

single-family dwelling will generate 650 gallons of wastewater per day and use an individual subsurface sewage disposal system to treat the generated wastewater.

During the application review process, items of information appeared to be missing and/or inaccurate and, therefore, were requested in a Notice of Technical Incompleteness dated May 18, 2010. Those requested items of information were received by the Department on December 10, 2010, July 25, 2011, August 23, 2011, and November 11, 2011. During this time period, multiple requests for time extensions for submission of this information were received and granted.

The Department of Environmental Protection (Department) reviewed the materials submitted to determine the applicability of the provisions of the Highlands Rules. As a result, the Department has determined that your project/activity is potentially affected because it meets the definition of "Major Highlands Development," as defined at N.J.A.C. 7:38-1.4 since the proposed activity requires an environmental land use permit. However, the Highlands Rules at N.J.A.C. 7:38-2.3 sets forth various exemptions. After a careful review of the information submitted, it has been determined that the project described above qualifies for the following exemption:

Construction of a single family dwelling on a lot in existence on August 10, 2004 provided construction does not result in one or more acres of disturbance or one-quarter acre or more of new impervious surfaces.

Supporting documentation includes:

- A site plan titled "HIGHLANDS PLAN 80 LOZIER RD. LOTS 11 & 14 BLOCK 2801," signed and sealed by R. Henry Huelsebusch, P.E. dated October 23, 2007, and last revised July 10, 2011, sheets 1 of 5, 2 of 5, 4 of 5 and 5 of 5, depicting the metes and bounds of the ultimate disturbance and the proposed impervious surface.
- A site plan titled "DRIVEWAY EASEMENT PLAN LOTS 11 & 14 BLOCK 2801," signed and sealed by R. Henry Huelsebusch, P.E., dated March 20, 2011, and last revised August 22, 2011, sheet 3 of 5, depicting the metes and bounds of the ultimate disturbance and the proposed impervious surface of the driveway easement located on Lot 11.
- A deed of Lots 11 and 14 dated October 4, 2002 and filed in the county clerk's office on October 18, 2002, showing that Lot 11 and Lot 14 were created before August 10, 2004.
- A notarized statement attesting that Lot 11 and Lot 14 have not been subdivided, merged, or had any lot line adjustment since October 4, 2002.
- A letter from Mount Olive Township attesting that Lot 11 and Lot 14 have existed as separate lots since 1990.
- A Deed of Easement Driveway agreement dated October 4, 2011, under which the owner of Lot 11 grants the easement of driveway for ingress and egress through, over and under the driveway of Lot 11 to the owner of Lot 14.

Therefore, the proposed project/activity is deemed exempt from the provisions of the Highlands Rules, subject to the following limitation(s):

This exemption determination is limited to the land area and specific scope of the activities described herein or as shown on the referenced site plan above. This determination does not eliminate the need for any permits, approvals, or certifications required by any other Federal, State, county or municipal review agency with jurisdiction over this project/activity.

This determination is limited to the extent of activities shown on the referenced site plan and shall not result in one acre or more of land disturbance or an increase of impervious surface of one-quarter acre or more. Therefore, no additional impervious surfaces such as a shed, pool, deck, addition, or other improvement (see N.J.A.C. 7:38-2.3(a)5) may be added to the property in the future that would cause such threshold to be reached. Should additional disturbance beyond the metes and bounds area delineation (depicted on the above referenced site plan) or impervious covering occur that would reach or exceed either of these thresholds, this determination shall be null and void.

Prior to obtaining any building permits for the project, the applicant must modify the deed for the subject property to include the required Notice of Highlands Applicability language and submit a copy of the deed to the Department. Until such date that the above requirement is met, this determination will not be considered to be final. Enclosed is an example of the Notice of Highlands Applicability that should be included in the referenced property deed.

It is permissible to slightly modify the above-cited plan to allow for additional impervious surface or ultimate disturbance or to slightly modify the metes and bounds disturbance area delineation without the need for separate concurrence of this Department as long as the required thresholds are not met or exceeded.

The Department also reviewed your project/activity for consistency with the Statewide Water Quality Management Planning Rules at N.J.A.C. 7:15 and the provisions and recommendations of the Upper Raritan and Upper Delaware WQMPs. Based on our review, the proposed project is consistent with the WQMPs and is in accordance with the WQMP Rule (N.J.A.C. 7:15). This determination is made based on the following:

The project/activity will be served by an individual subsurface sewage disposal system with a discharge to ground water of 2,000 gallons per day or less. Furthermore, the project site is mapped in the WQMPs as service area for Individual Subsurface Sewage Disposal Systems discharging <2,000 gallons per day.

A copy of this determination letter must be enclosed with any future permit application(s) filed with the Department.

This Highlands Applicability and Consistency Determination is subject to the following limitations:

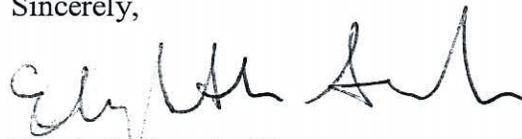
- (1) This determination does not eliminate the need for any permits, approvals, or certifications required by any other Federal, State, County or municipal review agency with jurisdiction over this project/activity.
- (2) This determination shall be considered null and void if changes are made to the project that would increase the scope or area disturbed by the project, or result in a change in the use or change the method of wastewater treatment; or if the information submitted to obtain this determination from the Department is later determined to be inaccurate.

Let it be noted that this project, Lozier Estates, was published in the December 2, 2009 DEP Bulletin and no public comments were received.

If the applicant disputes the Department's factual findings or any of its conditions or if anyone is aggrieved by this determination, that person may request an adjudicatory hearing. A request for an adjudicatory hearing shall be submitted in writing by certified mail, or by other means which provides verification of the date of delivery to the Department, within 30 days of notice of this decision published in the DEP Bulletin in accordance with N.J.A.C. 7:38-1.5. The adjudicatory hearing request must be accompanied by a completed Adjudicatory Hearing Request Checklist and Tracking Form (form enclosed).

Please place the program interest number and the activity number found above at the top of all written correspondence submitted to the Division of Land Use Planning. If you have any questions or require further assistance, please call Changi Wu at (609) 777-4297.

Sincerely,



Elizabeth Semple, Manager
Office of Land Use Planning

Enclosures

- c: R. Henry Huelsebusch, P.E.
Lisa M. Lashway, Mount Olive Township Clerk
Gary Lindsay, Mount Olive Township Construction Code Official
Catherine Natafalusy, Mount Olive Township Planning Board
Mount Olive Township Environmental Commission
Morris County Planning Board
Morris County Environmental Commission
Eileen Swan, Highlands Council
Office of Land Use Planning – File

Copy via Email:

Barbara Baus, NJDEP, Bureau of Coastal and Land Use Compliance and Enforcement (w/o encl.)

Dan Bello, NJDEP, Bureau of Inland Regulation (w/o encl.)
Barbara Greenhalgh-Weidman, NJDEP, Office of Land Use Planning (w/o encl.)
Changi Wu, NJDEP, Office of Land Use Planning (w/o encl.)
Debra Frails, NJDEP, Office of Land Use Planning (w/o encl.)

Template#5308-Rev04072011

Enclosures

Notice of Highlands Applicability

IN ACCORDANCE WITH THE CONDITIONS LISTED IN THE HIGHLANDS APPLICABILITY DETERMINATION (HAD), ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON *[Insert date of issuance]*, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____
[Signature]

[Print name below signature]

Recorded by:

[Signature, Officer of County Recording Office]

[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is", or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate: City/Borough/Township/Town]* of *[Insert the name of municipality]*, *[Insert the name of county]* County (the "Property"). The New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the Highlands Applicability Determination (HAD) issued for this Property is *[Insert the Program Interest Number (Preferred ID)]*; and the Property is more particularly described in the Department approved plan, entitled_____, prepared by_____dated_____, and revised through_____which is attached hereto and made a part hereof (the "Plan").

2. CONSIDERATION. In accordance with the New Jersey Department of Environmental Protection's issuance of a HAD for the Property, and in consideration of the terms and conditions

of that determination, and other good and valuable consideration, Owner has agreed to the limitations associated with the exemption granted pursuant to the HAD and to provide notice to subsequent owners, lessees and operators of the limitations outlined in this Deed Notice, as set forth herein.

3. DISTURBED AREA. Pursuant to the HAD, the Department approved area of ultimate disturbance consists of less than 1.0 acre and is described in the Department approved metes and bounds delineation of the disturbed area. **The metes and bounds delineation of the disturbed area is only required for projects where the property is 1.0 acre or more.** In addition, the proposed impervious surface, on the above identified Plan, does not equal or exceed one-quarter acre. Pursuant to the HAD, should additional disturbance beyond the metes and bounds delineation of the disturbed area or impervious covering occur that would reach or exceed either of these thresholds, the HAD shall be null and void and the regulations at N.J.A.C. 7:38-1 et seq. shall apply.

4. NOTICES. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Property to contain a provision expressly requiring all holders thereof to take the Property subject to the limitations contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

5. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is an individual]

WITNESS:

[Signature]

[Print name below signature]

[If Owner is a corporation]

ATTEST:

[Name of corporation]

By _____

[Print name and title]

[Signature]

[If Owner is a general or limited partnership]

WITNESS:

[Name of partnership]

[Signature]

By _____, General
[Print name] Partner

[If Owner is an individual]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Print Name and Title]

[If Owner is a corporation]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print name and title of attesting witness]

Signed and sworn before me on _____, 20__

_____, Notary Public

[Print name and title]

[If Owner is a partnership]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

- (a) is a general partner of [Owner], the partnership named in this document;
- (b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [owner]; and
- (c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

[Signature]

_____, General Partner
[Print Name]

_____, Notary Public

[Print name and title]

Adjudicatory Hearing Request Checklist
and Tracking Form

I. Highlands Applicability and Water Quality Management Plan Consistency Determination Decision (Applicability Determination) Being Appealed:

Issuance Date of Document

Document Number (if any)

II.

Name of Person Requesting Hearing

Name of Attorney (if applicable)

Address

Address

Telephone #

Telephone #

III. If you are the applicant, please include the following information with your hearing request:

- A. The date you received the applicability determination which you are appealing;
- B. A copy of the decision document;
- C. The findings of fact and conclusions of law you are appealing;
- D. A statement as to whether or not you raised each legal and factual issue during the applicability determination process;
- E. Suggested revised or alternative applicability determination conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
Trenton, New Jersey 08625-0402

with a copy to:

- 2. New Jersey Department of Environmental Protection
Office of Land Use Planning
Attention: Manager
P.O. Box 420, 401 East State Street
Mail Code 401-07C
Trenton, NJ 08625-0420

Signature: _____

Date: _____

IV. If you are a person other than the applicant, please include the following information with your hearing request:

- A. The date you or your agent received notice of the applicability determination (include a copy of that determination with your hearing request);
- B. Evidence that a copy of your hearing request has been delivered to the applicant for the determination which is the subject of your hearing request (e.g., certified mail receipt);
- C. A detailed statement of which findings of fact and/or conclusion of law you are challenging;
- D. A description of your participation in any public hearings held in connection with the application and copies of any written comments you submitted;
- E. Whether you claim a statutory or constitutional right to a hearing, and, if you claim such a right, a reference to the applicable statute or explanation of how your interests are affected by the applicability determination decision;
- F. Suggested revised or alternative applicability determination conditions;
- G. An estimate of the time required for the hearing;
- H. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- I. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of the hearing request to the Office of Administrative Law; and
- J. This form, completed, signed and dated with all the information listed above, including attachments to:

- 1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 East State Street, P.O. Box 402
Trenton, New Jersey 08625-0402

with a copy to:

- 2. New Jersey Department of Environmental Protection
Office of Land Use Planning
Attention: Manager
P.O. Box 420, 401 East State Street
Mail Code 401-07C
Trenton, NJ 08625-0420

V. Signature: _____

Dated: _____