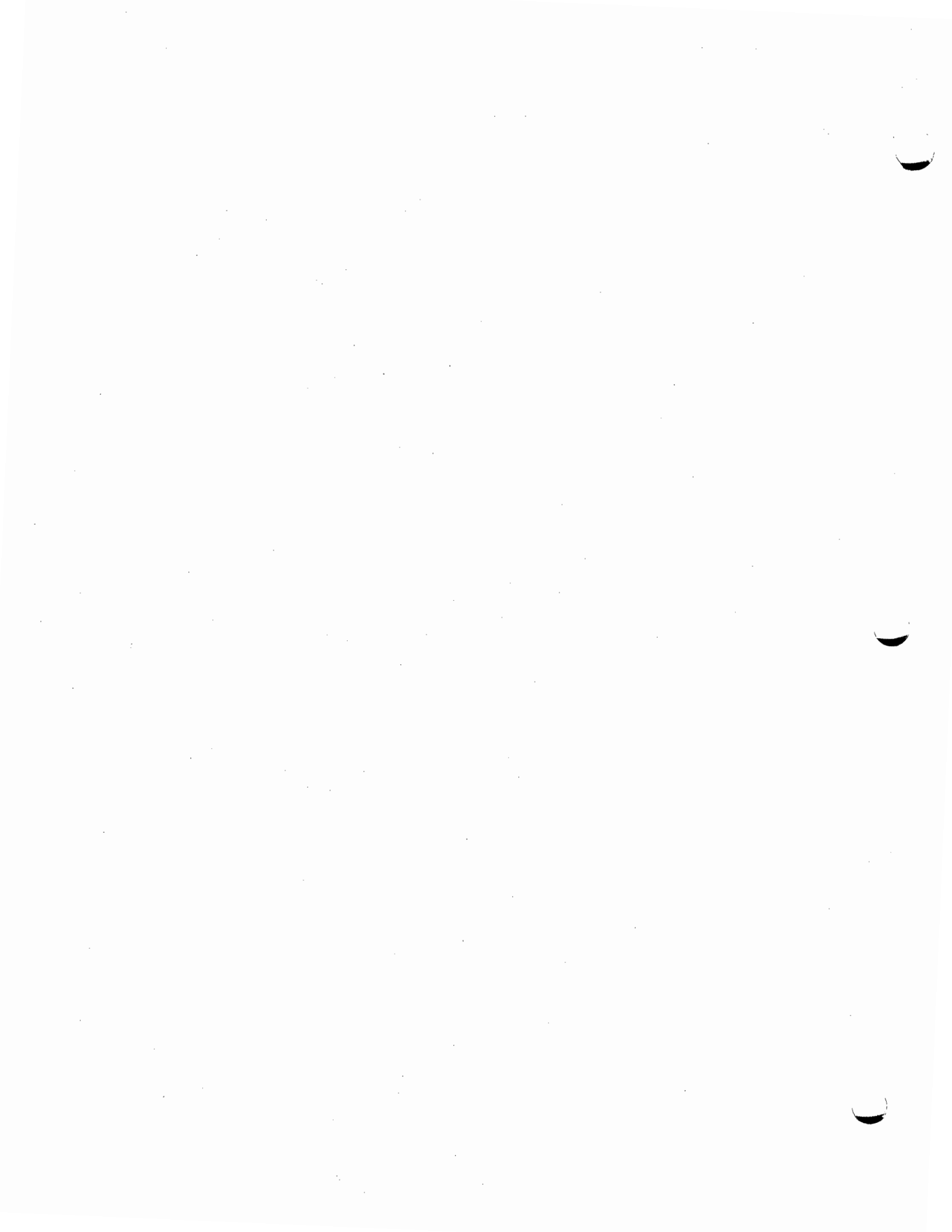


**5:21-1.6 Development over limestone geologic formations**

(a) A number of areas in northern New Jersey are underlain by solution-prone carbonate rocks (limestone, dolomite, and marble) which pose unusual and complex problems in relation to development activities. As such, these areas are quite sensitive to development improvements and may re-

quire special investigative, design, and construction techniques to protect both the eventual property owner as well as those in the immediate surroundings. It is not the intention of these site improvement standards to address such unusual subsurface conditions or to attempt to supersede definitive local ordinances addressing such concerns.

**New Jersey State Library**



(b) Any proposed revisions to the standards established by the Site Improvement Advisory Board may be submitted for consideration by any municipality shown on the list set forth as Appendix 1-A to this subchapter, incorporated herein by reference, or by any municipality where these materials are found to be present. Proposed revisions to the within standards shall be reviewed by the technical committee and recommended to the Site Improvement Advisory Board for approval.

#### 5:21-1.7 Administration and enforcement

(a) Wherever a municipality has enacted an ordinance which requires subdivision and/or site plan approval pursuant to N.J.S.A. 40:55D-37, then the planning board of such municipality shall ensure that the plans and plats for any residential development subject to review under such ordinance comply with the requirements of these rules before issuing a preliminary or final approval.

(b) Whenever a zoning board of adjustment created pursuant to N.J.S.A. 40:55D-69 grants subdivision or site plan approval pursuant to the provisions of N.J.S.A. 40:55D-76(b), then that board shall ensure that any plans and plats comply with the requirements of these rules before issuing a preliminary or final approval.

Administrative correction.  
See: 29 N.J.R. 1296(a).

#### 5:21-1.8 Approval

(a) All materials, equipment, and devices required to be approved by a board or official pursuant to N.J.A.C. 5:21-1.7 shall be constructed and installed in accordance with such approval.

(b) The standards referenced in these rules and listed in N.J.A.C. 5:21-8 shall be considered a part of the requirements of these rules to the prescribed extent of each reference. Where deficiencies occur between provisions of these rules and referenced standards, the provisions of these rules shall apply, except as provided in N.J.A.C. 5:21-1.5(e).

Administrative correction.  
See: 29 N.J.R. 1296(a).

#### 5:21-1.9 Violations

(a) Where any site improvement is required to meet any part of these rules pursuant to the requirements of any ordinance adopted pursuant to N.J.S.A. 40:55D-37, Subdivision and Site Plan Review and Approval, or N.J.S.A. 40:55D-62, Zoning, then any failure of any person to construct such site improvements in accordance with the requirements of these rules shall constitute a violation of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.). Any person responsible for such failure shall be subject to such penalties and enforcement procedures as are provided by that law and by any valid ordinance adopted pursuant

thereto which may be initiated by the administrative officer designated by the ordinance (N.J.S.A. 40:55D-18).

(b) In addition to any remedy provided by (a) above, any failure to comply with the requirements of these rules, where compliance is required, shall constitute a failure to meet the conditions of the construction permit and/or certificate of occupancy issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.). Notification from the approving authority or from the municipal engineer acting on behalf of the approving authority that any of the requirements of these rules that are conditions of the Construction Permit and/or Certificate of Occupancy have not been met shall subject any person responsible for such failure to the remedies provided under the State Uniform Construction Code Act.

Administrative correction.  
See: 29 N.J.R. 1296(a).

#### 5:21-1.10 Operative date

(a) These rules shall be operative on June 3, 1997. The requirements of any municipal ordinances or rules adopted by any instrumentality deriving authority therefrom in effect on that date which establish rules or requirements for any matter within the scope of these regulations shall be deemed to have been repealed and of no further force or effect.

(b) Any project for which preliminary subdivision or site plan approval has been given prior to June 3, 1997 shall continue to be subject to the municipal development ordinance under which it was approved.

(c) Any project for which application is made after June 3, 1997 shall be governed by these rules.

(d) These rules shall not be construed as requiring the revision or amendment of any application for site plan or subdivision approval which is pending on June 3, 1997. Such pending applications may, however, be amended provided that any such amendments shall meet the requirements of these rules.

1. For any project for which a completed application has been submitted on or before the operative date of these rules, but which has not yet received preliminary approval, the applicant shall have the option of amending the application in its entirety to comply with these rules or of requesting that the municipality continue to review the application under the municipal ordinances in effect at the time of application.

#### 5:21-1.11 Validity

If any provision of these rules or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect, and to this end the provisions of the rules are severable.

APPENDIX

5:21-2.2 Application form and checklist (Reserved)

NEW JERSEY MUNICIPALITIES  
LIMESTONE AREAS

County		Municipality
Hunterdon	Alexandria Township	Hampton Borough
	Bethlehem Township	Holland Township
	Bloomsbury Borough	Lebanon Township
	Califon Borough	Tewksbury Township
	Clinton Township	Union Township
	Clinton Town	
Morris	Chester Township	Mount Olive Township
	Jefferson Township	Mt. Arlington Borough
	Mendham Township	Randolph Township
	Mendham Borough	Rockaway Township
	Minehill Township	Roxbury Township
	Montville Township	Washington Township
Passaic	Morris Township	Wharton Borough
	Bloomington Borough	Wanaque Borough
	Ringwood Township	West Milford Township
	Bedminster Township	Peapack/Gladstone Borough
Sussex	Far Hills Borough	Lafayette Township
	Andover Township	Montague Township
	Andover Borough	Newton Town
	Branchville Borough	Ogdensburg Borough
	Byram Township	Sandyston Township
	Frankford Township	Sparta Township
	Franklin Borough	Stillwater Township
	Fredon Township	Vernon Township
	Green Township	Walpack Township
	Hamburg Borough	Wantage Township
	Hampton Township	
	Hardyston Township	Independence Township
	Allamuchy Township	Knowlton Township
	Alpha Borough	Liberty Township
Belvidere Township	Lopatcong Township	
Blairstown Township	Mansfield Township	
Franklin Township	Oxford Township	
Frelinghuysen Township	Phillipsburg Township	
Greenwich Township	Pohatcong Township	
Hackettstown Town	Washington Township	
Hardwick Township	Washington Borough	
Harmony Township	White Township	
Hope Township		
Warren		

† Listing established by the Department of Environmental Protection, Division of Science and Research (April 1995)

Administrative correction.  
See: 29 N.J.R. 2816(a).

SUBCHAPTER 2. APPLICATION AND REVIEW PROCEDURES

5:21-2.1 Application and review procedures

The procedure for municipal review and action on applications for residential subdivisions and/or site plans shall not be affected by anything contained in these rules, and shall continue to be as set forth in the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq. and in municipal ordinances adopted pursuant to the MLUL. This review shall include a review for compliance with these rules.

SUBCHAPTER 3. EXCEPTIONS, WAIVERS, AND SPECIAL AREA STANDARDS

5:21-3.1 Exceptions

(a) The municipal approving authority may grant such de minimis exceptions from the requirements of the site improvement standards as may be reasonable and within the general purpose and intent of the standards if the literal enforcement of one or more provisions of the standards is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question.

(b) An application for an exception pursuant to this section shall be filed in writing with the municipal approving authority and shall include:

1. A statement of the requirements of the standards from which an exception is sought;
2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties; and
3. A statement of the nature and extent of such practical difficulties.

(c) Exceptions shall become a part of the construction documents and shall be retained by the municipal approving authority.

(d) Within 30 days of granting a de minimis exception request, a municipal approving authority agreeing to an exception pursuant to this section shall send a copy of the document(s) constituting the de minimis exception resolution and/or document to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, NJ 08625-0802. Such notice shall be clearly marked "Site Improvement Exception(s)."

(e) An application for an exception may also be made by an officer or agency of the municipality.

(f) Examples of de minimis exceptions include, but are not limited to, the following:

1. Reducing the minimum number of parking spaces and the minimum size of parking stalls;
2. Reducing the minimum geometrics of street design, such as curb radii, horizontal and vertical curves, intersection angles, centerline radii, and others;
3. Reducing cartway width; and
4. Any changes in standards necessary to implement traffic calming devices.

(g) The municipal approving authority's granting of a request for a de minimis exception shall be based on a finding that the requested exception meets the following criteria:

1. It is consistent with the intent of the Site Improvement Act;
2. It is reasonable, limited, and not unduly burdensome;
3. It meets the needs of public health and safety; and
4. It takes into account existing infrastructure and possible surrounding future development.

Administrative correction.  
See: 29 N.J.R. 1296(a).

### 5:21-3.2 Waiver request

(a) A municipality or developer may, in connection with a specific development, request a waiver of any site improvement standard adopted under this chapter in accordance with N.J.S.A. 40:55D-40.4(c). A waiver request may also be made jointly by a municipality and a developer.

(b) The Site Improvement Advisory Board may approve a request for a waiver based on any danger to public health and safety that would be caused by adherence to a standard specified in this chapter.

(c) A waiver may be requested by a municipality or a developer, or the request may be made jointly. The waiver request shall consist of the following:

1. A copy of the development application as submitted to the municipal approving authority; and
2. A brief memorandum to the Commissioner of the Department of Community Affairs containing sufficient information upon which to base a determination, including:
  - i. A short description of the project in narrative form;
  - ii. A citation to the particular site improvement standard from which waiver is requested;
  - iii. A clear description of the condition(s) giving rise to the request;
  - iv. A clear description of the anticipated result if the standard were to be followed;
  - v. The name, address, and telephone number of a contact person for the developer; and
  - vi. The name, address, and telephone number of a contact person for the municipal approving authority.

(d) The party requesting the waiver shall send the request to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, PO Box 802, Trenton, NJ 08625-0802.

(e) Where a waiver is requested by the developer, the developer shall send a copy of the request to the administrative officer of the municipality concerned. Where a waiver is requested by the municipality, the municipality shall send a copy of the request to the developer.

(f) A waiver may be requested by the developer or the municipal approving authority at any time during the pendency of a development application. The Site Improvement Advisory Board recommends submission of a waiver request early in the application process or prior to the submission of a formal development application. If the applicant or the municipal approving authority determines during the planning board review process that a waiver request is appropriate, the municipal approving authority shall give consideration whenever possible to the granting of an extension for the purpose of pursuing a waiver. In some cases it may be impracticable for the party requesting or appealing a waiver to complete the waiver process within the time guidelines of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.; see, for example, N.J.S.A. 40:55D-45.3, 46(c), 46.1, 47, 48 and 50). In such cases, the municipal approving authority may provide for the disposition of the waiver as a condition of its approval.

(g) There is no fee for requesting a waiver.

### 5:21-3.3 Waiver review

(a) The Commissioner shall review the waiver request to determine whether it appears on preliminary review that adherence to a particular standard would jeopardize the public health and safety.

1. If the waiver request on its face does not meet the requirements of this subsection, the Commissioner shall contact the requesting party within 20 days of receipt of the request and advise the requesting party of the waiver request rejection. Grounds for rejection shall be indicated in writing.

(b) Within 20 days of receipt of a waiver request, the Commissioner shall date and mark as justified for review each waiver request accepted for review. The Commissioner shall then direct each such waiver request to the Site Improvement Advisory Board's technical committee which consists of Board members representative of, respectively, the New Jersey Society of Professional Engineers; the New Jersey Society of Municipal Engineers; and the New Jersey Builders Association (see N.J.S.A. 40:55D-40.4(c)).

(c) The Commissioner shall send notice of the Commissioner's determination of justification to designated contacts at the same time as the waiver request is sent to the technical committee.

(d) The technical committee shall render a decision by resolution within 30 days of the Commissioner's determination that the waiver request is justified.

(e) A waiver resolution adopted by the committee shall specify the grounds for granting or denying the waiver request.

(f) The Commissioner shall promptly notify the developer and the municipal approving authority of the committee's decision, and shall provide a copy of the resolution memorializing such decision to those parties and to the Site Improvement Advisory Board.

#### 5:21-3.4 Appeal of waiver decisions

(a) Any decision of the technical committee may be appealed to the Site Improvement Advisory Board, which shall hear appeals in public session at regularly scheduled or special meetings announced in compliance with the Open Public Meetings Act (see N.J.S.A. 10:4-6 et seq.).

(b) For each hearing, the Site Improvement Advisory Board shall designate, by simple majority of the members present, a voting member of the Board to serve as presiding officer.

(c) Any documents and materials constituting the appeal shall be available for public inspection at the Department of Community Affairs, Division of Codes and Standards during normal business hours at least 10 days before the date of the hearing. Other documents, records, or testimony may be produced at the hearing to clarify or supplement materials previously submitted.

(d) The hearings shall be informal. Rules of evidence shall not apply, but the presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(e) The testimony of all witnesses in a waiver appeal shall be under oath or affirmation and shall be recorded verbatim either mechanically or stenographically. Transcripts may be obtained at the expense of the requesting party and shall be certified by the transcriber to be accurate.

(f) The Site Improvement Advisory Board shall render a final decision within 10 days of the hearing. The Board's decision shall be in writing, and shall contain findings and conclusions. The Board shall mail a copy of the decision to the developer and to the municipal approving authority.

#### 5:21-3.5 Special area standards

(a) The Commissioner and the Site Improvement Advisory Board as a matter of policy recognize the need for preservation and/or enhancement of community character in New Jersey municipalities. This section is intended to provide a procedure whereby a municipal approving authority may develop and recommend to the Board supplementary and/or alternative standards in the form of municipal ordinances for review and amendment to this chapter. The Site Improvement Advisory Board shall solicit the input of the Department of Environmental Protection, the Office of State Planning, and the Department of Transportation and may solicit input from public or private organizations and individuals as it deems appropriate during the process of review of special area standards.

(b) A special area designation may be applied by ordinance by a municipality or group of municipalities to an area or areas of a municipality or municipalities exhibiting or planned to exhibit a distinctive character or environmental feature that the municipality or municipalities by ordinance have identified and expressed a desire to preserve and enhance. Examples of a special area may include:

1. Designated redevelopment areas pursuant to N.J.S.A. 40A:12A-1 et seq.;

2. Designated special improvement districts pursuant to N.J.S.A. 40:56-65 et seq.;

3. Designated historic districts pursuant to N.J.S.A. 40:55D-65.1;

4. Municipalities in the Metropolitan Planning Area (Planning Area 1), and Regional Centers, villages, hamlets, or other Centers identified by the State Development and Redevelopment Plan or designated by the State Planning Commission;

5. Infill areas in urban settings;

6. Planned unit and planned unit residential developments, and residential clusters pursuant to N.J.S.A. 40:55D-39;

7. Areas where environmental systems such as watersheds may require special environmental controls;

8. Designated scenic corridors, pursuant to the Intermodal Surface Transportation Efficiency Act or other similar State or local initiatives; and

9. Rural preservation areas including, but not limited to, designated Agricultural Development Areas, pursuant to N.J.S.A. 4:1C, and in support of the rural preservation policies of the State Development and Redevelopment Plan.

(c) The Site Improvement Advisory Board shall consider at its regular or specially-scheduled public meetings special area standards submitted for approval by or on behalf of a municipality or municipalities. The following procedures shall govern the review of special area standards submitted for approval:

1. Upon receipt of an application for approval of special area standards conforming to (e) below, the Department of Community Affairs, on behalf of the Board, shall prepare and file with the Office of Administrative Law, for publication in the New Jersey Register, a notice of receipt of the application, including a summary of its contents. Any such notice shall conform to the requirements applicable to petitions for rules set forth at N.J.A.C. 5:2-2. The notice shall indicate the time and place of any meeting that is to be held to consider the application and shall also indicate the address and telephone number at which persons may contact the Department in order to be placed on lists that the Department shall use to keep interested persons informed as to the status of any specific application or of special area standards applications generally.