

TOWNSHIP OF CLINTON  
REGULAR COUNCIL MEETING  
April 13, 2016

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**CALL TO ORDER:**

Council President Mullay called the meeting to order at 7:02 PM.

**OPEN PUBLIC MEETINGS ACT STATEMENT:** Council President Mullay gave the statement of adequate notice. The annual meeting notice is on file in the Office of the Municipal Clerk for public inspection.

**ROLL CALL:**

Councilwoman Switlyk	Present
Councilman McTiernan	Present
Councilman D'Alleinne	Present
Council President Mullay	Present
Mayor Higgins	Absent
Kristina Hadinger, Esq.	Present
Marvin Joss, Administrator	Present
Carla Conner, Township Clerk	Present

**CONSENT:**

Council President Mullay introduced the matter and read the items on the consent agenda.

MOTION was made by Councilman McTiernan to approve the consent agenda. Seconded by Councilman D'Alleinne. There being no further discussion the roll was called. Motion carried.

**Roll Call:**

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullay	Yes

**Consent #1**

Resolution #39-16 – Tax Premium Refund for Block 82.13 Lot 57.1705 & Block 46.01 Lot 20

**WHEREAS**, liens on properties located in the Township of Clinton have been redeemed; and

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**WHEREAS**, Tax Collector, Patricia Centofanti requests Mayor and Council approve the premium refunds required.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Clinton as follows:

1. Checks shall be issued for the properties listed below, such checks representing premium refunds on tax liens.

Block	Lot	Certificate	Vendor	Premium
82.13	57.1705	2015-011	US BANK CUST FOR PC5 STERLING NATNL	700.00
			50 SOUTH 16 <sup>TH</sup> ST-SUITE 1950	
			PHILADELPHIA, PA 19102	
46.01	20	2014-002	US BANK CUST BV001 TRST&CRDTRS	22,000.00
			50 SOUTH 16 <sup>TH</sup> ST SUITE 2050	
			PHILADELPHIA, PA 19102	
			<b>TOTAL</b>	<b>22,700.00</b>

Consent #2

Resolution #40-16 - Overpayment of taxes, Block 9 Lot 19

**WHEREAS**, on properties located within the Township of Clinton, an overpayment of real estate taxes has been made; and

**WHEREAS**, applications have been made to the Tax Collector for refunds of said overpayments, totaling \$551.02; and

**WHEREAS**, the attached listing is a detail of the requested refunds.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Clinton that the Tax Collector is hereby authorized to refund such taxes to the parties in the amounts specified on the listing below.

VENDOR	BLOCK	LOT	LOCATION	Quarter	AMOUNT
WELLS FARGO HOME MORTGAGE	9	19	151 COKESBURY RD	2016/2	551.02
1 HOME CAMPUS/MAC X2032-04D					
DES MOINES, IA 50328					

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<b>TOTAL REFUND</b>					<b>\$551.02</b>

Consent #3

Resolution #41-16 – Release of Performance bond – Ocean State Job Lot

**BE IT RESOLVED** that certain performance guarantees and escrows have been recommended by the Planning Board and Township Engineer to be reduced,

**NOW, THEREFORE BE IT RESOLVED** that the following refunds be issued:

Amount	Block / Lot	Street Address	Applicant	Type of Permit
\$42,029.27	70/3	1712 Rt 31 N	Ocean State Jobbers	Perf.Guarantee

**PUBLIC COMMENTS:**

There we no public comments.

**REPORTS:**

Councilman D’Alleinne

Councilman D’Alleinne reported that the Environmental Commission met and is reminding residents that the Musconetcong River cleanup is April 16. Councilman D’Alleinne reported that the Environmental Commission is looking for any tiny plastic bags that newspapers are delivered in to put little tiny trees in to give away at Community Day. Councilman D’Alleinne reported the Environmental Commission is starting to mark out trails on Windy Acres. The Environmental Commission is undecided if it should use metal or wooden posts to mark the trails.

Councilman McTiernan:

Councilman McTiernan reported the Planning Board approved T-Mobile putting up a tower off of Petticoat Lane that will extend a little bit higher in case other carriers also want to get on it. Councilman McTiernan reported United Telephone is making adjustments to its property at Clinton Pointe. United Telephone is adding in a tank so it can power a generator and also adding two air conditioning units. Councilman McTiernan reminded the Council that Community Day is April 30<sup>th</sup>.

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Councilman Switlyk:

Councilwoman Switlyk reported that the Clinton Township School Board President reached out to her regarding meeting times. The School Board President offered dates to review the closing of the school issue for April 19 or April 21. The School Board President gave Councilwoman Switlyk dates to discuss the budget on April 28 or May 4. Councilwoman Switlyk asked the School Board President if the school board can combine the two meetings together. The School Board President stated there would be a quorum issue. Councilwoman Switlyk stated she and Councilman McTiernan will attend the April 21 meeting to discuss the budget before the School Board votes on it on April 25. Councilwoman Switlyk reported that Administrator Joss will send out questions to the School Board regarding the budget and closing of a school prior to the April 25 meeting as requested by the Board President

Council President Mullay:

Council President Mullay reported that the Historic Commission is expecting a report from the Township's consultant regarding the old municipal building. Council President Mullay reported once the report is received the Historic Commission will send it to the State Historic Preservation office so they can incorporate the report into their final resolution. Council President Mullay reported the Sewerage Authority discussed a request for a small amount of capacity on a Rt. 31 property that is north of Ocean State Job Lot. Council President Mullay reported the Sewerage Authority decided not to move forward with any work until an escrow account is established. Council President Mullay reported that two applications for pumping stations will be sent to the Planning Board.

Administrator Joss:

Administrator Joss reported that he has been working on the budget. Administrator Joss reported the Township's non tax revenue continues to drop. Administrator Joss reported the budget is up 2% this year but still less than the 2010 budget.

Lt. Higgins:

Lt. Higgins reported the Police Department purchased two new police vehicles. Lt. Higgins reported the equitable sharing program with the DEA was reinstated in December. Lt. Higgins reported the Police Department has started a Facebook page. Lt. Higgins reported the Junior Police Academy will run from June 20-24.

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**ACTION:**

**INTRODUCTION OF ORDINANCES:**

1082-16 - AN ORDINANCE AMENDING AND SUPPLEMENTING “PART 6  
SUBDIVISION AND SITE PLAN REVIEW” OF “ARTICLE VI APPLICATION  
PROCEDURE” OF “CHAPTER 165 LAND USE REGULATIONS” OF THE CODE  
OF THE TOWNSHIP OF CLINTON BY THE ADDITION THERETO OF A NEW  
SECTION 165-41.1 TO ESTABLISH SUBMISSION REQUIREMENTS FOR  
APPLICATIONS FOR DEVELOPMENT IN THE HIGHLANDS AREA

Council President Mullay introduced the Ordinance.

MOTION was made by Councilwoman Switlyk to introduce the ordinance. Seconded by Councilman McTiernan. There being no further discussion the roll was called. Motion carried.

Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D’Alleinne	Yes
Councilman President Mullay	Yes

**WHEREAS**, the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) was enacted by the New Jersey State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, in particular the water resources, which provide drinking water to over five million New Jersey residents; and

**WHEREAS**, the Highlands Act created the Highlands Water Protection and Planning Council (the “Highlands Council”) and charged it with crafting a comprehensive master plan for the New Jersey Highlands Region; and

**WHEREAS**, the Highlands Regional Master Plan (“Regional Master Plan”) was adopted by the Highlands Council through the adoption of Resolution 2008-27 (“Resolution 2008-27”) on July 17, 2008, and became effective on September 8, 2008 as the product of a long-term, participatory, and region-wide planning effort; and

**WHEREAS**, Resolution 2008-27 included the adoption of Highlands Regional Master Plan as well as the adoption of various technical reports and guidelines that accompanied the Plan including the 2008 Plan Conformance Guidelines (“Plan Conformance Guidelines”); and

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**WHEREAS**, the Plan Conformance Guidelines provide an overview of the Highlands Act's bifurcated system for municipal conformance with the Highlands Regional Master Plan – mandatory Plan Conformance for any portion (or if applicable, the whole) of a municipality located within the Preservation Area and voluntary Plan Conformance for any portion (or if applicable, the whole) of a municipality lying within the Planning Area; and

**WHEREAS**, Section 14 of the Highlands Act expressly requires municipalities to revise and conform their local master plans and development regulations for that portion of their lands within the Preservation Area, as related to development and use of said lands, with the goals, requirements and provisions of the Regional Master Plan within fifteen months of the effective date of adoption thereof, or December 8, 2009; and

**WHEREAS**, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may at any time voluntarily revise and conform its local master plan and development regulations, as related to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan; and

**WHEREAS**, the Plan Conformance Guidelines detail the requirements for Plan Conformance including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources; and

**WHEREAS**, the Plan Conformance Guidelines require conforming municipalities to adopt "Initial Revisions" as a first step of Plan Conformance, the Initial Revisions being revisions of the existing master plan and development regulations which are deemed necessary by the Highlands Council for prompt enactment by a petitioning local government in order to ensure the protection and enhancement of the resources of the Highlands Region; and

**WHEREAS**, the Plan Conformance Guidelines include the adoption of a Development Application Checklist Ordinance as an Initial Revision in order to ensure that any Application for Development not be deemed complete until such time as certain documents have been submitted by an Applicant and to ensure that Applications for Development are consistent or revised to be consistent with the Regional Master Plan; and

**WHEREAS**, the Township of Clinton is located in the Highlands Region with lands lying within both the Preservation Area and the Planning Area, as defined by section 7 of the Highlands Act; and

**WHEREAS**, the Governing Body of the Township of Clinton has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to Township lands located within both the Planning Area portion and the Preservation Area portion of the Highlands Region; and

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**WHEREAS**, the petition filed by the Township of Clinton with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Regulations of the Code of the Township of Clinton, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the Township; and

**WHEREAS**, the Mayor and Council of the Township of Clinton (“Mayor and Council”) find that the proposed changes to the municipal planning program are of broad and significant effect, are vital to the protection of the Highlands resources of the municipal Highlands Area, and are compelling to the interests and general welfare of the community; and

**WHEREAS**, the Mayor and Council recognize that the formal municipal adoption of each component of the revised planning program must take place, in sequential order in accordance with all statutory requirements, involving public hearings and deliberation by the Environmental Commission, Planning Board, and Mayor and Council; a process that will require an additional undetermined period of time; and

**WHEREAS**, the Mayor and Council are aware that lands within the Planning Area are not regulated by the New Jersey Department of Environmental Protection’s Highlands Rules (N.J.A.C. 7:38-1 et seq.) and, with the exception of Wastewater Management Plans and Water Allocation Permits, would remain without the full suite of Highlands Regional Master Plan protections during the interim period between the date of filing of the Petition for Plan Conformance and the adoption of ordinances and regulations that will provide such protections; and

**WHEREAS**, an immediate level of protection to the resources located within the Highlands Region by adoption of revised submission requirements pertinent to Applications for Development therein is required by the Plan Conformance Guidelines; and

**WHEREAS**, the adoption of revised submission requirements pertinent to Applications for Development therein is essential to ensuring that Applicants achieve compliance with the standards and protections required under the Highland Regional Master Plan despite the interim status of the municipal Plan Conformance ordinances and regulations, this interim period not constituting an appropriate instance in which municipal approvals based upon existing municipal regulatory requirements, can appropriately be issued conditioned upon subsequent approval by the Highlands Council or the New Jersey Department of Environmental Protection (“NJDEP”), as may occur under usual circumstances; and

**WHEREAS**, the Mayor and Council find that the adoption of such submission requirements are important not only to provide such immediate resource protections, but to ensure the proper management of Applications for Development involving lands within the Highlands Area of the municipality; and

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WHEREAS, the Highland Council deems the immediate protections ascribed by this Ordinance to lands in the Planning Area and the Preservation Area of the municipality, eligible for application of the provisions of the Highlands Act at N.J.S.A. 13:20-22 and N.J.S.A. 13:20-24 regarding legal representation to municipalities filing for Plan Conformance and regarding the strong presumption of validity and extraordinary deference afforded to such ordinances;

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Township of Clinton, in the County of Hunterdon, New Jersey, as follows:

**SECTION 1. New Section 165-41.1 Added to Code.** The Code of the Township of Clinton is amended by the addition thereto of a new section 165-41.1 entitled "Applications for Development in the Highlands" to read as follows:

**§165-41.1. Applications for Development in the Highlands.**

A. Applicability.

This Section shall apply to any Application for Development involving lands located within (or partially within) the Township Highlands Area (which includes the entirety of the Township) that seeks approval of a site plan, subdivision, or change in use, where approval of such Application would:

- (1) For residential development, create three (3) or more dwelling units;
- (2) For non-residential development:
  - (a) Result in the ultimate disturbance of one (1) acre or more of land;
  - (b) Produce a cumulative impervious surface area of one-quarter ( $\frac{1}{4}$ ) acre, or more; or
  - (c) Introduce or expand on any of the following land uses/ facilities:
    - [1] Landfills;
    - [2] Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
    - [3]. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
    - [4] Industrial treatment facility lagoons; or
    - [5] Any Major or Minor Potential Contaminant Source (as identified in Appendix A and Appendix B of this Section, respectively) on lands located within 200 feet of the wellhead of any public community well

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or public non-community well, as these are defined at §165-41.1.B below.

All thresholds in §165-41.1.A(1) and §165-41.1.A(2), above, shall be interpreted to apply cumulatively over time, beginning as of the effective date of this Section. If or when any one of the thresholds is reached, the Section shall apply to any and all development in excess of that threshold. Where an application proposes a mixed use, the thresholds in §165-41.1.A(2), for non-residential development shall apply to the whole of the project, while that in §165-41.1.A(1), shall apply to the residential component. For purposes of this Section, the phrases “Application for Development,” “Highlands Area,” “residential development,” “ultimate disturbance,” and “cumulative impervious surface area” shall be defined as provided at §165-41.1.B below.

B. Definitions.

For the purpose of this Section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Section clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

**Agricultural or Horticultural Development** – means construction for the purposes of supporting common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**Agricultural or Horticultural Use** – means the use of land for common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**Agricultural Impervious Cover** – means agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings.

**Applicant** – means a developer submitting an Application for Development.

**Application for Development** – means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

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**Disturbance** – means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

**Disturbance, Ultimate** – means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

**Farm Management Unit** – means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

**Highlands Council** – means the New Jersey Highlands Water Protection and Planning Council.

**Highlands Act** – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

**Highlands Applicability Determination (HAD)** – means the determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

**Highlands Area** – means that portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands Regional Master Plan.

**Highlands Region** – means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

**Impervious Surface** – means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

**Impervious Surfaces, Cumulative** – means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

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**Major Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see Appendix A).

**Minor Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see Appendix B).

**Municipal Land Use Law (MLUL)** – means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

**NJDEP** – New Jersey Department of Environmental Protection

**NJDEP Preservation Area Rules** – means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 et seq.

**Planning Area** – means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

**Plan Conformance** – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.

**Public Community Well** – means a well that provides water to a public water system serving at least 15 service connections used by year-round residents or regularly serving at least twenty-five year-round residents.

**Public Non-Community Well** – means a well that is not a public community well and that provides water to a public water system regularly serving at least 25 individuals for at least 60 days in any given calendar year.

**Preservation Area** – means that portion of the Highlands Region so designated by subsection b. of section 7 of the Highlands Act.

**Regional Master Plan (RMP)** – means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

**Solar Panel** – means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

**Structure** – means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

C. Consistency Determinations Required.

No Application for Development included in Paragraph A above, shall be deemed complete or considered for review by an approving authority of Clinton Township until and unless the Applicant has obtained and provided a copy of:

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- (1) A Consistency Determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
- (2) A Consistency Determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan, accompanied by a certification, as described in Paragraph D below, by the Applicant's professional(s) that the application has been revised since review by the Highlands Council to achieve consistency with the Highlands Regional Master Plan.

D. Findings of Consistency.

Where a Highlands Council Consistency Determination indicates that an Application for Development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by an approving authority of Clinton Township, until or unless the Applicant has obtained from the professional(s) responsible for preparation of the Applicant's plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the application has been revised to achieve consistency with the Highlands Regional Master Plan and specifically describing the revisions made to achieve such consistency.

E. Waiver.

The Township may issue a waiver from the provisions of this Section where it can be established by the Applicant and can be verified by the Township Administrator or Zoning Officer of the Township that:

- (1) The activity, improvement or development proposed by the subject Application for Development has not yet been formally determined to be exempt from the Highlands Act (see §165-41.1.H, below), but eligibility for an exemption has been sufficiently established by the Applicant; or
- (2) The activity, improvement or development proposed in the Application for Development will neither encroach upon a Highlands Resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The Applicant's professional(s) responsible for preparation of the Applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands Resources and Resource Areas and related policies and objectives as identified in Chapter 4 of the Highlands Regional Master Plan.

F. Highlands Council Call-Up.

All Township waivers or findings of application completeness issued pursuant to this Section shall be issued in writing, inclusive of a statement indicating the rationale for the determination. All such determinations shall be subject to Highlands Council call-up review,

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and shall include conditions requiring same consistent with this paragraph. The Township shall within five (5) calendar days of issuance of all such determinations, provide a copy of the decision to the Applicant and to the Highlands Council. The Highlands Council call-up review period shall expire fifteen (15) calendar days following its receipt of same. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the Applicant and the municipality. Absent any such notification from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or finding of application completeness to be as of the date of first issuance by the municipality.

G. Exclusions.

The following specific improvements and related applications shall be excluded from the provisions of this Section:

- (1) The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Section, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
- (2) Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Section, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
- (3) Any Agricultural or Horticultural Use or Development that would not result in either:
  - (a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in §165-41.1.B , above); or
  - (b) Construction of three (3) or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).

H. Exemptions.

Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the provisions of this Section. Formal demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Highlands Area shall consist of one of the following:

- (1) *State Agency Determination.* State Agency Determinations shall include either, a Highlands Applicability Determination (HAD) issued by the NJDEP for a Preservation Area proposal, or a Highlands Exemption Determination issued by the

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Highlands Council for a Planning Area proposal, in either case, indicating that the proposal qualifies as a Highlands Act Exemption.

- (2) *Municipal Determination.* Pursuant to §165-41.2 Highlands Area Exemptions below for any application under this Section involving Highlands Act Exemptions #4, #6, #7, or #8, the Applicant may request and shall be deemed to have satisfied the evidentiary requirement by obtaining a Municipal Exemption Determination issued by the Municipal Exemption Designee as established by §165-41.2H, provided such Determination indicates that the proposal qualifies as a Highlands Act Exemption. The Applicant may rely upon the findings of a Municipal Exemption Determination to the same extent and with the same protections as would apply in the case of a Highlands Exemption Determination issued by the Highlands Council, or of a HAD issued by the NJDEP.

**SECTION 2. Severability.**

If any portion, paragraph, clause, sentence or phrase of this Ordinance is determined to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Ordinance.

**SECTION 3. Repealer.**

All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 4. Effective Date.**

This Ordinance shall take effect after final passage and publication in the manner prescribed by law.

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**APPENDIX A. MAJOR POTENTIAL CONTAMINANT SOURCES**

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Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

1. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.).
2. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center (repair & maintenance).
4. Dry cleaning processing facility.
5. Road salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
11. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.
12. Quarrying and/or mining facility.
13. Asphalt and/or concrete manufacturing facility.
14. Junkyard/auto recycling and scrap metal facility.
15. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

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**APPENDIX B. MINOR POTENTIAL CONTAMINANT SOURCES**

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Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant

Sources include the following:

1. Underground storage of hazardous substance or waste of less than 50 gallons.
2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by a NJPDES permit granted under N.J.A.C. 7:14A.
4. Industrial waste line.
5. Septic system disposal field.
6. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C. 7:14A et seq.
7. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
8. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
9. Waste oil collection, storage and recycling facility.
10. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
11. Above-ground storage of hazardous substance or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.

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1083-16 - AN ORDINANCE AMENDING AND SUPPLEMENTING PART 6 "SUBDIVISION AND SITE PLAN REVIEW" OF ARTICLE VI "APPLICATION PROCEDURE" OF CHAPTER 165 "LAND USE REGULATIONS" OF THE CODE OF THE TOWNSHIP OF CLINTON BY THE ADDITION THERETO OF A NEW SECTION 165-41.2 TO ESTABLISH PROCEDURAL AND SUBSTANTIVE REQUIREMENTS BY WHICH THE TOWNSHIP MAY ISSUE HIGHLANDS ACT EXEMPTION DETERMINATIONS

Council President Mullay introduced the Ordinance.

MOTION was made by Councilman D'Alleinneto introduce the ordinance. Seconded by Councilman McTiernan. There being no further discussion the roll was called. Motion carried.

Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullay	Yes

**BE IT ORDAINED**, by the Mayor and Council of the Township of Clinton, County of Hunterdon, New Jersey, as follows:

**SECTION 1. New Section 165-41.2 Added to Code.** The Code of the Township of Clinton is amended by the addition thereto of a new section 165-41.2 entitled "Highlands Area Exemptions" to read as follows:

**§165-41.2. Highlands Area Exemptions.**

**A. Purpose.**

The purpose of this Section is to set forth the procedural and substantive requirements by which the Township will issue Highlands Act Exemption Determinations. Such determinations pertain only to Highlands Act Exemptions 1, 2, 4, 5, 6, 7, and 8. Highlands Act Exemption Determinations indicate whether proposed activities, improvements or development projects affecting lands located within the Township Highlands Area are exempt from the Highlands Water Protection and Planning Act ("Highlands Act," N.J.S.A. 13:20-1 et seq.), and are therefore exempt from the Highlands Water Protection and Planning Council's ("Highlands Council") Regional Master Plan, the New Jersey Department of Environmental Protection's Highlands Water Protection and Planning Act Rules and from any amendments to the Township's master plan, development regulations, or other regulations adopted pursuant to the approval of the Township's Petition for Plan Conformance by the Highlands Council.

**B. Scope/Applicability.**

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The provisions of this Section pertain to activities, improvements and development projects involving lands located within the Township of Clinton. The provisions of this Section shall not be construed to alleviate any person or entity from the provisions and requirements of any other applicable ordinances, rules, or regulations of the municipality, or from any other applicable law, regulation, or requirement of any county, state, or federal authority having jurisdiction. Nor shall the provisions of this Section deprive any person or entity from seeking a Highlands exemption determination from the NJDEP or the Highlands Council.

**C. Statutory Authority.**

This Section is adopted under the authority of the Highlands Act and the MLUL. In the Highlands Act, the Legislature identified numerous categories of activities that are exempt from the Act, the RMP, the Preservation Area Rules, and any amendments to a master plan, development regulations, or other regulations adopted by a local government to conform them with the RMP. See N.J.S.A. 13:20-28. The Legislature granted the Highlands Council the authority to administer the plan conformance process and to approve, reject, or approve with conditions municipal plan conformance petitions. See N.J.S.A. 13:20-14, -15. The Legislature, through the MLUL, granted authority to New Jersey municipalities to govern land use and development within their borders and, through the Highlands Act, established requirements for Highlands municipalities to conform their land use and development regulations with the RMP. In a July 19, 2012 Memorandum of Understanding between the Highlands Council and the NJDEP, the Council and the NJDEP recognized the circumstances in which it would be appropriate for conforming, Highlands Council-certified municipalities to make determinations regarding specified Highlands Act exemptions.

**D. Word Usage.**

Terms used in the body of this Section which are defined by the Highlands Act are intended to have the same definitions as provided in the Highlands Act. Unless expressly stated to the contrary or alternately defined herein, terms which are defined by the MLUL are intended to have the same meaning as set forth in the MLUL. For purposes of this Section, the terms “shall” and “must” are indicative of a mandatory action or requirement while the word “may” is permissive.

**E. Definitions.**

**For purposes of this Section the following definitions shall apply:**

**Agricultural or Horticultural Development** – Construction for the purposes of supporting common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

**Agricultural or Horticultural Use** – The use of land for common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

**Agricultural Impervious Cover** – Agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings. (N.J.S.A. 13:20-3.)

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**Applicant** – Any entity applying to the Board of Health, Planning Board, Zoning Board of Adjustment, Zoning Officer, Construction Official or other applicable authority of the municipality for permission or approval to engage in an activity that is regulated by the provisions of this Section.

**Application for Development** – The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

**Building Permit** – Used interchangeably with the term “Construction Permit;” see definition below.

**Construction Permit** – A permit issued pursuant to the New Jersey Uniform Construction Code, Chapter 23 of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:23-1 et seq.), providing authorization to begin work subject to the conditions and requirements established under the provisions therein.

**Development** – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the MLUL. (N.J.S.A. 13:20-3; N.J.S.A. 40:55D-4.)

**Disturbance** – The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation. (N.J.S.A. 13:20-3.)

**Disturbance, Ultimate** – The total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

**Environmental Land Use or Water Permit** – A permit, approval, or other authorization issued by the Department of Environmental Protection pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.). (N.J.S.A. 13:20-3.)

**Farm Management Unit** – A parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. (N.J.S.A. 13:20-3.)

**Forest Management Plan** – A written guidance document describing the forest resources present on a property, the landowner’s management goals and objectives, and the recommended practices or activities to be carried out over time on the land. This tool is used to evaluate a forest land’s current state and provide a management process which, over time, meets the landowner’s objectives, while maintaining health and vigor of the resource. Forest Management Plans are typically written for a ten year period. (RMP, Glossary.)

**Farmsite** – A Farm Management Unit as defined above.

**Highlands Applicability Determination** – A determination made by the NJDEP (pursuant to N.J.A.C. 7:38-2.4) indicating whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan

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**Highlands Area** – That portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands RMP.

**Highlands Preservation Area Approval (HPAA)** – An approval issued by the NJDEP pursuant to 7:38-6 pertinent to a regulated activity in the Highlands Preservation Area, and including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b.

**Immediate Family Member** – A spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption. (N.J.S.A. 13:20-3.)

**Impervious Surface** – Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements. (N.J.S.A. 13:20-3.)

**Impervious Surfaces, Cumulative** – The total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

**Major Highlands Development** – Except as otherwise provided pursuant to subsection a. of section 30 of the Highlands Act (“Exemptions”): (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 from the NJDEP, 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 from the NJDEP, 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 include any agricultural or horticultural development or agricultural or horticultural use. Solar panels shall not be included in any calculation of impervious surface. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

**Master Plan** – For purposes of this Section, all references to the “Township Master Plan,” “master plan,” or “Master Plan,” refer to the municipal master plan, as defined in the MLUL, as adopted by the Township Planning Board.

**Master Plan, Highlands Regional (RMP)** – For purposes of this Section, all references to the Highlands Regional Master Plan (RMP), shall be by use of the words “Highlands Regional Master Plan,” “Highlands RMP,” “Regional Master Plan,” or “RMP.”

**Municipal Land Use Law (MLUL)** – The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.  
**NJDEP** – New Jersey Department of Environmental Protection

**NJDEP Preservation Area Rules** – The regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 et seq.

**Planning Area** – Lands within the Highlands Region that are not located in that portion designated by the Highlands Act as the “Preservation Area” (see metes and bounds description at N.J.S.A. 13:20-7b). For purposes of this Section, this terminology shall also be used to refer to Planning Area lands located solely within the Township.

**Preservation Area** – Lands within the Highlands Region that are located in that portion designated by the Highlands Act as the “Preservation Area” (see metes and bounds description at N.J.S.A. 13:20-7b). For purposes of this Section, this terminology shall also be used to refer to Preservation Area lands located solely within the Township.

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**Solar Panel** – An elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (N.J.S.A. 13:20-3.)

**Structure** – A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

**F. Highlands Act Exemptions.**

Section 30 of the Highlands Act identifies as exempt, specific activities, improvements and development projects affecting lands within the Highlands Region. Such activities, improvements and projects may be proposed as a component of any type of land use application submitted to the municipality for approval, including but not limited to zoning permit applications, building permit applications, and Applications for Development (as defined at § 165-41.2.F). Any such qualifying activity, improvement or development project is exempt, with regard specifically to that activity, improvement or development project, from the requirements of the Highlands Act, the Highlands RMP, the NJDEP Preservation Area Rules, and any amendments to the Township's master plan, development regulations, or other regulations adopted pursuant to the approval of Township's Petition for Plan Conformance by the Highlands Council. Such an exemption specifically applies to any Highlands Area land use ordinance adopted by the Township pursuant to the Highlands Council's approval of Township's Petition for Plan Conformance.

Evidence that a proposed activity, improvement, or development project qualifies as a Highlands Act Exemption may be sought in the form of either, a State Agency Exemption Determination or a Municipal Exemption Determination as provided at § 165-41.2.F.1 and § 165-41.2.F.2 below, respectively.

**(1) State Agency Exemption Determination.**

State Agency Exemption Determinations shall consist of either, a Highlands Applicability Determination issued by the NJDEP for a Preservation Area proposal, or a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal. State Agency Determinations may be requested with regard to any Highlands Act Exemption, however for applications involving any exemption not identified at §165-41.2.G below, a State Agency Exemption Determination is required. Any applicant seeking a formal exemption determination for a capital or other project of any State entity or local government unit, or for any other publicly-owned or controlled land or facility, also must request a State Agency Exemption Determination.

**(2) Municipal Exemption Determination.**

For an application involving any of the specific exemptions listed in §165-41.2.G below, the applicant may request a Municipal Exemption Determination. The applicant may rely upon the findings of a Municipal Exemption Determination to the same extent as would apply to an exemption determination issued by the Highlands Council or the NJDEP.

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**G. Highlands Act Exemptions Eligible for Municipal Determination.**

**Effective as of the date on which the Township receives written authorization from the Highlands Council to proceed, an applicant may seek a Municipal Exemption Determination for the Highlands Act Exemptions listed hereunder.**

- (1) *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 the date of enactment of the Highlands Act (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.
- (2) *Exemption 2.* The construction of a single family dwelling on a lot in existence on the date of enactment of the Highlands Act (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.
  - (a) A Municipal Exemption Determination indicating that an applicant qualifies under Highlands Act Exemption 2 shall require approval and filing of a Deed Notice along with a site plan delineating the total exempt area and the extent of the disturbance recognized in the Municipal Exemption Determination (see §165-41.2.I(6) below). Municipal Exemption Determinations in such instances shall not take effect until the applicant has provided proof of filing of the approved Deed Notice.
- (3) *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.
  - (a) For purposes of this Section, this exemption shall not be construed to permit multiple 125% footprint expansions, but rather, to permit one or more reconstruction activities cumulatively resulting in a maximum 125% increase in the footprint of the impervious surfaces lawfully existing on the site, provided they do not cumulatively exceed the one-quarter acre limitation. Any determination of whether the expansion of impervious cover meets the statutory criteria for the exemption must account for the preexisting impervious cover, and for the Preservation Area, such expansion must be contiguous to the location of the existing impervious cover. See In re August 16, 2007 Determination of NJDEP ex rel. Christ Church, 414 N.J. Super. 592 (App. Div. 2010), certif. denied, 205 N.J. 16 (2010).
  - (b) For Preservation Area determinations, the applicable date of lawful existence shall be August 10, 2004, the date of enactment of the Highlands Act. For Planning Area determinations, the date of lawful existence shall coincide with the effective date of the municipally-adopted Highlands Area Checklist Ordinance (§165-41.1) or Highlands Area Land Use Ordinance, whichever is earlier.
- (4) *Exemption 5.* Any improvement to a single family dwelling in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system.
- (5) *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), including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.
- (6) *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 a forest stewardship plan approved pursuant to section 3 of P.L.2009, c. 256 (the "State Park and Forestry Resources Act," C.13:1L-31), or the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester.

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- (7) *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.

**H. Exemption Designee(s)**

Municipal Exemption Determinations regarding Highlands Act Exemptions shall be issued by the Township Administrator or Zoning Officer. The Exemption Designee(s) shall be authorized to issue Municipal Exemption Determinations on behalf of the Township, and shall only begin to do so, after satisfactory completion of a Highlands Council training class for which the individual(s) has/have received formal certification from the Highlands Council.

**(1) Updates to Training Certification.**

In the event of programmatic changes, updated information, or modifications to procedures, updated training certification may be required of Exemption Designees in order to maintain qualifications for providing Municipal Exemption Determinations. The Highlands Council will provide training modules on an as-needed basis, to provide base training to new employees, and/or to further the expertise of already-certified individuals. Exemption Designees and the municipalities they serve will be advised of any need for upgraded training, which will be provided and funded by the Highlands Council.

**(2) Interim Determinations.**

For the duration of any period during which the Township is without a qualified Exemption Designee(s) due to changes in personnel or other extenuating circumstances, applicants seeking Highlands Act Exemption Determinations shall be referred to the NJDEP or the Highlands Council, for a State Agency Determination pursuant to § 165-41.2.F.1 above.

**I. Application Procedures.**

**(1) Municipal Exemption Applications.**

Requests for Municipal Exemption Determination shall be submitted on forms provided by the Planning Department and shall be accompanied by sufficient information and documentary evidence to demonstrate whether the proposed activity, improvement or development project qualifies for the applicable exemption. Required submission materials applicable to each exemption, appear at §165-41.2.M below.

**(2) Completeness Determination.**

The Exemption Designee shall review the application and all accompanying materials to determine whether sufficient information has been submitted to make a determination on the application. In the event of a finding that the application is incomplete, the Exemption Designee shall, within fifteen (15) calendar days of receipt, issue such findings in writing to the applicant, indicating what information is required to properly consider the application.

**(3) Time for Determination**

The Exemption Designee shall issue Municipal Exemption Determinations within thirty (30) calendar days of receipt of a complete application. The Exemption Designee may consult

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with the Executive Director (or applicable designee) of the Highlands Council as needed in making any exemption determination, however. In such circumstance, the Exemption Designee shall seek such assistance within the 30-day period and shall issue the determination within at least ten (10) calendar days of receiving the requested guidance. In no case shall failure to meet this date constitute approval of the exemption.

**(4) Determinations**

All Municipal Exemption Determinations shall be provided in writing, shall certify to the applicability or inapplicability of the exemption, and shall include a statement of the rationale for the decision. Any Municipal Exemption Determination certifying to the applicability of Highlands Act Exemptions #2 shall be contingent upon submission of proof of filing of the required Deed Notice, as set forth at §165-41.2I(6), below.

**(5) Notice of Determination Required.**

The Exemption Designee shall provide copies of all Municipal Exemption Determinations including a copy of the full application, to the Highlands Council and for decisions regarding lands in the Highlands Preservation Area, to the NJDEP, in either case, within ten (10) business days of issuance.

**(6) Deed Notice for Exemption #2**

Any Municipal Exemption Determination that certifies to the applicability of Highlands Act Exemption #2 (§165-41.2.G(2) above), shall be issued conditionally, pending fulfillment of the requirement that a deed notice be recorded in the office of the Hunterdon County Clerk indicating the extent of the exemption that has been consumed. The deed notice shall incorporate each of the components listed below and the applicant shall provide a copy of the filed Deed Notice to the Highlands Council within five (5) business days of filing.

- (a) Clear identification of the name(s) and address(es) of the owner(s) in fee of the property;
- (b) Designated tax block and lot number(s), street address(es), municipality and county of location of the property;
- (c) Reference to the Municipal Exemption Determination (by date, numbering if applicable) issued and under which the deed notice is being filed;
- (d) Description of the approved area of ultimate disturbance and the impervious surface area, with verification that these remain below the statutory limits;
- (e) For properties of one acre or more in area, metes and bounds delineation indicating the portion of the property for which the ultimate disturbance has been authorized;
- (f) Agreement to abide by the ultimate disturbance and impervious surface limits imposed, any furtherance thereof rendering the Municipal Exemption Determination null and void; and
- (g) Notice that the owner(s) and subsequent owner(s) and lessees shall cause all leases, grants, and other written transfers of interest in the property to contain provisions expressly requiring all holders thereof to take the property subject to the limitations therein set forth.

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**J. Appeal of Municipal Exemption Determination.**

A Municipal Exemption Determination may be appealed by any affected person/entity by filing a notice of appeal within twenty (20) calendar days of issuance or receipt of said determination, whichever is later, specifying the grounds therefor. Appeals must be filed with the NJDEP in the case of any Preservation Area Exemption, and with the Highlands Council, in the case of any Planning Area Exemption. All appeals shall be copied to the Exemption Designee, who shall immediately transmit to the NJDEP or the Highlands Council, as applicable, copies of the notice of appeal, the Municipal Exemption Determination Application, and all supplemental materials constituting the record that the Exemption Designee relied upon in issuing the Municipal Exemption Determination. Where the Municipal Exemption Determination deems an activity, improvement or development project exempt, the filing of an appeal to the NJDEP or the Highlands Council shall stay all proceedings in furtherance of its approval by the municipality.

**K. Effect of Certified Exemption.**

Issuance of a Municipal Exemption Determination that certifies to the applicability of a Highlands Act exemption shall recognize the applicant's exemption from the provisions of the RMP, NJDEP Preservation Area Rules, and any municipal ordinances and requirements adopted under the authority of the Highlands Act to achieve Highlands Plan Conformance. The exemption is restricted solely to the extent of the specified activity, improvement, or development project as described in the language of the Highlands Act exemption, or to any lesser activity, improvement, or development project as proposed and certified through a Municipal Exemption Determination Application. Any activity, improvement, or development project, or any part thereof, that is not specifically listed as an exemption or exceeds the limits of an exemption, remains subject to all of the above regulatory programs to the full extent of the respective applicability of each. Issuance of a Highlands Exemption Determination shall not relieve the applicant from securing all other required federal, state, or local approvals.

**L. Application Fees.**

The application fee for a Municipal Exemption Determination shall be \$100, except for Exemption #5, when it is a part of a Zoning Permit application, for which the general Zoning Permit fee shall apply.

**M. Submission Requirements.**

All applications shall be accompanied by the Municipal Exemption Determination Application Form, the applicable fees, and the information listed below, as applicable to the particular exemption or exemption(s) being sought by the applicant. All references to professional preparers indicated herein shall be construed to include any and all qualified individuals licensed, certified, or otherwise eligible and authorized to complete such work, in accordance with the applicable laws and legal requirements of the State of New Jersey including but not limited to the MLUL and Title 13 of the New Jersey Administrative Code, Law and Public Safety. Where the Exemption Designee finds that any submission item is not necessary to address the evidentiary requirements that must be satisfied for issuance of an Exemption Determination, either because alternate items have been provided by the applicant, or the relevant information is readily available through records, maps, or any other documents on file in the offices of the municipality, the Exemption Designee may waive the applicant's obligation to submit such information..

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- (1) *Exemption 1.*
  - (a) A copy of a deed, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was legally owned by the applicant on or before August 10, 2004 and indicating the lot and block as designated by the municipal tax mapping, the municipality and county in which the lot is located, and the street address;
  - (b) If the applicant did not own the lot, a copy of the binding contract of sale executed by the seller and the applicant on or before May 17, 2004 for the lot on which the house is to be constructed; and
  - (c) A certification by the applicant stating that the single family dwelling proposed for construction on the lot specified and described therein by tax lot and block, municipality and county of location, and street address, is intended for the applicant's own use or the use of an immediate family member as identified therein by name and relationship to the applicant.
- (2) *Exemption 2.*
  - (a) A copy of the recorded deed or plat showing that the lot was created on or before August 10, 2004 or proof of subdivision approval on or before August 10, 2004;
  - (b) A property survey certified by a licensed New Jersey Professional Land Surveyor indicating the property boundary lines and overall lot size, and showing what structures currently exist on the lot, if any;
  - (c) A parcel plan certified by a licensed New Jersey Professional Engineer showing all existing and proposed development, including all structures, grading, clearing, impervious surface and disturbance, and including the calculations supporting the claim that impervious surfaces and areas of disturbance are within the limits necessary for Exemption 2; and
  - (d) A metes and bounds description of the area of the lot to be disturbed, limited to less than one acre and a draft conservation restriction or deed notice (pursuant to §165-41.2.I(5), above) to cover the balance of the lot.
- (3) *Exemption 4.*
  - (a) A parcel plan certified by a licensed New Jersey Professional Engineer depicting:
    - [1] All existing property improvements, including all structures, grading, clearing, impervious surfaces and limits of disturbance, lawfully existing on the site as of August 10, 2004 for Preservation Area projects and as of the effective date of the municipal Highlands Area Checklist Ordinance (§165-41.1) or Highlands Area Land Use Ordinance, whichever is earlier; and
    - [2] All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading; and
  - (b) A copy of any official documentation of the original date of construction of the building or otherwise establishing the lawfulness of existing impervious surfaces.
- (4) *Exemption 5.*
  - (a) A copy of any official documentation proving the single family dwelling was in existence on August 10, 2004;
  - (b) A description of the proposed improvement; and
  - (c) A certification from the applicant that the property and all improvements will continue to be used for single family dwelling purposes.
- (5) *Exemption 6.*
  - (a) A copy of any official documentation indicating that the place of worship, public or private school or hospital was in existence on August 10, 2004;
  - (b) For improvements to a place of worship, documentation showing that the entity, society or association, or association organized primarily for religious purposes has non-profit status;
  - (c) A site plan certified by a licensed New Jersey Professional Engineer depicting:
    - [1] All existing property improvements including all structures, grading, clearing, impervious surfaces and limits of disturbance, existing on the site on August 10, 2004; and

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- [2] All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading.
- (6) *Exemption 7.*
  - (a) For a private landowner with an approved woodland management plan or forest stewardship plan:
    - [1] A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., if applicable;
    - [2] A brief description of the total area of woodlands that is the subject of the approved woodland management plan or forest stewardship plan;
    - [3] A brief description of the length of time that the area to be managed has been in use for woodland management or forest stewardship plan; and
    - [4] A copy of the approved woodland management plan or forest stewardship plan.
  - (b) For the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester:
    - [1] A brief description of the total area where the normal harvesting of forest products occurs;
    - [2] A brief description of the length of time that the area to be managed has been in use for normal harvesting of forest products; and
    - [3] A copy of a forest management plan or forest stewardship plan approved by the State Forester.
- (7) *Exemption 8.*
  - (a) A site plan certified by a licensed New Jersey Professional Engineer showing the proposed trail construction with details including the location, and width of existing and proposed trails and those off-site trails to which they connect, if any;
  - (b) A written description of the non-impervious materials to be used; and
  - (c) For privately owned property, a copy of a deed for the property and the conservation or recreational use easement on the property.

**SECTION 2. Severability.**

If any portion, paragraph, clause, sentence or phrase of this Ordinance is determined to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Ordinance.

**SECTION 3. Repealer.**

All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 4. Effective Date.**

This Ordinance shall take effect after final passage and publication in the manner prescribed by law.

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**RESOLUTIONS:**

Action Item #1

Resolution #42-16 – Approval of Limited Right of Entry Agreement with Kullman Associates, LLC

Council President Mullay introduced the matter. Attorney Hadinger explained the Resolution.

MOTION was offered by Councilman D'Alleinne to approve the resolution. Seconded by Councilman McTiernan. There being no further discussion the roll was called. Motion carried.

Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullay	Yes

**BE IT RESOLVED**, by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey, that the Township is authorized to enter into a limited right of entry agreement with Kullman Associates, LLC, regarding the proposed entry agreement on property located at 234 Main Street, Lebanon and designated as Block 7, Lot 31.01 (Clinton Township Tax Map 2003) in the Township of Clinton, County of Hunterdon, State of New Jersey; and

**FURTHER, BE IT RESOLVED**, that the Mayor and Clerk are authorized and directed to execute the same once all conditions precedent to execution are satisfied.

**BOARD OF HEALTH APPLICATIONS:**

Council President Mullay convened the Council meeting as the Board of Health to approve the following applications.

- Block 12 Lot 19 – 120 Petticoat Lane – Council President Mullay read the following waivers: 1) the proposed disposal bed will be located outside of the building envelope. 2) the engineer will install a rock wall along the side of the disposal bed nearest the property line since the 3:1 toe of slope of the mound cannot be achieved. Councilman D'Alleinne explained the waivers.

MOTION was offered by Councilwoman Switlyk to approve the waivers. Seconded by Councilman McTiernan. There being no further discussion a voice vote was called. Motion carried.

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Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullay	Yes

- Block 16 Lot 55.02 – 288 Stanton Mountain Road - Council President Mullay read the following waivers: 1) the proposed disposal bed will be located outside of the building envelope. 2) the downhill side of slope graded at 2:1. This does not meet the minimum slope of 3:1. 3) the disposal bed will be only 13.5 feet from the side property line. 4) the toe of the mound will be only 6 feet from the side property line and ROW. Councilman D'Alleinne explained the only issue is number four. The Board of Health agreed that the Township Engineer will look into whether the home owner will need a retaining wall.

MOTION was offered by Council President Mullay to approve the waivers with conditional approval. Seconded by Councilman D'Alleinne. There being no further discussion a voice vote was called. Motion carried.

Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullay	Yes

- Block 43 Lot 5 – 183 E. Main Street – Councilman D'Alleinne stated the Board of Health did not receive a response from the applicant's engineer. This waiver was tabled to such time the Board of Health receives a response from the applicant's engineer.

Council President Mullay adjourned as the Board of Health and reconvened as the Mayor & Council.

**VOUCHERS:**

Council President Mullay introduced the matter.

MOTION was offered by Councilman McTiernan to approve the check control registers dated April 13, 2016 totaling \$535,245.35. Seconded by Councilwoman Switlyk. There being no further discussion the roll was called. Motion carried.

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Roll Call:

Councilwoman Switlyk	Yes
Councilman McTiernan	Yes
Councilman D'Alleinne	Yes
Councilman President Mullaney	Yes

**PUBLIC COMMENT:**

Jeanette Foldes-Beam stated she is trying to purchase the property at 85 Grayrock Road. Ms. Foldes-Beam stated Mike Wright will not let her close on the property due to 17 outstanding violations on the house. Ms. Foldes-Beam stated that Mr. Wright told her the violations are the bank's responsibility and not hers. Ms. Foldes-Beam stated she wants the responsibility for the violations but not the fines and promised to abate all the violations if she can close. Ms. Foldes-Beam stated Mr. Wright is telling her she cannot close without a CO. Attorney Hadinger stated Mr. Wright is concerned that improvements were made without proper permits and approvals. Attorney Hadinger stated as long as Ms. Foldes-Beam's bank lets her close the Township cannot stop the closing; but if she does close, she becomes responsible for the fines and violations. Administrator Joss stated that Mr. Wright cannot issue a CO without the violations being taken care of first since the violations are major such as buildings being constructed without permits.

**EXECUTIVE SESSION:**

Resolution #43-16

MOTION was made by Councilman D'Alleinne to go into executive session. Seconded by Councilman McTiernan. There being no further discussion a voice vote was called. All ayes. Motion carried.

**WHEREAS**, Section 8 of the Open Public Meetings Act (NJSA 10:4-12 (b) (1-9) permits the exclusion of the public from a meeting in certain circumstances; and,

**WHEREAS**, the Mayor and Council is of the opinion that circumstances exist, and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Township of Clinton, County of Hunterdon, and State of New Jersey as follows:

1. The Mayor and Council will now convene in closed session that will be limited only to consideration of items from which the public may be excluded pursuant to Section 7B of the Open Public Meetings Act.
2. The general nature of the subjects to be discussed in this session is as follows:
  - Advice of Counsel with the respect of pending affordable housing litigation and litigation strategy.

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- Potential acquisition of property with public funds.
- 3. It is unknown precisely when, if ever, the matters discussed in this closed session may be disclosed to the public.
- 4. No action shall be taken in closed session.
- 5. Matters discussed concerning litigation may be announced upon the conclusion of any trial or settlement of the litigation.

**RETURN FROM EXECUTIVE SESSION:**

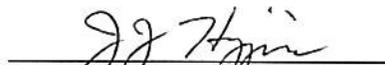
MOTION was made by Councilman McTiernan to return from executive session. Seconded by Councilwoman Switlyk. There being no further discussion a voice vote was called. All ayes. Motion carried.

**MOTION TO ADJOURN:**

MOTION was offered by Councilman D'Alleinne to adjourn at 8:21p.m. Seconded by Council President Mullay. There being no further discussion a voice vote was called. All ayes. Motion carried.

ATTEST:

  
Carla Conner, Township Clerk

  
John Higgins, Mayor

Adopted: June 22, 2016