

CMP Exemptions

N.J.A.C. 7:50-4.1(a)

The CMP indicates that for the purposes of Subchapter 4 only, 23 specified development activities do not require application to the Commission.

These development activities are commonly referred to as “exemptions”

- **The Exemption Administrative Process:**

As incorporated into the CMP, it is intended that the exemptions be self-executing with no contact with the Commission staff.

In practice, the Commission staff is regularly contacted in writing to advise in writing that a particular development activity does not require application to the Commission.

In an attempt to change this practice, the Commission amended its regulations in 2004 to require an administrative fee for the Commission staff to provide a written determination regarding information that is readily available to the public from other sources, including the 53 Pinelands Area municipal land use ordinances.

The Commission staff continues to receive letters with and without the required administrative fee inquiring as to whether proposed development is exempt from application to Commission.

The Commission staff receives applications with accompanying application fees for development that is exempt from application to the Commission.

The purpose of this presentation is to identify the substantive issue(s) associated with 9 of the 23 exemptions.

Exemption #3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;

The substantive issue: What activities can occur in a proposed agricultural structure and the structure still be considered exclusively for agricultural use? For example, if it proposed to sort and/or process an agricultural crop in a proposed barn, is the proposed barn “exclusively for agriculture?”

Exemption #5. The repair of existing utility distribution lines;

The substantive issue is that the exemption does not indicate whether replacement is included. In addition, the CMP has a less than clear definition of utility distribution line.

Exemption #6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development that has received all necessary approvals and permits;

The substantive issue is that the CMP does not define what constitutes “areas that are effectively developed” nor what “development that has received all necessary approvals and permits” means. Again, the CMP has a less than clear definition of utility distribution line.

Exemption #15. Tree pruning;

The substantive issue is that the CMP does not define tree pruning. The absence of this definition has generated lengthy discussions and letters addressing proposals to remove the majority of the tree, leaving only the tree trunk with no branches.

Exemption #16. The following forestry activities:

- i. Normal and customary forestry practices on residentially improved parcel of land that are five or less in size;
- ii. Tree harvesting, provided that no more than one cord of wood per five acres of land is harvested in one year and that no more than five cords of wood are harvested from the entire parcel in any one year;
- iii. Tree planting, ...; and
- iv. Forest stand improvement designed to selectively thin trees and brush, provided that no clearing or soil disturbance occurs and that the total land area on the parcel in which the activity occurs does not exceed five acres in any one year;

The substantive issues is that the CMP does not define the term “forest stand improvement.” Forestry exemption iv. allows for a forest stand improvement on up to five acres without application to the Commission. The intent of exemption iv. was to allow for certain limited forestry activity, but not the harvesting and removal of trees from a parcel. As written, the harvesting and removal of thinned trees is not prohibited.

Exemption #17. Prescribed burning and the clearing and maintaining of fire breaks;

The substantive issue is that the CMP does not define fire break.

Exemption #20. The installation of an accessory solar energy facility on any existing structure or impervious surface;

The substantive issue is that most accessory solar facilities are located over at least some pervious (grass) surface and/or require some disturbance of pervious (grass) surface.

Another substantive issue: What information demonstrates that a proposed solar energy facility qualifies as accessory to an existing use? For example, does 51% of the energy being used by the existing use qualify as accessory? What if some percentage of unused generated energy is rerouted back to the energy grid?

Exemption #22. The establishment of a home occupation within an existing dwelling unit or structure accessory thereto, provided that no additional development is proposed; and

The substantive issue raised is that the CMP definition of development is all encompassing. Installation of one paved parking stall, signage or landscaping constitutes “development.” What if the additional development, such as the paved parking stall, is otherwise exempt from application to the Commission?

Exemption#23. The change of one nonresidential use to another nonresidential use, provided that the existing and proposed uses are or will be served by public sewers and no additional development is proposed.

The same substantive issue as Exemption 22.

Other Substantive Exemption Issue

Although exempt, the proposed development must be consistent with the environmental and permitted land use standards.

This requirement consistently raises question of whether wetlands are present and the required buffer to any such wetlands.

This requirement can raise the questions of whether clearing of certain land for agricultural purposes is consistent with the threatened and endangered species protection standard.

This requirement can also raise permitted land use questions.