

## Highlands Exemptions

---

### Highlands Water Protection and Planning Act P.L. 2004, Chapter 120

C.13:20-28 Exemptions.

30. a. The following are exempt from the provisions of this act, the regional master plan, any rules or regulations adopted by the Department of Environmental Protection pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan:

(1) 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) 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) 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.);
  - (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

## Highlands Exemptions

---

applicable to the proposed major Highlands development, and if the proposed major Highlands development does not require one of the permits listed in 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) 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) 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) 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) 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;

(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;

(9) 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) 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;

## Highlands Exemptions

---

(11) 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) the reactivation of rail lines and rail beds existing on the date of enactment of this act;

(13) 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) 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) the remediation of any contaminated site pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.);

(16) any lands of a federal military installation existing on the date of enactment of this act that lie within the Highlands Region; and

(17) 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.).

b. The exemptions provided in subsection a. of this section shall not be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances.

c. Nothing in this act shall be construed to alter the funding allocation formulas established pursuant to the "Garden State Preservation Trust Act," P.L.1999, c.152 (C.13:8C-1 et seq.).

d. Nothing in this act shall be construed to repeal, reduce, or otherwise modify the obligation of counties, municipalities, and other municipal and public agencies of the State to pay property taxes on lands used for the purpose and for the protection of a public water supply, without regard to any buildings or other improvements thereon, pursuant to R.S.54:4-3.3. C.13:20-29 Agricultural, horticultural development, review required; enforcement.

## Highlands Exemptions

---

### Highlands Water Protection and Planning Act Rules N.J.A.C. 7:38

#### 7:38-2.3 Exemptions

(a) The following projects or activities are exempt from the requirements of this chapter, but are required to comply with all other Federal, state and local requirements that may apply to the proposed project. For the purposes of this section, a single family dwelling shall include those group homes, community residences, and other alternative living arrangements that are specifically authorized to be given equivalent treatment as a single family dwelling under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and that are using or proposing to use a new individual subsurface disposal system or aggregate of equivalent disposal units where the sanitary wastewater design flow is 2,000 gallons per day or less:

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;

3. Construction of a major Highlands development that received the following municipal and State approvals on or before March 29, 2004:

i. One of the following approvals issued pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.:

(1) Preliminary or final site plan approval;

(2) Final municipal building or construction permit;

(3) Minor subdivision approval where no subsequent site plan approval is required; or

(4) Preliminary or final subdivision approval where no subsequent site plan approval is required; and ii. At least one of the following Department permits, if applicable to the proposed project:

(1) A permit or certification pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

## Highlands Exemptions

---

(2) A water extension permit or other approval or authorization pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

(3) A certification or other approval or authorization issued pursuant to The Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq.; or

(4) A treatment works approval pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

iii. If none of the Department permits in (a)3ii above are required for the proposed project, one of the following Department permits, if applicable to the proposed project, shall be required, in addition to an approval under (a)3i above:

(1) A permit or other approval or authorization issued pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; or

(2) A permit or other approval or authorization issued pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; iv. The exemption provided in (a)3 above shall apply only to the land area and the scope of the major Highlands development addressed by the qualifying approvals applicable to the project and described in (a)3i through iii above, and shall expire:

(1) If any of those qualifying approvals expire;

(2) If construction beyond site preparation does not commence within three years after August 10, 2004; or

(3) If construction ceases for a cumulative total of one year after August 10, 2007;

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;

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,

## Highlands Exemptions

---

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 [for public lands,] the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

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;

9. 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 the Highlands Act, and does not result in the construction of any new through-capacity travel lanes.

10. 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. 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 the Highlands Act;

i. For the purposes of this exemption, installation of cellular equipment on a lawfully existing overhead utility tower and the construction of the attendant 10-foot by 20-foot pad, when located within the four footings of such tower within a Right-of-way owned or controlled by a public utility, constructed with the consent of the public utility is consistent with the goals and purposes of the Highlands Act and this exemption;

12. The reactivation of rail lines and rail beds existing on August 10, 2004;

13. 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, 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. The remediation of any contaminated site pursuant to N.J.S.A. 58:10B-1 et seq.;

16. Any activities on lands of a Federal military installation existing on August 10, 2004 that lie within the Highlands Region; and

## Highlands Exemptions

---

17. A major Highlands development located within an area designated as Planning Area 1 (Metropolitan), or Planning Area 2 (Suburban) as designated pursuant to the State Planning Act, N.J.S.A. 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. This exemption 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, N.J.S.A. 40:55D-1 et seq.

(b) For the purposes of this section, "lawfully existing" means that the dwelling or utility tower was constructed, or impervious surface placed, in accordance with all applicable state and Federal environmental land use and water permits and valid municipal approvals, including building permits, septic system approval, limitations on lot coverage and, where applicable, certificates of occupancy.

(c) Proposed development exempt from the Highlands Act shall comply with all Federal, and local statutes, regulations, development regulations or ordinances that may apply to the proposed activity and shall also comply with all other State laws including, but not limited to, the Freshwater Wetlands Protection Act, N.J.S.A.13:9B-1 et seq.; the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.; the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.; the Water Pollution Control Act, N.J.S.A.58:10A-1 et seq.; the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Safe Drinking Water Act, P.L.1977, c.224, N.J.S.A. 58:12A-1 et seq., the Flood Hazard Area Control Act, N.J.S.A.58:16A-50 et seq.), and all implementing rules.