

HIGHLANDS WATER PROTECTION AND PLANNING ACT
SIGNED/EFFECTIVE DATE: AUGUST 10, 2004
<http://www.state.nj.us/dep/highlands/>

DEP Provisions of the Highlands Act

Regulations adopted May 9, 2005

Preservation Area is subject to new DEP standards. Planning Area is not.

Applicability determination (conducted by Watershed Program) answers:

- Whether something is a Major Highlands Development
- Consistency with WQMP Determination
- Exemption Determination

Also collects information re:

- Water Supply Determination—Does it require a new public water supply? No new public water supplies permitted.
- Treatment Works/NJPDES/Ground water Determination—Does it require an extension to a sewage treatment plant? No new sewer extensions permitted.

From the Highlands Act and the Highlands Regulations

N.J.A.C. 7:38-1.4 Definitions

"Major Highlands Development" means, except as otherwise provided pursuant to N.J.S.A. 13:20-28a, (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;

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:

1. Construction of a single-family dwelling, for an individual's own use or the use of an immediate family member, on an 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 an lot in existence on August 10, 2004, provided that construction does not result in the ultimate disturbance of more than one acre 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.;

(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.; or

iii. If none of the Department approvals in 3ii, above are required for the proposed project, one of the following Department permits, if applicable to the proposed project:

(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.; or

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 3i through 3iv 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, 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 legally 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;

i. For the purposes of this exemption, “legally existing” means that the dwelling 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;

6. Any improvement, for non-residential purposes, to a place of worship owned by a non-profit entity, society 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 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;

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
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.

N.J.A.C. 7:38-2.4 Applicability Determination

(a) Any person proposing to undertake an activity that constitutes a major Highlands development shall either clearly stipulate that the proposed activity is subject to the Highlands Act in an application to the Department for a HPAA, or obtain a Highlands Applicability and Water Quality Management Plan Consistency Determination (Applicability Determination) from the Department to determine if the proposed activity is:

1. A major Highlands development pursuant to N.J.A.C. 7:38-2.2;
2. Consistent with the applicable areawide Water Quality Management Plan;
and
3. Exempt from the Highlands Act, pursuant to N.J.A.C. 7:38-2.3.

(b) Any project in the preservation area that requires any environmental land use or water permit from the Department other than, as provided at (c) below, a NJPDES permit or TWA, requires a Highlands Applicability Determination except for:

1. The following improvements to a legally existing single family dwelling in existence on August 10, 2004, provided that the lot upon which the home is situated has not been further subdivided:
 - i. Driveway, garage or shed;
 - ii. An addition for residential purposes attached to the home;
 - iii. Deck, patio or porch;
 - iv. Swimming pool; or
 - v. Septic system;
2. Routine maintenance, rehabilitation, reconstruction and repair of

transportation or infrastructure systems by a State entity or local government unit provided such activity is confined to the existing footprint of development, and does not increase the conveyance capacity, for example, by increasing the pipe size of the system; or

3. The construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit provided the construction does not:
 - i. Create a new travel lane or increase the length of an existing travel lane by more than 2,640 linear feet, not including tapers;
 - ii. Result in a cumulative increase in impervious surface of one acre or more; or
 - iii. Involve the ultimate disturbance of two or more acres of land;
4. Any activity that is part of an agricultural or horticultural development or agricultural or horticultural use; and
5. Any activity conducted by a landowner 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.

Highlands Preservation Area Approval (permit) (conducted by Land Use Program) addresses:

- Highlands open waters (Wetlands, Open Waters, Perennial streams, Intermittent streams) + 300 foot buffer adjacent to all Highlands open waters—Nothing permitted except linear development for which there is no alternative location—PROVIDED IN THE ACT

- Flood Hazard Area—0% Net Fill—PROVIDED IN THE ACT
- Impervious Coverage--limited to 3% total (including what is already onsite). Definition includes gravel, porous pavers etc. that are not considered impervious elsewhere under the stormwater reg's—PROVIDED IN THE ACT
- Steep Slopes-- $\geq 20\%$. Nothing permitted except linear development for which there is no alternative location —PROVIDED IN THE ACT.
- Steep Slopes between 10 and 20%--Standards are provided in the rules and are based upon slope, forest cover and soil classification.
- Upland Forested Area—Standards are provided in the rules. Law provides that no disturbance is permitted unless it meets all other existing Highlands requirements. Then it establishes permitted disturbance of 20 feet adjacent to a house and 10 feet adjacent to a road. The Department has added an alternatives requirement and a mitigation requirement in the rules.
- Rare, threatened and endangered plant and animal species. The rules use the existing lists for threatened and rare plants, and for threatened and endangered animals and then create a new definition for “rare” species. Once identified as a rare, threatened or endangered plant or animal habitat, no impacts are permitted.
- Septic systems—Rules establish requirement for one septic system per 88 acres for undisturbed sites (defined as greater than 50% forested). Remaining areas require 25 acres per septic system.
- Historic and Archaeological Resources—Rules contain a procedure to identify and protect historic and archaeological resources.
- Unique and Irreplaceable Resources —Unique and irreplaceable resources will protect unique ecological communities that the Department has in its Natural Heritage database, and vernal habitats. Once identified as a unique or irreplaceable resource, there can be no encroachment.
- Scenic resources will protect all preserved open spaces and any additional areas as designated by the Highlands Council.

Three types of **Waivers** are provided in the Highlands Act and the criteria for each are contained within the regulations:

1. Waiver for activities necessary to protect health and safety;
2. Waiver for redevelopment of areas that contain 70% impervious coverage or for redevelopment of Department-designated brownfields. The Department's rules establish a process for identification and designation of brownfields, and

criteria for waiver approval. The Highlands Council has the responsibility for designating areas eligible for redevelopment and thus eligible for the waiver;

3. Waiver for taking of property without just compensation.

Calendar

The rules became effective on May 9, 2005. At that time, a 45-day comment period began for the Highlands Council and other agencies of the State.

At the conclusion of the 45-day comment period (June 21, 2005) the Department will prepare a rule proposal that will subsequently be published and open for public comment.

The Highlands Act requires that a final rule be in place by May 7, 2005 (one year after the 270-day rule adoption the Department just completed).