

**DRAFT – FOR CONSIDERATION AT THE JUNE 5, 2008  
MEETING OF THE HIGHLANDS COUNCIL**

**Part 7. Landowner Equity**

**Highlands Transfer of Development Rights Program**

**Issue Overview**

The Highlands Transfer of Development Rights (TDR) Program is a regional program that permits the transfer of development rights, termed Highlands Development Credits, to further the goals of the Highlands Act. As a land use tool, TDR permits a community to utilize market forces to encourage the transfer of development potential from areas that the community wants to preserve, called Sending Zones, to areas that are more appropriate to accommodate increased growth, called Receiving Zones. Landowners in the Sending Zones receive compensation for restricting development on their property. As a market-based system, payment for this lost development potential comes from purchasers who buy credits representing the lost development potential in the Sending Zones. The credits then entitle the purchaser to build in a Receiving Zone at a density greater than that otherwise permitted in the underlying zoning. Under the Highlands Act, certain benefits accrue to Receiving Zone municipalities where the resulting development density is 5 dwelling units per acre or greater.

**RMP Policies and Objectives Addressed**

Part 7, Landowner Equity (all Policies and Objectives)

**Program Summary**

The TDR Program guides new growth and development away from lands with little or no capacity to accommodate human development without adversely affecting the integrity of the Highlands ecosystem. This program establishes procedures and standards by which eligible property owners may apply for an allocation of Highlands Development Credits. The program provides for the designation of Receiving Zones where HDCs may be transferred and used for development purposes. The program also creates a Highlands Development Credit Bank to serve as the administrator of the Highlands Development Credit program.

**Highlands Development Credit Created**

The Highlands Regional Master Plan (RMP) creates a transferable development right in the form of a Highland Development Credit (HDC) which can be used to increase the density or intensity of development in a designated Receiving Zone.

**Allocation of Highlands Development Credits**

Sending Zones are those areas of the Highlands Region that may be eligible to receive an allocation of HDCs because reasonable future development expectations have been disproportionately limited by the provisions of the Highlands Act or implementation of programs established by the RMP. Which parcels of land within the various Land Use Capability Map Zones are eligible to apply for an allocation of HDCs is determined by the requirements outlined below.

1. A parcel of land in the Protection Zone or Conservation Zone in the Preservation Area, which was zoned for residential use on August 9, 2004,

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and which satisfies one (1) of the following criteria, is eligible to apply for an allocation of HDCs:

- The parcel of land has an area of at least five (5) acres;
  - The area of the parcel of land is at least three (3) times the minimum lot size in effect on August 9, 2004; or
  - The parcel of land is undeveloped and the owner voluntarily chooses not to develop the parcel pursuant to one or more of the exemptions under section 28 of the Act.
2. A parcel of land in the Protection Zone or Conservation Zone in the Planning Area, which was zoned for residential use on the date of Highlands Council determination of Plan Conformance may be eligible to apply for an allocation of HDCs under the same criteria as listed in (1) above when the municipality in which their property is located has voluntarily conformed to the Regional Master Plan and establishes one or more Sending Zones for that portion of the municipality in the Planning Area.
  3. A parcel of land in the Protection Zone or Conservation Zone in the Preservation Area, which was zoned for non-residential use on August 9, 2004, is eligible to apply for an allocation of HDCs.
  4. A parcel of land in the Protection Zone or Conservation Zone in the Planning Area, which was zoned for non-residential use on the date of Highlands Council determination of Plan Conformance, may be eligible to apply for an allocation of HDCs when the municipality in which their property is located has voluntarily conformed to the Regional Master Plan and establishes one or more Sending Zones for that portion of the municipality in the Planning Area.
  5. The owners of eligible parcels of land may apply to the Highlands Council for an allocation of HDCs by submitting an application for an HDC Allocation Determination to the Highlands Council together with the information required by the Council to make an HDC Allocation Determination. Any owners of parcels not eligible in 1 through 4 above may request from the Highlands Council a determination of eligibility on a case by case basis based upon particularized extenuating circumstances.
  6. HDCs shall be allocated to a residentially zoned parcel of land on the basis of the following formula:

$$U_{NET} \times K_{ZF} \times K_{LF} = \text{HDC Allocation}$$

**U<sub>NET</sub> = Net Yield** – the number of residential lots that could have been situated on a parcel of land on August 9, 2004, taking into consideration all municipal development regulations and applicable state and federal laws and regulations.

**K<sub>ZF</sub> = Zoning Factor** – a regional adjustment factor to recognize that the value of the land varies according to the end use to which the property could have been developed.

**K<sub>LF</sub> = Location Factor** – an adjustment factor to recognize that per

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unit value of land varies by location within the Highlands Region.

7. In the event that a landowner voluntarily chooses not to develop an undeveloped, residentially zoned parcel pursuant to a single family home exemption under section 28 of the Act, the Net Yield shall be increased reflecting the parcel's regional resource value.
8. HDCs shall be allocated to a non-residentially zoned parcel of land on the basis of the following formula:

$$U_{NET} \div K_{SF/USE} = \text{HDC Allocation}$$

**$U_{NET}$**  = **Permitted Square Footage** – the amount of buildable area that could have been situated on the parcel of land on August 9, 2004, taking into consideration all municipal development regulations and applicable state and federal laws and regulations.

**$K_{SF/USE}$**  = **Non-Residential Square Footage Conversion** – a conversion factor between various types of non-residential uses recognizing differences in underlying land value associated with various non-residential uses.

9. As soon as practicable after the Highlands Council receives a complete Application for an HDC Allocation Determination, the Council will issue a HDC Allocation Letter setting forth the number of HDCs allocated to the eligible parcel of land if appropriate.
10. An HDC Allocation Letter shall include a specific restriction on the future use of the parcel of land to which HDCs are allocated.
11. If the landowner disputes the number of HDCs allocated to his or her parcel, the owner may seek reconsideration by the Highlands Council only with respect to the parcel's lot yield in the case of residential development or permitted square footage in the case of non-residential development.

**Highlands  
Development Credit  
Certificates**

1. No HDC may be sold, transferred or encumbered until the landowner has obtained a HDC Certificate from the Highlands Development Credit Bank.
2. The Highlands Development Credit Bank will not issue a HDC Certificate until an easement restricting the future development of the parcel of land to which HDCs have been allocated by the Highlands Council has been recorded on the chain of title to the parcel to which the HDCs were allocated.
3. The conservation easement shall restrict the future use of the parcel of land in accordance with the provisions of the Highlands Council's HDC Allocation Letter and shall be enforceable by the Highlands Development Credit Bank, the Highlands Council, the municipality in which the parcel of land is located, and the New Jersey Department of Environmental Protection. Enforcement by an appropriate non-profit corporation may be included, if applicable.

**Sale and Use of HDCs**

1. Prior to the sale, transfer or conveyance of HDCs, the holder of an HDC Certificate shall apply to the Highlands Development Credit Bank for the re-issuance of a HDC Certificate in the name of the grantee.

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2. An application for re-issuance of an HDC Certificate in conjunction with a sale, transfer or conveyance of HDCs shall include the name(s) of the grantee(s), the name(s) of the grantor(s), the number of HDCs to be sold, transferred or conveyed, the date of the proposed closing of the transaction, written documentation of the interest sold, transferred or conveyed and the consideration for the sale, transfer or conveyance.
  3. Prior to the encumbrance of HDCs as collateral or other security, the holder of the HDC Certificate shall notify the Executive Director of the Highlands Development Credit Bank of the name and address of the lender and the date, amount and term of the loan or obligation.
  4. In the event a government agency or non-governmental organization proposes to acquire conservation or agricultural easements which restrict the future use of land in a TDR Sending Zone and the agency requests a HDC Certificate from the Highlands Development Credit Bank, the Executive Director shall procure an HDC Allocation Letter from the Highlands Council and issue a HDC Certificate to the agency or organization when the easement(s) are recorded.
  5. When HDCs are used in conjunction with a development project within a Receiving Zone, the holder of the HDC Certificate shall, within ten (10) days of municipal development approval, notify the Highlands Development Credit Bank of the use of the HDCs and apply for a Certificate of Redemption.
  6. An application for redemption of a HDC shall include the name of the holder of the HDC Certificate, the name of the developer who used the HDCs, the municipality where the development using HDCs is located, the legal description of the parcel of land on which the HDCs were used and the date of the municipal approval of the development.
  7. In the event that only a portion of the HDCs which are authorized in a HDC Certificate are redeemed, the Highlands Development Credit Bank shall issue a new HDC Certificate for the HDCs which were not used.
1. Parcels of land located within the Existing Community Zone and any lands within a Highlands Redevelopment Area may be designated as Receiving Zones by a Highlands municipality upon approval by the Highlands Council, provided that such receiving zones are consistent with the Regional Master Plan.
  2. Parcels of land located in the Conservation Zone may also be designated as Receiving Zones upon approval of the Highlands Council, provided that such receiving zones are consistent with the Regional Master Plan and the development does not conflict with the maintenance of viable agriculture.
  3. Parcels of land, which are located within Highlands Counties but not within the boundaries of the Highlands Region, may be designated as a Receiving Zone for the use of HDCs upon approval of the Highlands Council, provided that the municipality has received plan endorsement in accordance with State Planning Commission guidelines.

**Receiving Zone  
Eligibility**

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**Receiving Zone  
Designation Process**

4. A Municipality within the Planning Area, which does not petition the Highlands Council for a determination of Plan Conformance, may establish a Receiving Zone for the use of HDCs upon approval of the Highlands Council, provided that the municipality has received plan endorsement in accordance with State Planning Commission guidelines.
5. Through the municipal Plan Conformance process a Highlands municipality may establish a Receiving Zone which is restricted to the transfer and use of HDCs allocated to parcels of land located within the municipality and/or county where the Receiving Zone is located.
1. Within the Highlands Region, the Highlands Council may designate parcels of land as either a Higher Intensity Receiving Zone or Lower Intensity Receiving Zone in response to a petition from the municipality in which the Receiving Zone is to be located. A Higher Intensity Receiving Zone is one where development may require the use of appropriate public water and wastewater infrastructure with capacity to accommodate additional or new growth and which may be proximate to existing developed lands and multi-modal transportation infrastructure. An area that serves as a Higher Intensity Receiving Zones will have a minimum net residential density of 5 dwelling units per acre or its residential unit equivalent for non-residential development. A Lower Intensity Receiving Zone is one that has residential densities below 5 dwelling units per acre but which provides some amount of bonus residential density or increase in non-residential intensity which is consistent with existing community character. In many cases, a Lower Intensity Receiving Zone will be located in an area where the community character is more suburban or rural.
1. Any area within the Highlands Region identified by the Highlands Council as a potential voluntary HDC Receiving Zone may not be designated as such unless the municipality in which the zone is identified petitions the Highlands Council for designation.
2. Before a municipality may petition the Highlands Council for Receiving Zone designation, it shall conduct a feasibility assessment of the proposed area to accommodate the increase in residential density or non-residential use intensity contemplated by the municipality. This feasibility assessment shall be governed by requirements established by the Highlands Council.
3. Upon completing the feasibility assessment, the municipality shall complete a Petition for Receiving Zone Designation and shall include with that petition a resolution stating its desire to designate the proposed Receiving Zone setting forth the bases for the proposed Receiving Zone's inclusion in the Highlands TDR Program.
4. The Highlands Council shall consider the municipality's Petition for Receiving Zone Designation and may approve the Petition for Receiving Zone Designation, provided that designating the proposed Receiving Zone is consistent with the provisions of the Highlands TDR Program and the Regional Master Plan.
5. Upon Highlands Council approval of the Petition for Receiving Zone

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**Highlands  
Development Credit  
Bank Created**

Designation, the municipality shall prepare a Transfer of Development Rights Ordinance to be reviewed and approved by the Highlands Council.

1. The Highlands RMP provides for the creation of a Highlands Development Credit Bank.
2. The Highlands Development Credit Bank is to serve as a regional clearinghouse for information with regard to the Highlands TDR Program.
3. The Highlands Development Credit Bank is to serve as the administrator and official recording agency for the Highlands TDR Program.
4. The Highlands Development Credit Bank is authorized to buy HDCs for the following purposes:
  - To further the objectives of the Highlands Act and the RMP; or
  - To alleviate a Sending Zone parcel owner's demonstrated unique and extenuating financial circumstances such as imminent bankruptcy, extraordinary medical expenses, or loss of job and inability to secure new job within 6 months.
5. The Highlands Development Credit Bank is authorized to sell, exchange or otherwise convey HDCs, but only in a manner that does not substantially impair the private sale or transfer of HDCs.