

Highlands Area Municipal Exemption Determination Certification Training Program

A Joint Program Developed and Provided by the:
New Jersey Highlands Water Protection and Planning Council
&
New Jersey Department of Environmental Protection



Introduction

Overview of Highlands Act Exemptions

- 17 exemptions in Act
- NJDEP vs. local authority
- July 2012 – Memorandum of Understanding (MOU) between Highlands Council and NJDEP
 - Local authorization to issue Exemptions 1, 2, 4, 5, 6, 7, 8 following training and certification
- April 2013 – Launch of Certification Training
- July 2013 – First Exemption Ordinance adopted (High Bridge)

Status To Date

- To-date 32 municipalities have adopted an Exemption Ordinance & received certification
 - Bergen County: Mahwah Township, Oakland Borough
 - Hunterdon County: Alexandria Township, Bethlehem Township, Califon Borough, Clinton Township, Glen Gardner Borough, High Bridge Borough, Lebanon Township
 - Morris County: Chester Township, Jefferson Township, Montville Township, Mount Arlington Borough, Mount Olive Township, Parsippany-Troy Hills Township, Washington Township
 - Passaic County: Ringwood Borough, West Milford Township
 - Somerset County: Bedminster
 - Sussex County: Byram Township, Hardyston Township, Hopatcong Borough, Sparta Township, Vernon Township
 - Warren County: Allamuchy Township, Franklin Township, Hackettstown, Harmony Township, Lopatcong Township, Oxford Township, Pohatcong Township, Washington Township

Program is voluntary.

Why participate?

- Simplify/streamline process for residents
- Covers most common/routine exemption requests
 - Construction of/improvements to single family residence
 - Expansions to non-residential

Funding, Invoicing, Continuing Ed

- Funding for attendance at Certification Program provided in Highlands Grant Contract (up to \$1,000).
- Funding for adoption of Highlands Exemption Ordinance up to \$1,500 will be provided as part of the Highlands Grant Contract.
- Invoices may be provided upon completion of attendance of the Certification Training Program and/or upon adoption of Highlands Exemption Ordinance.
- This session is approved for one technical contact hour for individuals holding a Rutgers issued Board Secretary, Zoning Official, and/or Land Use Administrator certification(s). See Appendix G in binder.

Program Overview

Program Overview

Exemptions Eligible for Municipal Determination

Exemption #1 – Construction of a single-family home for own family on lot owned on August 10, 2004 (or under contract to purchase on/before May 17, 2004).

Exemption #2 – Construction of a single-family home on lot existing on August 10, 2004 with limitations on disturbance (less than 1 acre) and impervious surface (< ¼ acre increase).

Exemption #4 – Reconstruction of buildings or structures within 125% of original impervious footprint with ¼ acre impervious increase max.

Exemption #5 – Improvement to a single family home (such as: addition, garage, shed, driveway, porch, deck, patio, pool, septic system).

Exemption #6 – Non-residential improvements to places of worship, schools, or hospitals.

Exemption #7 – Activities related to approved woodland management plan or forest management plan approved by state forester.

Exemption #8 – Construction of non-impervious trails on public or private lands.

Program Overview

Applying Exemptions

- Per the Highlands Act (C.13:20-28), Exemptions grant relief “... 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.”
- All other state and local regulations **still apply**
- For state or local capital projects, exemption determinations must be obtained from the:
 - NJDEP for lands located in the Preservation Area
 - Highlands Council for lands located in the Planning Area

Program Overview

Municipal Certification

- **Preservation Area** – Exemptions will apply immediately with regard to NJDEP Highlands Preservation Area Rules (N.J.A.C. 7:38).
- **Planning Area** – Exemptions are only applicable to Planning Area projects after a municipality has adopted a Highlands Ordinance.
 - Highlands Referral Ordinance; or
 - Highlands Area Land Use Ordinance
 - Only Exemptions 4, 6, 7 & 8 are applicable under these ordinances.
 - Exemptions 1, 2 & 5 apply to single family homes which are **not** regulated by these ordinances.

Program Overview

Municipal Certification (continued)

- The Certification Program **does not** authorize municipalities to issue exemption determinations for projects:
 - proposed by other local government units (including schools), or
 - pertaining to its own lands or facilities, or
 - to any other publicly owned or controlled land or facility.

Program Overview

Exemption Designee Certification

- Approved Municipal Petition for Plan Conformance
- Completion of Highlands Council Training Program
- Municipality adopts Exemption Ordinance
 - (see Appendix F for model)
- Municipality submits adopted Ordinance and Exemption Designee contact information to Highlands Council
- Highlands Council issues Certificates
- Highlands Council staff will prepare exemption application form tailored to municipality (see Appendix B).

Exemption Designees may only begin issuing Exemption Determinations after completion of the Highlands Council Training Program, local adoption of the Highlands Area Exemption Ordinance, and receipt of certificate.

Exemption Certification Process



Highlands Area Exemption Ordinance

Highlands Area Exemption Ordinance

- Applicability
 - Conforming Highlands areas (Preservation Area, Planning Area or both)
- Eligible Exemptions
 - Highlands Act Exemptions 1, 2, 4, 5, 6, 7 and 8
 - State agency determinations required for all other Highlands Act Exemptions
 - State agency determinations required in the case of any capital or other project or improvement of any State entity or local government unit, including those of the subject municipality

Highlands Area Exemption Ordinance (continued)

- Identification of Exemption Designee
 - Designated by title, not individual
 - Certification goes to individual
- Procedures & Requirements
 - Timing, notice, fees, appeals, documentation
- Highlands Council will track certified municipalities and issued exemptions via tracking sheet on website
 - Municipality must submit exemption to Highlands Council within 10 days of issuance.



Exemption Program with Scenarios

Exemption Program with Scenarios

- The following scenarios are provided as guidance to support municipal exemption designees.
- If any uncertainty exists regarding an Exemption Determination, Designees may seek assistance from NJDEP or Highlands Council, or if necessary, instruct applicant to formally file with:
 - NJDEP for the Preservation Area
 - Highlands Council for the Planning Area
- Applications requesting connection to water or sewer utility in the Preservation Area may require a formal Highlands Applicability Determination (HAD)

For All Exemptions

- Consult the Department of Agriculture (Frank Minch, 609-292-5532) to determine what projects are considered agriculture. If it is not taxed as Qfarm, it is not an agricultural use. Generally, if the property is less than 5 acres, and hasn't received a Farm Land Assessment from the Department of Agriculture, it is not an agricultural use.

Major Highlands Development

To determine if an exemption is necessary

Only projects in the Preservation Area can be Major Highlands Development.

- 1) Is the activity an agricultural activity? Yes/No If YES, **STOP**; project is **NOT** a Major Highlands Development
- 2) Is the project a non-residential activity? Yes/No If YES, project **IS** a Major Highlands Development
- 3) Does the project require an environmental land use or water permit? Yes/No
 If YES, project **IS** a Major Highlands Development
- 4) Will the project result in the ultimate disturbance of an acre or more of land? Yes/No
 If YES, project **IS** a Major Highlands Development
- 5) Will the project result in the cumulative increase in impervious surface of $\frac{1}{4}$ acre or more? Yes/No
 If YES, project **IS** a Major Highlands Development
- 6) Will the project, *although not a development**, result in the ultimate disturbance of $\frac{1}{4}$ acre or more of forested land? Yes/No If YES, project **IS** a Major Highlands Development
- 7) Is the project a capital project of the State, county, or municipal government and meets **at least one** of the following criteria:
 - Requires an environmental land use or water permit;
 - Results in the ultimate disturbance of acre or more of land; and/or
 - Results in the cumulative increase in impervious surface of $\frac{1}{4}$ acre or more?
 If YES, project **IS** a Major Highlands Development

***Definition of development from the Municipal Land Use Law**

Exemption #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 August 10, 2004 or on a lot for which the individual entered into a binding contract of sale to purchase on or before May 17, 2004.

- Important Criteria

- Lot existed as of August 10, 2004
- Lot owned by applicant as of August 10, 2004; or under contract for purchase by May 17, 2004
- For individual's own use or that of "immediate family member"

Exemption #1

What municipal official must determine:

- Location of lot in the Preservation Area;
- Existence of legal lot prior to August 10, 2004;
- Ownership of lot on dates as required; and
- Planned use for self or immediate family member (see Highlands Area Exemption Ordinance Article 2: Definitions)

Exemption #1 Scenarios

[Discussion]

Exemption #1 Scenario

Key Take-Aways

- Ownership by applicant as of August 10, 2004 (or under contract to purchase as of May 17, 2004).
- Lot line adjustments may be possible as long as the original lot was buildable prior to the adjustment and the construction is within the original lot(s) boundaries.
- If the lot is owned by a company, it can only qualify under exemption 1 if it was owned by an individual in the company or the individual's immediate family member before August 10, 2004.
- Once a property is granted an exemption 1 and a single family home is built, the exemption remains valid for those improvements if the property is sold in the future.

Exemption #2

The construction of a single family dwelling on a lot in existence on August 10, 2004.

Construction under this exemption may 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.

- Important Criteria

- Lot existed as of August 10, 2004

- Is construction within development constraints?

Exemption #2

What a municipal official must determine:

- Location of lot in the Preservation Area
- Existence of legal lot prior to August 10, 2004
- Proposed house to be constructed within development constraints (less than one acre of disturbance and less than $\frac{1}{4}$ acre of cumulative increase in impervious surface – 10,890 square feet)
- Additional Requirement: Deed Notice (Appendix C), to be filed with the County Clerk's office, providing for the protection of the balance of the applicant's property.

Exemption #2 Scenarios

[Discussion]

Exemption #2 Scenario

Key Take-Aways

- The removal of impervious surfaces will be credited towards the less than ¼ acre (10,890 square feet) of cumulative increase in impervious surface. The definition of impervious surface includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures.
- Existing impervious surface to remain must be included in the ultimate disturbance area; but, any areas of existing impervious surface to be removed will not have to be included within the designated ultimate disturbance area as long as those areas are to remain untouched and restored to natural conditions.
- The DEP requires a metes and bounds description of the limits of disturbance to be shown on the approved site plan and a deed notice be placed on the lot to ensure long-term compliance with these limitations.
- If a single family home project requires access from an adjacent lot contact NJDEP.

Exemption #5

Any improvement to a lawfully existing single family dwelling in existence on the date of enactment of the Highlands Act (August 10, 2004). These improvements shall include, but not be limited to, an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system.

- Important Criteria
 - Single family house existed as of August 10, 2004
- What a municipal official must determine
 - Location of lot in Preservation Area
 - Lawful existence of the single family home
 - Improvement proposed is related to existing single family dwelling

Exemption #5 Scenarios

[Discussion]

Exemption #5

Key Take-Aways

- A lawfully existing single family home that includes a lawfully existing home business is eligible for exemption 5.
- Any proposed improvement must maintain the use as a single family dwelling and does not permit use of the structure as a multiple unit dwelling.
 - May be an attached single family unit, such as a townhouse.
- If a single family home is connecting to the sewer system, may require a formal Highlands Applicability Determination (HAD) at the NJDEP.

Exemption #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 the Highlands Act (August 10, 2004). These improvements shall include, but not be limited to, new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.

- Important Criteria
 - Place of worship, public/private school, or hospital existed on the site as of August 10, 2004
- What municipal official must determine
 - Location of lot in Preservation Area or Planning Area
 - Existence of place of worship, public or private school, or hospital as of August 10, 2004
 - For places of worship, evidence of nonprofit status
 - Proposed improvement is not for residential purposes

Exemption #6 Scenarios

[Discussion]

Exemption #6

Key Take-Aways

- If a project applying for an exemption 6 contains a residential portion, it may be possible to issue an exemption 6 for the non-residential portion and an exemption 4 for the residential portion; assuming the residential portion meets the criteria for an exemption 4.
- Municipality may not issue an exemption for a public school improvement, but may for a private school improvement.

Exemption #7

An activity conducted in accordance with an approved woodland management plan pursuant to section 3 of the “Farmland Assessment Act,” 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.

- Important Criteria
 - Forest Management Plan approved by the State Forester
- What a municipal official must determine
 - Proposed activity is part of a Forest Management Plan approved by the State Forester

Exemption #7

Key Take-Aways

- State Forester Todd Wyckoff
Tel: 609-984-0813
Email: todd.wyckoff@dep.nj.gov

Exemption #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.

- Important Criteria
 - Proposed trail construction with non-impervious surface
- What a municipal official must determine
 - Proposed trail construction will utilize non-impervious surface
 - Proposed trail construction will be located on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established

Exemption #8 Scenarios

[Discussion]

Exemption #8

Key Take-Aways

- For the purposes of trails, wood chips are considered a non-impervious surface.
- If a proposal includes footbridges over a stream, the footbridge is considered impervious and cannot be approved under Exemption 8.
- If a path/trail is being put in by the municipality it could **not** be approved by the municipality anyway - would require exemption from Highlands Council or DEP.
- Footbridges may be approved under an Exemption 10 – construction of transportation safety projects **and** bicycle and pedestrian facilities.

Exemption #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.

- Important Criteria
 - Footprint of the lawfully existing impervious surfaces
 - Does not permit multiple 125% footprint expansions, rather, permits one or more reconstruction activities cumulatively resulting in a maximum 125% increase in the impervious surfaces, provided they do not cumulatively exceed the one-quarter acre limitation
 - The applicable date of lawful existence shall coincide with
 - For Preservation Area, date of enactment of the Highlands Act, August 10, 2004
 - For Planning Area, effective date of the Highlands Referral Ordinance or Highlands Area Land Use Ordinance, whichever is the earlier

Exemption #4

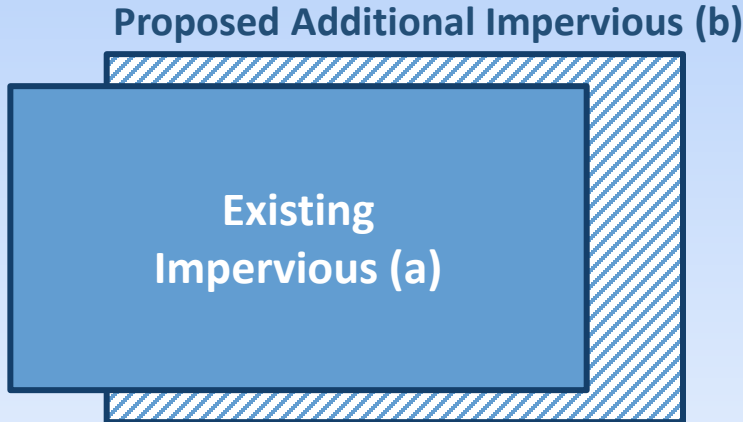
What municipal official must determine

- Location of site in Preservation Area or Planning Area
- Extent of lawfully existing impervious surface prior to applicable date
- Proposed impervious surface is within 125% of lawfully existing impervious surface
- The project must **not** result in a total increase of a ¼ acre or more of impervious surface – increase in impervious surface must be **less than** 10,890 square feet

Exemption #4

Scenario 1

Plan



Existing Impervious (a): 10,000 sq. ft.

+

Proposed Additional Impervious (b): 2,000 sq. ft.

Final



=

New Total Impervious (c): 12,000 sq. ft.

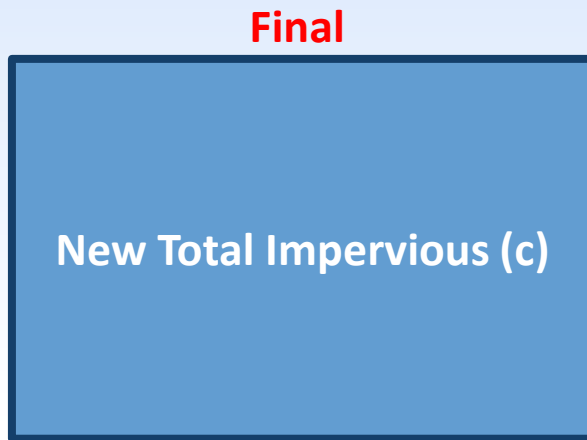
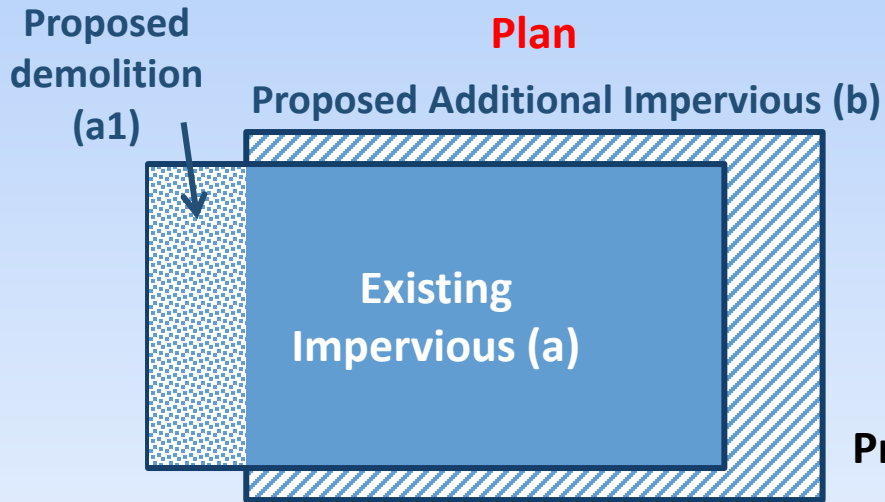
New total impervious (c) MUST be within 125% of existing (a).

AND

Proposed additional (b) must be less than .25 acre.

Exemption #4

Scenario 2



Existing Impervious (a): 10,000 sq. ft.

—

Proposed demolition (a1): 1,000 sq. ft.

+

Proposed Additional Impervious (b): 2,000 sq. ft.

=

New Total Impervious (c): 11,000 sq. ft.

New total impervious (c) MUST be no more than 125% of existing impervious (a)
AND
Net new impervious (b - a1) must be less than .25 acre.

Exemption #4 Scenarios

[Discussion]

Exemption #4

Key Take-Aways

- The MLUL definition of structure is used for this exemption. The same definition is included in the Exemption Ordinance.
- Generally, the date of lawfully existing impervious surface for the Preservation Area is August 10, 2004.
- Removal of existing impervious surfaces can be credited ONLY to the one-quarter acre limitation.
- NJDEP will provide guidance as requested for determinations.

Next Steps

Exemption Certification Process



Now, you are here.

** Highlands Council will track certified municipalities and issued exemptions via tracking sheets on website (see Appendix D or contact Highlands Council staff)

Questions?

Practice Scenarios

What exemption applies?

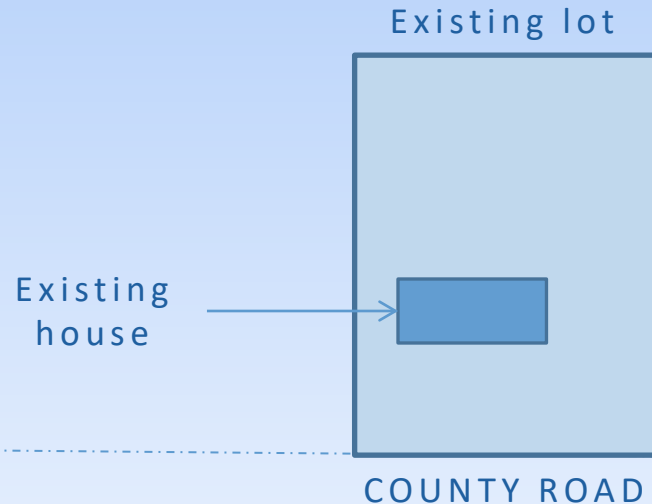
Existing lot



HIGHLANDS ROAD

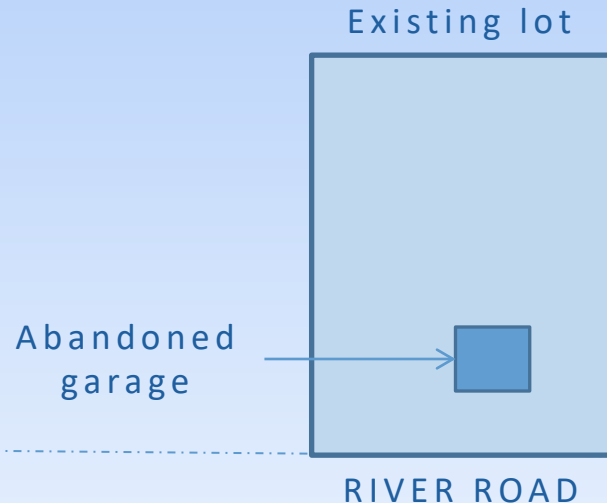
- Residential lot created prior to August 2004
- 2 acre, undeveloped lot
- Proposal:
Owner (as of 2013) wants to build single-family home

What exemption applies?



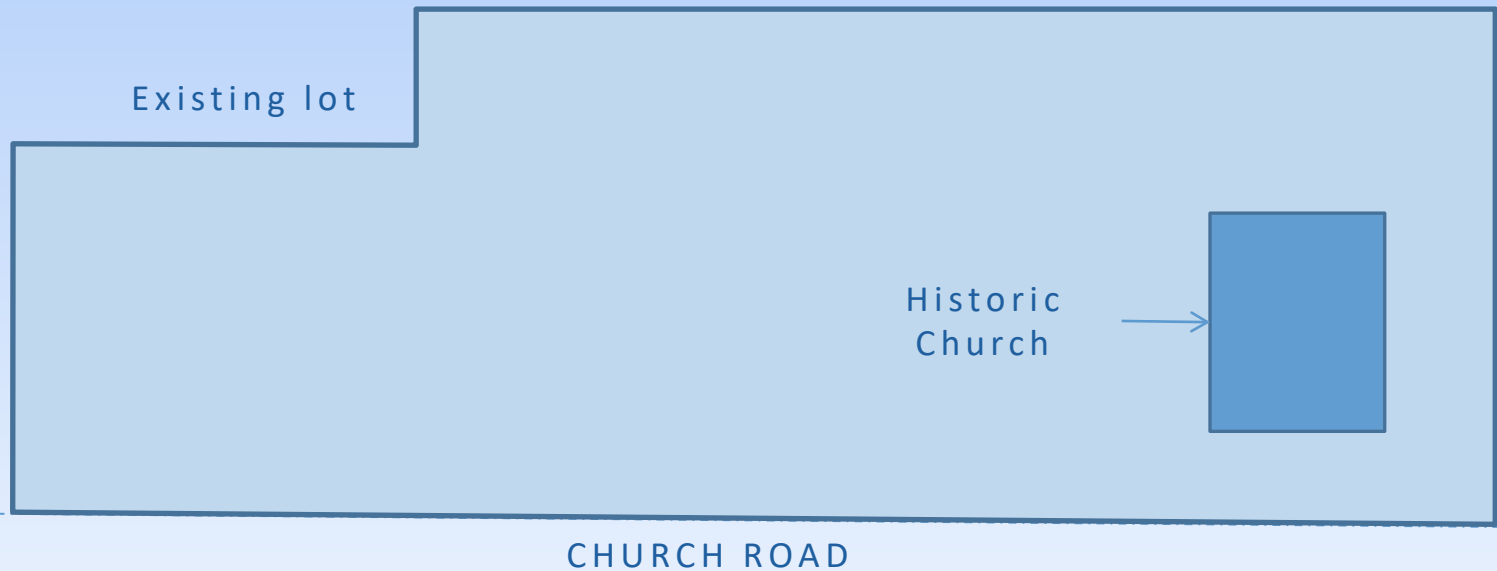
- Community commercial zoning
- Existing structure (house built in 1958)
- Proposal:
Owner wants to convert and expand existing house to commercial use

What exemption applies?



- Residentially zoned lot created prior to August 2004
- Existing structure on property (abandoned garage – non-residential)
- Proposal:
Purchaser would like to build single-family home

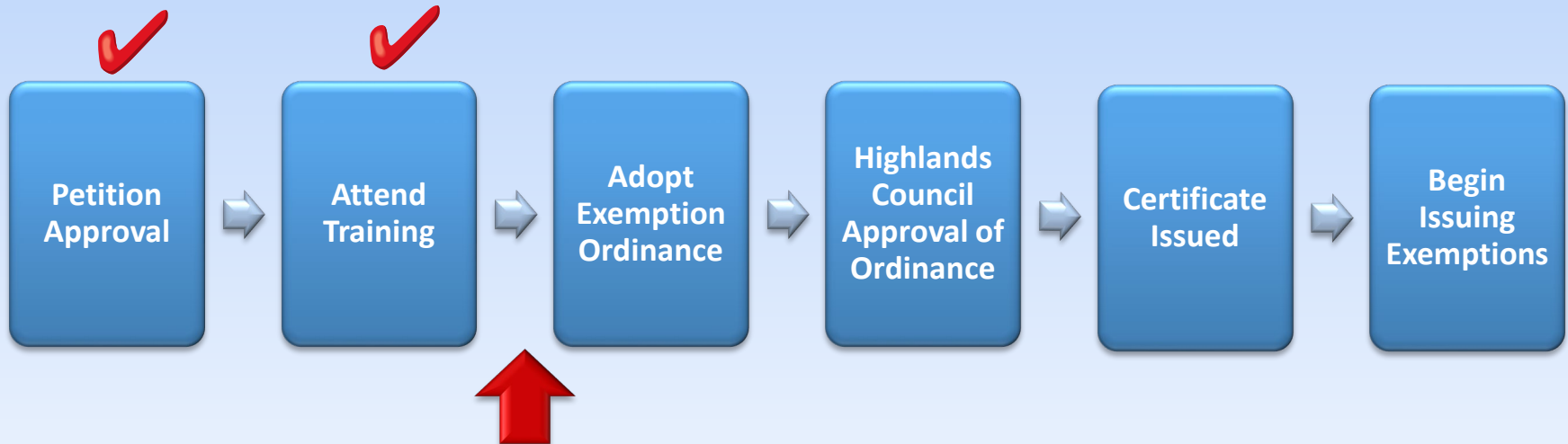
What exemption applies?



- Church property, circa 1890
- Proposal:
Church would like to add a 15,000-ft community center with parking for 100 cars

Thank you!

Exemption Certification Process



Now, you are here.

Contact Information

Preservation Area:

Michael Tropiano (609) 984-3873 (michael.tropiano@dep.nj.gov), NJDEP

Planning Area:

Maryjude Haddock-Weiler (908) 879-6737 or your Highlands Council Municipal Liaison