



## State of New Jersey

Highlands Water Protection and Planning Council

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### **HIGHLANDS ACT EXEMPTIONS TO SINGLE FAMILY DWELLINGS**

One of the most frequently asked questions regarding the Highlands Water Protection and Planning Act ("Highlands Act") is whether the enhanced environmental standards apply to single family homeowners. While the Highlands Act limits certain development activities, the Act provides four broad exemptions that are applicable to the construction or expansion of single family dwellings.

#### EXEMPT FROM THE HIGHLANDS ACT:

- 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 has on or before May 17, 2004 entered into a binding contract of sale to purchase;
- The construction of a single family dwelling on a lot in existence on 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;
- Any 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; and
- 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.

Activities that fall within any of the four exemptions outlined above are fully exempt from any of the restrictions of the Highlands Act and the enhanced environmental standards ("Highlands regulations") adopted by the Department of Environmental Protection ("NJDEP") pursuant to the Highlands Act. However, it must be kept in mind that such activities are still subject to federal, state, and local law (for

example, the applicant must comply with local development regulations and with non-Highlands environmental laws such as the fresh water wetlands, stormwater and stream encroachment regulations).

The following scenarios illustrate how the Highlands Act exemptions apply \*:

***Construction of Single family Dwelling – Exemption #1 under the Act***

A property owner owns a vacant, 1.5-acre lot in the Preservation Area that is zoned for residential development. The lot was in existence on the day the Highlands Act was enacted (August 10, 2004). The property owner wants to construct a single family dwelling for the owner’s use or that of an immediate family member. Such development would be exempt from the Highlands Act and the NJDEP Highlands regulations.

A property owner owns a vacant, 10-acre parcel in the Preservation Area upon which the owner wants to build a single family home. Local zoning only authorizes industrial uses. Although construction of the single family home would be exempt from the Highlands Act, the proposal would still be subject to the underlying zoning, and as such, could not be constructed absent a change in zoning.

***Construction of a Second Single family Dwelling***

A property owner owns a 10-acre lot in the Preservation Area, zoned for residential development, which is already developed with an existing single family dwelling. The lot and home were in existence on the day the Highlands Act was enacted. The property owner wants to construct a second single family dwelling on the lot, which is permitted under the local development regulations. Construction of this second single family dwelling will not qualify for an exemption. Depending upon the size of the project, it may be subject to the Highlands Act and NJDEP Highlands regulations because it does not fall within any of the exemptions discussed above.

***Sale of Existing Lot – Exemption #2 under the Act***

A property owner owns a vacant, 1.5-acre lot in the Preservation Area that is zoned for residential development and was in existence on the day the Highlands Act was enacted (August 10, 2004). The property owner sells that lot to a third-party in September 2004. The new property owner wants to construct a single family home, under exemption number two above. The proposed development is exempt from the Highlands Act and NJDEP Highlands regulations provided that the development does not disturb one acre or more of land nor result in a cumulative increase in impervious surface by one-quarter acre or more.

***Expansion of Existing Single family Dwelling – Exemption #5 under the Act***

A property owner owns a single family home in the Preservation Area that was in existence on the day the Highlands Act was enacted (August 10, 2004). The property owner would like to construct a 1,500 square foot addition onto the existing home. The development is exempt from the Highlands Act and NJDEP Highlands regulations

***Construction of Shed or Pool – Exemption #5 under the Act***

A property owner owns a 1.5-acre lot in the Preservation Area, zoned for residential development, which is already developed with an existing single family dwelling. The lot and home were in existence on the day the Highlands Act was enacted. The property owner would like to construct a shed and install an in-ground pool. Both of these activities would be exempt from the Highlands Act and NJDEP Highlands regulations.

***Reconstruction of Single Family Dwelling – Exemption #4 under the Act***

A property owner owns a 10-acre lot in the Preservation Area, zoned for residential development, which is already developed with an existing, but dilapidated and abandoned house. The lot and house were in existence on the day the Highlands Act was enacted (August 10, 2004). The property owner wishes to raze the old house and construct a new single family dwelling. The property owner may raze the house and construct a new home provided the construction is within 125% of the footprint of the lawfully existing impervious surfaces on the site, and the reconstruction does not increase the impervious surface by one-quarter acre or more.

***Purchase of Existing Single Family Dwelling and Construction of Addition – Exemption #5 under the Act***

A property owner owns a 1.5-acre lot in the Preservation Area, zoned for residential development, which is already developed with an existing single family dwelling. That home is sold to a third-party who would like to build an addition onto the existing home. The proposed development would be exempt from the Highlands Act and NJDEP Highlands regulations.

*\*Please note that applicability of these exemptions may be subject to NJDEP interpretation on a case-by-case basis.*