

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**REGARDING THE MUNICIPAL ISSUANCE OF CERTAIN EXEMPTION
DETERMINATIONS**

THIS MEMORANDUM OF UNDERSTANDING, dated this 19th day of July, 2012, is entered into by and between the Highlands Water Protection and Planning Council ("Highlands Council" or "Council") and the New Jersey Department of Environmental Protection ("NJDEP") to further the cooperative planning process consistent with the legislative mandate set forth in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. ("Highlands Act"); and

WHEREAS, the Highlands Act defines the Highlands Region and divides it into the Preservation Area and the Planning Area as defined by Section 7 of the Highlands Act, N.J.S.A. 13:20-7; and

WHEREAS, pursuant to Sections 33 and 34 of the Highlands Act, N.J.S.A. 13:20-31 and -32, the NJDEP adopted rules and regulations at N.J.A.C. 7:38-1.1 et seq., Highlands Water Protection and Planning Act Rules ("Highlands Rules"), establishing the environmental standards for the Preservation Area; and

WHEREAS, pursuant to N.J.S.A. 13:1D-9 (g) and (q), the NJDEP has the power to contract with any other public agency or corporation incorporated under the laws of this State to aid in coordinating State, regional, and local plans and programs concerning conservation and environmental protection; and

WHEREAS, pursuant to Sections 8 and 9 of the Highlands Act, N.J.S.A. 13:20-8 and -9, the Highlands Council adopted the Regional Master Plan ("RMP") for the entire Highlands Region including both the Preservation Area and the Planning Area consistent with the goals and standards of the Highlands Act; and

WHEREAS, pursuant to Section 30 of the Highlands Act, N.J.S.A. 13:20-28, there are seventeen categories of development or land use activity that are deemed exempt from the provisions of the Highlands Act, the RMP, any rules or regulations adopted by the NJDEP pursuant to the Highlands Act, and any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the RMP; and

WHEREAS, pursuant to Section 30 of the Highlands Act, N.J.S.A. 13:20-28, all seventeen exemptions are applicable to development in the Preservation Area, while fifteen exemptions are applicable to development in the Planning Area (exemptions # 3 and 17 do not apply to the Planning Area because they apply only to "major Highlands development" which, by definition, is limited to certain development projects in the Preservation Area); and

WHEREAS, the NJDEP's Highlands Rules incorporate all seventeen statutory exemptions for the Preservation Area and provide for the NJDEP to issue Highlands Applicability Determinations as to whether a proposed development or activity is exempt from the Highlands Act; and

WHEREAS, pursuant to Section 8 of the Highlands Act, the Highlands Council incorporated the seventeen exemptions in Objective 7F1a of the RMP and specified, in Objective 7F1e, that exemptions # 3 and # 17 are limited to specified development projects in the Preservation Area; and

WHEREAS, Objective 7F1g of the RMP specifies that "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 the NJDEP"; and

WHEREAS, Sections 14 and 15 of the Highlands Act, N.J.S.A. 13:20-14 and -15, establish the conformance process whereby municipalities in the Highlands Region bring master plans and development regulations into conformance with the goals, requirements, and provisions of the RMP; and

WHEREAS, Section 18 of the Highlands Act, N.J.S.A. 13:20-18, authorizes the Highlands Council to make available grants and other financial and technical assistance to municipalities and counties to facilitate conformance with the RMP, pursuant to which the Highlands Council established an active grants program by which it provides funds for projects that promote the goals of the Highlands Act or further the RMP; and

WHEREAS, the Highlands Council and the NJDEP collaboratively examined the seventeen Highlands Act exemptions, discussed which exemptions are appropriate to be issued by Conforming Municipalities, as hereinafter defined, and agreed that seven of the seventeen exemptions, specifically exemptions # 1, 2, 4, 5, 6, 7, and 8 (collectively, the "Municipal Issued Exemptions"),¹

¹ The Municipal Issued Exemptions are:

1. 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 an individual has, on or before May 17, 2004, entered into a binding contract of sale to purchase that lot;
2. Construction of a single-family dwelling on a lot in existence on August 10, 2004, provided that 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;
4. Reconstruction for any reason of any building or structure within 125 percent of the footprint of the lawfully existing impervious surfaces on the site on August 10, 2004, provided that the reconstruction or development does not increase the lawfully existing impervious surface by one-quarter acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or non-horticultural use;
5. Any improvement to a lawfully existing 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 as long as the improvement maintains the use as a single-family dwelling as defined by code or ordinance in the municipality in which the dwelling is located and does not permit use of the structure as a multiple unit dwelling;

may be issued by those municipalities where a Petition for Plan Conformance has been approved or approved with conditions by the Highlands Council regarding the Preservation Area, Planning Area, or both ("Conforming Municipalities"), and where such Conforming Municipalities, by ordinance, establish appropriate procedures and requirements governing the review and issuance of such determinations.

NOW THEREFORE, in consideration of the principles, assurances, and premises contained in this Memorandum of Understanding, the Highlands Council and the NJDEP do hereby agree to the following:

- A. The Highlands Council and the NJDEP shall establish a cooperative and collaborative process to enable Conforming Municipalities to review and issue exemption determinations for the Municipal Issued Exemptions in accordance with the requirements of the Highlands Act and the NJDEP's implementing regulations.
 - B. The Highlands Council and the NJDEP shall collaboratively develop and implement a Highlands Exemption Training Program for Conforming Municipalities. Grant funding for the reasonable costs for municipal participation in the Highlands Exemption Training Program may be provided by the Highlands Council in accordance with the Highlands Act.
 - C. Conforming Municipalities shall prepare and adopt a Highlands Exemption Ordinance based on the model ordinance to be prepared by the Highlands Council. The Highlands Exemption Ordinance shall apply to all applications submitted to and under the jurisdiction of the Conforming Municipality, seeking approvals for projects and activities affecting the use and development of land within the conformance area of the Conforming Municipality. The Highlands Exemption Ordinance shall:
 1. Recognize that the Conforming Municipality may issue exemption determinations under the Highlands Act for the Municipal Issued Exemptions;
 2. Require that such exemption determinations be issued to applicants in a timely fashion, in writing, inclusive of a statement indicating the basis for the final decision;
 3. Require that the Conforming Municipality provide a copy of each exemption application and municipal exemption determination be provided to the Highlands Council and to the NJDEP within ten (10) business days of the date of issuance;
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6. Any improvement, for non-residential purposes, to a place of worship owned by a non-profit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on August 10, 2004, including, but not limited to, new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility;
 7. Any activity conducted in accordance with an approved woodland management plan issued pursuant to the Farmland Assessment Act, N.J.S.A. 54:4-23.3, or the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester; and
 8. The construction or extension of trails with non-impervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established and filed with the deed for the lots on which the easement exists.

4. Provide that municipal exemption determinations by a Conforming Municipality may be appealed to the Highlands Council for applications involving lands in the Planning Area and to the NJDEP for applications involving lands in the Preservation Area by any affected party within twenty (20) days of the effective date of the Conforming Municipality's issuance of the exemption determination. The Highlands Council and the NJDEP shall examine any such exemption appeals based upon a de novo review; and
 5. Provide that, for any applicant who receives a municipal exemption determination from a Conforming Municipality and is required to obtain a Highlands Applicability Determination pursuant to N.J.A.C. 7:38-2.4(b), the NJDEP will review the municipal determination as part of the NJDEP permit review.
- D. The Highlands Exemption Ordinance shall be reviewed by the Highlands Council in accordance with the provisions of Sections 14 and 15 of the Highlands Act, N.J.S.A. 13:20-14 and -15, and the requirements of the Council's Plan Conformance Guidelines. A Conforming Municipality may review and issue exemption determinations under the Highlands Exemption Ordinance only after the Highlands Council issues: (a) formal approval of the municipality's Highlands Exemption Ordinance; and (b) certification that the applicable officers and representatives of the Conforming Municipality have satisfactorily completed the Highlands Exemption Training Program. The Highlands Exemption Ordinance shall be adopted and effectuated as a Land Development Ordinance in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).
- E. The preceding provisions notwithstanding, nothing herein shall be construed to authorize Conforming Municipalities to review or issue requests for exemption determinations sought by other local government units, as these are defined under the Highlands Act. Notwithstanding anything herein to the contrary, a Conforming Municipality may not issue any exemption determination pertaining to proposed development or improvement of any local government unit (as defined in N.J.S.A. 13:20-3), its own lands or facilities, or any other publicly owned or controlled land or facility, including, but not limited to, such examples as municipal buildings, parklands, public works facilities, or school improvements.
- F. The NJDEP shall issue exemption determinations in the Preservation Area for any capital or other project of a State entity or local government unit as defined by the Highlands Act, and for all exemptions other than the Municipal Issued Exemptions in Conforming Municipalities that have adopted a Highlands Exemption Ordinance.
- G. The Highlands Council shall issue exemption determinations in the Planning Area for any capital or other project of a State entity or local government unit as defined by the Highlands Act, as applicable, and for all exemptions other than the Municipal Issued Exemptions in Conforming Municipalities that have adopted a Highlands Exemption Ordinance.
- H. Nothing herein shall limit the NJDEP's enforcement authority under Section 37 of the Highlands Act, N.J.S.A. 13:20-35.

BE IT FURTHER AGREED that the NJDEP and the Highlands Council authorize this Memorandum of Understanding to be duly executed by their authorized representatives to be effective on the date first written above.

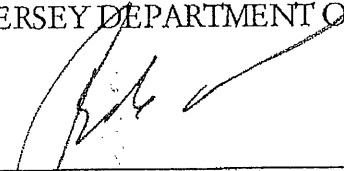
BE IT FURTHER AGREED that this Memorandum of Understanding shall remain in effect unless either party determines at its sole discretion, with 60 days' written notice to the other party, to terminate this Memorandum of Understanding, and that the municipal actions enabled by this Memorandum of Understanding shall be coterminous with this Memorandum of Understanding.

NEW JERSEY HIGHLANDS COUNCIL

By:  _____

Title: Chairman

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:  _____
Bob Martin

Title: Commissioner