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HIGHLANDS COUNCIL ABSTRACT

An analysis of the impact and implications of Highlands Act exemptions

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The purposes of this abstract are to: (a) detail the Highlands Council's analysis of certain exemptions provided for in the Highlands Act; (b) highlight the possible implications on the Highlands Region if these exemptions are exercised; and (c) briefly discuss how the Highlands Council intends to address these implications.

I. Background on Exemptions

As one means of addressing concerns regarding the impact of the Highlands Act on landowners, the Act provides seventeen (17) exemptions. If a project or activity falls within one these seventeen exemptions, the project or activity is exempt from the Highlands Act, the Highlands Preservation Area rules adopted by the New Jersey Department of Environmental Protection (NJDEP), the Regional Master Plan, and any municipal master plan or development regulations that are conformed to the Regional Master Plan. Of the seventeen exemptions, there are four that are most significant to Highlands Region landowners. Each of these four exemptions is discussed below.

Exemption 1 allows for the construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on August 10, 2004 or on a lot for which the individual had on or before May 17, 2004 entered into a binding contract of sale to purchase that lot. **Exemption 2** also allows for the construction of a single-family dwelling on an undeveloped lot that lawfully existed as of August 10, 2004, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. The distinction between Exemptions 1 and 2 is that, under Exemption 1, the home is being constructed for the person who owned the lot on August 10, 2004, or her immediate family member. Any subsequent purchaser of an undeveloped lot may only construct a home under Exemption 2 and is governed by the disturbance and impervious surface limitations of that exemption.

Exemption 4 allows the reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surface on the site. However, the reconstruction may not increase the lawfully existing impervious surface by one-quarter acre or more.

Exemption 5 permits an improvement to a single family dwelling in existence on August 10, 2004, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system. Under this exemption, NJDEP's rules interpret the term "in existence" to mean that the home was issued a certificate of occupancy no later than August 10, 2004.

II. Steps for Analysis

For purposes of this analysis, the Highlands Council staff utilized 2005 MOD-IV tax assessment data received from the New Jersey Treasury Department, Division of Taxation. The data is derived from real property tax assessment information submitted by municipal tax assessors to the Division of Taxation. Information contained in the 2005 MOD-IV data is for the period January 10, 2004 through January 9, 2005.

To conduct its analysis of Exemptions 1 and 2, staff began by selecting only those parcels listed as either Class 1 (vacant parcels) or Class 3B (farm qualified) under the MOD-IV data. These two classes represent those parcels that would have been undeveloped as of January 9, 2005, and eligible for either Exemption 1 or 2. After selecting these classes, staff joined the data with the composite zones developed by the Council and coded the parcels as either Preservation Area or Planning Area based on the Council's GIS information. Staff also included the acreage of parcels within these two classes as well as their assessed land values, and improvement values, if any. Staff excluded any Class 1 and Class 3B parcel that was less than 0.1 acre in size because it is unlikely that such a small parcel could be developed without seeking some type of zoning variance. Staff also excluded all Class 1 parcels that have an improvement value as this indicates that some amount of development or economic activity already exists on site. Lastly, staff excluded all known preserved open space in the Highlands Region, including preserved farmland, from the analysis.

For purposes of conducting the analysis for Exemption 4, staff selected out those parcels from the MOD-IV data listed as either Class 4A (commercial), 4B (industrial) or 4C (apartment buildings). These classes represent the vast majority of non-residential parcels that were developed as of January 9, 2005, and which could utilize Exemption 4 to expand existing structures within the parameters of the exemption.

In analyzing those parcels that could avail themselves of Exemption 5, staff selected out those parcels from the MOD-IV data listed as Class 2 (residential). Class 2 includes all residential uses such as single family homes, townhomes and condominiums. However, it does not include rental apartments, which are identified as Class 4C as noted above. From this data set staff flagged those parcels that are either condominiums or townhomes based on those MOD-IV parcels that had multiple records associated with the same parcel ID. Staff excluded these records because only single-family dwellings may utilize Exemption 5.

It is important to keep in mind that the Preservation Area boundary does split a number of parcels. Consequently, there are parcels that have some percentage of their acreage in both the Preservation Area and the Planning Area. For purposes of each of the above analyses, staff selected only those parcels that have at least 70% of the parcel either in the Preservation Area or the Planning Area. In some cases, use of the 70% threshold results in the number of Preservation Area parcels and Planning Area parcels not totaling up to the number of parcels for a given analysis when examined on a Region-wide basis. This occurs because parcels that do not have at least 70% of their property within one or the other area are excluded from the analysis.

III. Results

(A) Exemptions 1 and 2

The MOD-IV data reveals that there are **25,918** undeveloped parcels throughout the Highlands Region that have the potential to exercise Exemption 1 or 2 for the construction of a single-family dwelling. Significantly, those parcels that are currently zoned residential may exercise Exemption 1 or 2 without having to seek either a zoning change or use variance from municipal officials. Region-wide there are **22,554** such parcels which are classified as either Class 1 (vacant) or Class 3B (qualified farm) and are currently zoned residential. These parcels represent **228,293.00** acres in the Highlands Region.

For purposes of understanding the relative size and distribution of the residentially-zoned, undeveloped parcels in the Highlands Region, staff divided the parcels into six classes based upon parcel size: (1) greater than 0.1 acres and less than or equal to 5 acres; (2) greater than 5 acres and less than or equal to 10 acres; (3) greater than 10 acres and less than or equal to 25 acres; (4) greater than 25 acres and less than or equal to 50 acres; (5) greater than 50 acres and less than or equal to 100 acres; and (6) greater than 100 acres. The number of parcels within each category is listed in Table 1 below.

Table 1 – Highlands Region Residentially-Zoned, Undeveloped Parcels

Parcel Size Class (acres)	Region-Wide	Preservation Area	Planning Area
> 0.1 and <= 5	14,635	5,990	8,640
> 5 and <= 10	2,722	1,360	1,361
> 10 and <= 25	2,882	1,394	1,486
> 25 and <= 50	1,256	621	633
> 50 and <= 100	744	330	414
> 100	315	133	182
Totals	22,554	9,828	12,716

With respect to non-residentially zoned parcels in the Highlands Region, there are **3,364** that are undeveloped (Class 1 or 3B) comprising **36,455.69** acres.

(1) Preservation Area

There are 10,533 undeveloped parcels (Class 1 or 3B) located within the Preservation Area. Of these parcels, **9,828** are currently zoned for residential development and may construct a single-family dwelling as- of-right based on Exemption 1 or 2. These 9,828 parcels represent 107,021.97 acres in the Preservation Area. As for non-residential development in the Preservation Area, there are 725 undeveloped parcels constituting 8,538.91 acres.

(2) Planning Area

With respect to the Planning Area, there are 15,352 undeveloped parcels (Class 1 or 3B) that have the potential to exercise Exemption 1 or 2. Of these parcels, **12,716** are currently zoned residential and could exercise Exemption 1 or 2 without seeking a zoning change or use variance. The total acreage of these 12,716 parcels is 121,178.06 acres. There are 2,636 parcels zoned for non-residential development in the Planning Area. These undeveloped, non-residential parcels represent 27,912.34 acres.

(B) Exemption 4

In examining Exemption 4, the MOD-IV data reveals that there are **12,118** parcels classified as Class 4A (commercial), 4B (industrial) or 4C (apartment buildings) that could utilize this exemption to expand existing structures. This includes 1,744 parcels in the Preservation Area and 10,368 parcels in the Planning Area.

(C) Exemption 5

Throughout the Highlands Region, there are **233,394** parcels that are developed with a single-family home and which have the ability to construct additions or other structures under Exemption 5. This figure represents 59,178 single-family homes in the Preservation Area and 174,184 homes in the Planning Area.

IV. Implications

Based on the results of the above analysis, it is evident that a significant amount of development can occur within the Highlands Region under Exemptions 1 and 2 due to the number of undeveloped parcels that exist. This fact has important implications for the Region's resources. Should each of these exemptions be exercised, it will result in further fragmentation of the Region's ecosystems or result in further construction of impervious surface. For example, assuming that each property owner with an undeveloped, residentially zoned parcel constructs a home under Exemption 2, this would result in a minimum disturbance of **22,554 acres**. In turn, this could lead to reductions in water quality and quantity, critical habitat, farmland and other important regional resources.

At the same time, the exemptions are one of the primary means for landowners to utilize their properties where development potential is limited by the Highlands Act. Each landowner that has a project or activity that qualifies for an exemption has the right afforded to him or her to exercise that exemption within the parameters of the Act and municipal development regulations. Furthermore, the Highlands Council recognizes that it may not prohibit a property owner from exercising an exemption without providing mechanisms that allow the property owner to realize a like development opportunity or its equivalent.

To address the quandary presented by Exemptions 1 and 2 where Highlands resources are at risk, the Highlands Council will have to develop programs that encourage landowners to either (a) not exercise their exemption instead utilizing a program offered, or (b) exercise their exemption in a location that is more appropriate for further growth. The Highlands Council has proposed a number of these programs in the draft Regional Master Plan, including open space and farmland acquisition, clustering and providing bonus TDR credits. These programs, and likely others, will

have to be incorporated into the final Regional Master Plan if the implications of the exemptions are going to be addressed.

(Disclaimer – This analysis does not control the granting of an exemption request under the Highlands Act and NJDEP rules. A property owner seeking an exemption from the Highlands Act must follow the procedure NJDEP has established for granting an exemption, including the filing of a Highlands Applicability Determination application. That application may be found at <http://www.nj.gov/dep/highlands/consistency.pdf>)