees shall be charged in accordance with any Rule adopted by the Highlands Council in accordance with the Highlands Act (N.J.S.A. 13:20-6.x.)

5.5 Review Timeframes/schedules

Any application to be reviewed by the Highlands Council at a public hearing shall be posted to the Highlands Council website. A minimum 30-day public comment period shall be made available, during which public comments will be accepted.

5.6 Public Access to Pending Applications

The Highlands Council shall maintain a tracking sheet of all applications received, pending and reviewed. Any member of the public may request to review any application during regular business hours.

5.7 Establishment of a Service List

The Highlands Council shall maintain a service list of interested parties who shall receive copies of any project review public notice issued in accordance with these procedures. At a minimum the service list shall include the municipal clerk of the municipality of which any project is located. In addition, any person may sign up for automatic notifications of any public hearings of the Highlands Council on the Highlands Council's website.

5.9 Public Hearings and Appeals

Nothing shall prevent an applicant from requesting a public hearing before the Highlands Council on a Consistency Determination, even if not otherwise required. In the event of such a request, the Highlands Council review process shall remain identical to that described above for project reviews subject to public hearing.

Any party aggrieved by the result of a Consistency Determination issued by the Executive Director may appeal the decision by filing notice of same to the Highlands Council within twenty (20) days of issuance or receipt of the Consistency Determination, whichever is later. All such appeals must specify the grounds for same, providing the supporting rationale with basis in and reference to, the goals, policies, and/or objectives of the RMP.

Any appeal of a Consistency Determination issued by the Highlands Council shall be conducted in accordance with the Highlands Act (N.J.S.A. 13:20-26).

Glossary of Commonly Used Terms

Affordable Housing – Means deed restricted for sale or rental housing affordable to low (less than 50% of median gross household income) and moderate income (between 50% and 80% of the median gross household income) households.

Agricultural or Horticultural Development – Means construction for the purposes of supporting common farm site activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

Applicant – Any entity applying to the Board of Health, Planning Board, Zoning Board of Adjustment, Zoning Officer, Construction Official or other applicable authority of the municipality for permission or approval to engage in an activity that is regulated by the provisions of this Ordinance.

Application for Development – The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permits pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

Development – Means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law (MLUL).

Environmental Land Use or Water Permit – A permit, approval, or other authorization issued by the Department of Environmental Protection pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.). (N.J.S.A. 13:20-3.)

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

1. Track One addresses sanitary landfill sites;
2. Track Two addresses sites that have already met the NJDEP remediation requirements and legally disturbed areas as of August 10, 2004; and

3. Track Three addresses sites with suspected or confirmed onsite contamination that have not yet received a No Further Action letter.

Highlands Act – The Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 to 13:20-35).

Highlands Applicability Determination (HAD) – The determination made by the NJDEP (pursuant to N.J.A.C. 7:38-2.4) indicating of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

Highlands Preservation Area Approval – A Highlands Preservation Area Approval (HPAA) means a permit from the NJDEP to engage in a regulated activity in the Highlands Preservation Area issued pursuant to the Highlands Act (N.J.A.C. 7:38).

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

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

Impervious Surface – Means 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 (N.J.S.A. 13:20-3). To be considered an impervious surface, the structure, surface or improvement must have the effect of reducing or preventing stormwater absorption.

Major Highlands Development – Means except as otherwise provided pursuant to the Highlands Act (N.J.S.A. 13:20-30), (1) any non-residential development in the preservation area; (2) any residential development in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity undertaken or engaged in the preservation area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a State entity or local government unit in the Preservation Area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. Major Highlands development shall not mean an agricultural or horticultural development or agricultural or horticultural use in the preservation area.

Safe Yield – Means the amount of water that can be provided from a water supply system over a repeat of the drought of record, reflecting passing flows requirements, demand patterns, watershed conditions and precipitation patterns, as determined by the NJDEP.