

**RESOLUTION 2006-09**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**APPROVAL OF SENDING ZONE AND RECEIVING ZONE CRITERIA**

**WHEREAS**, Section 8 of the Highlands Water Protection and Planning Act (the “Highlands Act”) mandates that the Highlands Water Protection and Planning Council (the “Highlands Council”) adopt a Regional Master Plan by June of 2006; and

**WHEREAS**, Section 13.a of the Highlands Act requires the Highlands Council to establish a Transfer of Development Rights (“TDR”) program for the Highlands Region, based upon Section 11, the resource assessment, and Section 12, the smart growth component of the Regional Master Plan, that furthers the goals of the Regional Master Plan; and

**WHEREAS**, pursuant to Section 13.b of the Highlands Act, within 18 months after the date of enactment of the Highlands Act, the Highlands Council, in consultation with municipal, county and State entities, is to identify areas within the Preservation Area that are appropriate as TDR sending zones pursuant to P.L.2004, c. 2 (C.40:55D-137 et seq.); and

**WHEREAS**, to achieve the Highlands Act mandate that Preservation Area landowners affected by the application of the Highlands Act and its implementing regulations be justly compensated, the extent of Preservation Area properties that may serve as sending zones must be as broad as possible within the parameters established by the Highlands Act; and

**WHEREAS**, Highlands Council staff suggests that the use of narrative criteria to identify areas of the Preservation Area that are appropriate to serve as sending zones accomplishes this objective and satisfies the legislative mandate of Section 13.b of the Highlands Act; and

**WHEREAS**, pursuant to Section 13.c of the Highlands Act, within 18 months after the date of enactment of the Highlands Act, the Highlands Council, in consultation with municipal, county and State entities, is to identify areas within the Planning Area that are appropriate for voluntary receiving zones pursuant to P.L.2004, c. 2 (C.40:55D-137 et seq.); and

**WHEREAS**, Section 13.c of the Highlands Act, requires the Highlands Council to consider such information as may be gathered pursuant to Sections 11 and 12 of the Highlands Act as may be available at the time; and

**WHEREAS**, Section 13.d of the Highlands Act, requires the Highlands Council to “work with municipalities and the State Planning Commission to identify centers, designated by the State Planning Commission, as voluntary receiving zones for the transfer of development rights program; and

**WHEREAS**, the data and information that inform Section 11, the resource assessment, and Section 12, the smart growth component, are still in development; and

**WHEREAS**, to specify geographic boundaries of voluntary receiving zones without sufficient data and information, particularly information on the location of existing water supply and wastewater infrastructure and natural resource information, could detrimentally affect the development and implementation of the Regional Master Plan; and

**WHEREAS**, the Highlands Council staff suggests that the use of narrative criteria to identify areas of the Planning Area that are appropriate to serve as voluntary receiving zones satisfies the legislative mandate of Section 13.c of the Highlands Act without prejudicing development and implementation of the Regional Master Plan; and

**WHEREAS**, the Smart Growth and Economic Development Committee has reviewed and approved the following narrative criteria for identifying sending zones and voluntary receiving zones after taking public comment.

**NOW THEREFORE, BE IT RESOLVED** by the Highlands Council that it hereby adopts the following narrative criteria for both sending zones and voluntary receiving zones, which indicate those land characteristics or attributes that an area must have to be deemed appropriate as either a sending zone or voluntary receiving zone:

The narrative criteria listed below are intended to serve as a threshold for determining what lands in the Highlands Region are appropriate as TDR sending zones and voluntary TDR receiving zones as required by Section 13 of the Highlands Act. In essence, these narrative criteria serve as the lens through which each property in the Highlands Region will be viewed to determine its role, if any, in the Highlands Region TDR Program.

With respect to sending zones, the Highlands Council envisions a process whereby Preservation Area landowners will apply to the Council for a determination as to how many development rights or credits their respective properties are entitled. Specifically, the Highlands Council may utilize an individual property review process to assign TDR credits on a lot-by-lot basis that will be developed by the Council as part of the Regional Master Plan. It is important to note that all lands in the Preservation Area are eligible to participate in the TDR program provided they satisfy the sending zone criteria. Thus, any land types are eligible, including but not limited to agricultural lands, woodlands, environmentally sensitive lands or lands zoned for residential, commercial or industrial development.

With respect to voluntary receiving zones, specific identification of these zones will occur during the Regional Master Plan conformance process. A similar process will be utilized to identify voluntary receiving areas outside of the Highlands Region but within the seven Highlands counties.

Sending Zone Criteria:

In consultation with municipal, county and State entities, the Highlands Council may identify any land in the Preservation Area as an area appropriate as a TDR sending zone provided that the land could have been developed as of August 9, 2004, based upon municipal zoning and land use regulations then in effect, and State and federal environmental laws and regulations then in effect, but which development is now precluded or severely constrained by the restrictions imposed pursuant to the Highlands Act.

The Highlands Council may deem land within the Preservation Area inappropriate as a sending zone where that land is appropriate for redevelopment as either a brownfield site designated by the Department of Environmental Protection or a site at which at least 70% of the area thereof is covered with impervious surface, or such land otherwise qualifies for an exemption or waiver from strict compliance with the standards at N.J.A.C. 7:38.

The above criteria are preliminary and do not preclude the Highlands Council in the future from modifying these criteria or identifying other areas within the Highlands Region as TDR sending zones.

Voluntary Receiving Zone Criteria:

Any area in the Planning Area that is appropriate and suitable for development utilizing existing resource assessment information and exhibits one or more of the following characteristics may be appropriate as a voluntary TDR receiving zone provided that it has been approved by the Highlands Council in consultation with municipal, county and State entities:

- (1) Land with access to multi-modal transportation utilizing the existing transportation network;
- (2) Land that is proximate to existing areas of concentrated development patterns and existing population centers; or
- (3) Land that is underutilized or previously developed.

In addition, a voluntary TDR receiving zone must demonstrate access to available water supply and wastewater infrastructure with the capacity to support increased development, and the proposed zoning must be economically viable and be shown to be able to accommodate an increase in density above that allowed in municipal zoning in place at the time of adoption of a voluntary TDR ordinance. The Highlands Council will work with municipalities and the State Planning Commission to identify centers, designated by the State Planning Commission, as voluntary receiving zones for the transfer of development rights program.

The above criteria are preliminary and do not preclude the Highlands Council in the future from modifying these criteria or identifying other areas within the Highlands Region or within the seven Highlands counties as voluntary TDR receiving zones.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 23rd day of February, 2006.

  
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John Weingart, Chairman