

**DRAFT FOR CONSIDERATION BY THE HIGHLANDS COUNCIL  
AT THE MAY 22, 2008 COUNCIL MEETING**

**Part 7. Landowner Equity**

Additionally, the Highlands Act includes seventeen (17) exemptions. If a project or activity falls within one of these seventeen exemptions, the project or activity is exempt from the Highlands Act, the Highlands Preservation Area rules adopted by the NJDEP, the Regional Master Plan, and any municipal master plan or development regulations that are revised to conform to the Regional Master Plan.

Tens of thousands of acres throughout the Region could potentially be developed under the exemptions based upon an analysis conducted by the Highlands Council. While the exemptions are one of the primary means for landowners to utilize their properties where development potential is limited by the Highlands Act, the exercise of these exemptions may result in further fragmentation of the Region's ecosystems due to the construction of additional impervious surface. Given this circumstance, the Regional Master Plan addresses the need to develop voluntary programs that attempt to mitigate these impacts, including programs to encourage non-contiguous clustering, intra-local government transfers of development rights and economic incentives.

Lastly, the Act also provides the authority to grant waivers from the strict application of Highlands Act provisions on a case by case basis, under certain circumstances. Under this authority, waivers may be issued: (1) where a project or activity is necessary in order to protect public health and safety; (2) for redevelopment in previously developed areas as identified by the Highlands Council, provided that such areas are either a brownfield site designated by NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface; or (3) in order to avoid a taking of property without just compensation.

<b>GOAL 7F</b>	<b>ENSURE THAT HIGHLANDS ACT EXEMPTIONS ARE PROPERLY ISSUED AND MONITORED</b>
<b>Policy 7F1</b>	To provide guidance on the activities that are exempt from the provisions of the Highlands Act, the Regional Master Plan, any rules or regulations adopted by NJDEP pursuant to the Highlands Act, and any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the Regional Master Plan.
<b>Objective 7F1a</b>	Provide a guidance document that outlines the process for obtaining approval of the seventeen (17) exemptions available under the Highlands Act. These detailed exemptions are summarized below: <ol style="list-style-type: none"><li><b>Construction of a single family dwelling for one's own use or family use</b> on a lot owned by the individual on August 10, 2004.</li><li><b>Construction of a single family dwelling on a lot in existence on August 10, 2007</b> 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.</li><li><b>Developments that received certain municipal approval and specific NJDEP Approvals on or before March 29, 2004</b> where construction beyond site preparation commenced on or before August 10, 2007.</li><li><b>Reconstruction of buildings or structures within 125% of the footprint</b> of the lawfully existing impervious surfaces provided there is not an increase in impervious surface by one-quarter acre or more (not applicable to conversion of an agricultural or horticultural building or structure to a non-agricultural or non-</li></ol>

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horticultural use).

5. **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.
6. **Expansion of or improvement to any existing places of worship, schools, or hospitals** for non-residential purposes.
7. **Activities conducted pursuant to approved woodland and forest management plans.**
8. **Construction or extension of trails (with non-impervious surfaces) on public or private lands.**
9. **Public transportation or infrastructure systems** - Routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair, consistent with the goals and purposes of the Act without any new through-capacity travel lanes.
10. **Transportation safety projects by a State entity or local government unit**, provided that the activity does not result in the construction of any new through-capacity travel lanes.
11. **Public utility lines, rights of way, or systems** - Routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade by a public utility, consistent with the goals and purposes of the Act.
12. **Reactivation of rail lines and rail beds** existing on August 10, 2004.
13. **Public infrastructure projects approved by public referendum** prior to January 1, 2005 or a capital project approved by public referendum prior to January 1, 2005.
14. **Mining or quarrying** on any mine, mine site, or construction materials facility existing on June 7, 2004.
15. **Site Remediation of** contaminated sites.
16. **Military lands** existing on August 10, 2004.
17. **Affordable Housing pursuant to Settlements** in Planning Area 1 or Planning Area 2.

**Objective 7F1b**

Provide guidance that the Highlands Act exemptions apply for the entire Highlands Region including both the Preservation Area and the Planning Area.

**Objective 7F1c**

Preservation Area exemptions issued by NJDEP in accordance with N.J.A.C. 7:38, shall be required, where appropriate, prior to consideration of a local development review or a Highlands Project Review. Guidance shall specify the exceptions where a review may proceed absent an exemption determination from the NJDEP.

**Objective 7F1d**

Planning Area exemptions, issued by the Highlands Council, shall be required, where appropriate, prior to consideration of a local development review or a Highlands Project Review. Guidance shall specify the exceptions where a review may proceed absent such an exemption determination. Applications for exemptions submitted to the Highlands Council shall be based upon the application requirements exemptions codified in N.J.A.C. 7:38.

**Objective 7F1e**

Projects in the Planning Area that nearly qualify for exemptions #3 and #17, which are limited by the Highlands Act to major Highlands development in the Preservation Area, should be given priority consideration for a waiver where appropriate.

**Objective 7F1f**

Activities authorized under exemptions #9 and #11, which require a finding that the activity is consistent with the goals and purposes of the Highlands Act, shall be based upon a finding that the proposed activities are consistent with Highlands Act, the

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	Regional Master Plan, any rules or regulations adopted by NJDEP pursuant to the Highlands Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the Regional Master Plan.
<b>Objective 7F1g</b>	Highlands municipalities and counties may not issue Highlands Act exemption determinations. Delegation of Highlands Act exemption determinations, in the Highlands Region, may be authorized for conforming municipalities and counties through specific delegation approvals issued by the Highlands Council and NJDEP.
<b>Objective 7F1h</b>	Ensure that Highlands Act exemption determinations are limited to the activities specifically authorized under the Act. While the construction activities of a single family dwelling may be authorized under an exemption, water conservation requirements, septic maintenance requirements, or any other activities related to the use of that dwelling are not exempt.
<b>Policy 7F2</b>	To monitor and track activities which are, or may be, deemed to be exempt from the provisions of the Highlands Act.
<b>Objective 7F2a</b>	Develop and maintain an inventory of the exemptions that have been formally issued and map the land disturbance authorized under these exemptions.
<b>Objective 7F2b</b>	Develop and maintain an inventory of the exemptions that may be exercised and map the potential land disturbance that may occur under these exemptions.
<b>GOAL 7G</b>	<b>ENSURE THAT HIGHLANDS ACT PERMITS AND WAIVERS ARE PROPERLY ISSUED, TRACKED, AND MONITORED</b>
<b>Policy 7G1</b>	For the Preservation Area, coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 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, or 3) in order to avoid the taking of property without just compensation.
<b>Objective 7G1a</b>	Ensure through agency coordination in accordance with N.J.A.C. 7:38-1.1 that any Highlands permit, or permit with a waiver, be issued only with due consideration of the Regional Master Plan and/or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them to the Regional Master Plan.
<b>Policy 7G2</b>	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 Regional Master Plan or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the Regional Master Plan: 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, or 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.
<b>Policy 7G3</b>	For both the Preservation Area and the Planning Area during local development review, any variance or exception issued shall be conditioned upon a written determination, specifically included in an approving resolution, that the proposed

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development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible.

**GOAL 7H**                    **MITIGATION TO THE MAXIMUM EXTENT POSSIBLE OF THE IMPACTS OF EXEMPT DEVELOPMENT ON THE ECOSYSTEM INTEGRITY OF THE HIGHLANDS REGION THROUGH USE OF INNOVATIVE LAND USE PROGRAMS.**

**Policy 7H1**                    To encourage municipalities with jurisdiction over lands which are entitled to any exemption(s) under Section 30 of the Highlands Act to establish voluntary, incentive-based land use programs to avoid adverse impacts to the Highlands ecosystem or to the fiscal integrity of the municipality.

**Objective 7H1a**                Establish an intra-municipal transfer of development rights program for landowners whose property is entitled to an exemption under Section 30 of the Highlands Act and who voluntarily apply for and receive transferable development rights under a municipal TDR program.

**Objective 7H1b**                Establish municipal clustering programs which allow landowners whose property is entitled to an exemption under the Highlands Act, for both contiguous and non-contiguous properties, to minimize the impact of such exempted development on the ecological integrity of the Highlands Region or the fiscal integrity of the municipality.

**Policy 7H2**                    To provide an opportunity for landowners whose property is entitled to an exemption under the Highlands Act to voluntarily apply for and receive an allocation of Highlands Development Credits in lieu of developing on-site under the provisions of Section 30.