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Highlands Water Protection and Planning Act Exemptions and Waivers

The Highlands Act includes seventeen exemptions from the provisions of the Act and Regional Master Plan. In addition, the DEP Highlands Rules include four waivers that allow some degree of deviation from the enhanced environmental standards of the Act. Following are summaries of each exemption and waiver.

Exemptions (P.L. 2004, c.120, C.13:20-28)

1. **Construction of a single family dwelling for own use or family use:** 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 the date of enactment of this act or on a lot for which the 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 existing lot:** The construction of a single family dwelling on a lot in existence on the date of enactment of this act, 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;
3. **Developments with prior Municipal and DEP Approvals:** A major Highlands development that received on or before March 29, 2004:
 - (a) one of the following approvals pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.):
 - (i) preliminary or final site plan approval;
 - (ii) final municipal building or construction permit;
 - (iii) minor subdivision approval where no subsequent site plan approval is required;
 - (iv) final subdivision approval where no subsequent site plan approval is required; or
 - (v) preliminary subdivision approval where no subsequent site plan approval is required;
 - and*
 - (b) at least one of the following permits from the Department of Environmental Protection, if applicable to the proposed major Highlands development:
 - (i) a permit or certification pursuant to the "Water Supply Management Act," P.L.1981, c. 262 (C.58:1A-1 et seq.);
 - (ii) a water extension permit or other approval or authorization pursuant to the "Safe Drinking Water Act," P.L.1977, c. 224 (C.58:12A-1 et seq.);

Highlands Water Protection and Planning Act Exemptions and Waivers

- (iii) a certification or other approval or authorization issued pursuant to the "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.); or
 - (iv) a treatment works approval pursuant to the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.);
- or*
- (c) one of the following permits from the Department of Environmental Protection, if applicable to the proposed major Highlands development, and if the proposed major Highlands development does not require one of the permits listed in sub-subparagraphs (i) through (iv) of subparagraph (b) of this paragraph:
 - (i) a permit or other approval or authorization issued pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c. 156 (C.13:9B-1 et seq.); or
 - (ii) a permit or other approval or authorization issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c. 19 (C.58:16A-50 et seq.).

The exemption provided in this paragraph shall apply only to the land area and the scope of the major Highlands development addressed by the qualifying approvals pursuant to subparagraphs (a) and (b), or (c) if applicable, of this paragraph, shall expire if any of those qualifying approvals expire, and shall expire if construction beyond site preparation does not commence within three years after the date of enactment of this act;

4. **Reconstruction of buildings or structures within 125% of the footprint:** The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction 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. **Improvement to a single family dwelling:** Any improvement to a single family dwelling in existence on the date of enactment of this act, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system;
6. **Places of worship, schools, or a hospitals:** Any improvement, for non-residential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of this act, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility;
7. **Woodland and Forest management plans:** An activity conducted in accordance with an approved woodland management plan pursuant to section 3 of P.L.1964, c. 48 (C.54:4-23.3) or the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

Highlands Water Protection and Planning Act Exemptions and Waivers

8. **Trails on public or private lands:** 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;
9. **Repair of transportation or infrastructure systems:** 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;
10. **Transportation safety projects:** The construction of transportation safety projects and bicycle and pedestrian facilities 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:** 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;
12. **Reactivation of rail lines/rail beds:** The reactivation of rail lines and rail beds existing on the date of enactment of this act;
13. **Public Infrastructure:** The construction of a public infrastructure project 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:** The mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring or which are permitted to occur on any mine, mine site, or construction materials facility existing on June 7, 2004;
15. **Site Remediation:** The remediation of any contaminated site pursuant to P.L.1993, c. 139 (C.58:10B-1 et seq.);
16. **Military lands:** Any lands of a federal military installation existing on the date of enactment of this act that lie within the Highlands Region;
17. **Affordable Housing:** A major Highlands development located within an area designated as Planning Area 1 (Metropolitan), or Planning Area 2 (Suburban), as designated pursuant to P.L.1985, c. 398 (C.52:18A-196 et seq.) as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. The exemption provided pursuant to this paragraph shall expire if construction beyond site preparation does not commence within three years after receiving all final approvals required pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.).

Highlands Water Protection and Planning Act Exemptions and Waivers

Waivers (N.J.A.C 7:38-6.4)

The DEP may grant waivers from its Highlands rules for major Highlands developments in the Preservation Area on a case-by-case basis conditioned upon the DEP's determination that the statutory standards are met to the maximum extent possible. A major Highlands Development may obtain one of the following three waivers:

1. Public Health and Safety

A waiver of any provision of a Highlands permitting review on a case-by-case basis if determined to be necessary by DEP in order to protect public health and safety.

2. Redevelopment in previously developed areas as identified by the Highlands Council

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 identified by the Highlands Council. Any areas identified for possible redevelopment by the Highlands Council shall be either a brownfield site designated by DEP or a site at which at least 70% of the area thereof is covered with impervious surface.

3. To avoid a Taking of Property without Just Compensation

A waiver of any provision of the Highlands permitting review on a case-by-case basis in order to avoid the taking of property without just compensation.

4. For the Construction of a 100 percent Affordable Housing Development (N.J.A.C. 7:38-6.9 – added to Highlands Rules during 2005 re-adoption with amendments)

A waiver for the five municipalities located entirely within the Preservation Area to allow for the construction of a housing development that is exclusively comprised of low and moderate income dwelling units, as defined by COAH pursuant to N.J.A.C. 5:93-5.5 and N.J.A.C. 5:94-4.6. This waiver only applies to the Boroughs of Bloomsbury, Califon, and Glen Gardner in Hunterdon County and Ringwood Borough and West Milford Township in Passaic County.

Definitions

"Major Highlands development" means, except as otherwise provided pursuant to subsection a. of section 30 of this act, (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.