

Part 7. Landowner Equity

The Highlands Act recognizes that implementation of the Regional Master Plan, which directs and guides future development, inevitably has an impact on reasonable landowner expectations regarding future land use potential. The Act provides several mechanisms that seek to mitigate such impacts, including a transfer of development rights (TDR) program, land acquisition, exemptions, and waivers.

The Act requires the Highlands Council to establish a regional Highlands TDR program. This is intended as an equitable means of guiding human development away from sensitive lands in the Highlands Region to areas both within the Region as well as outside the boundaries of the Highlands Region but within other parts of the seven Highlands counties which are suitable for more intense human development. The Act contemplates that transferable development rights will be allocated to the owners of land which should not be developed at all or be developed at very low densities and impacts, and that voluntary TDR Receiving Zones for Highlands Development Credits will be identified. The Highlands TDR Program is required to be consistent with the State Transfer of Development Rights Act, except as otherwise expressly provided for in the Highlands Act TDR provisions. (Section 13.a)

The Highlands Regional Master Plan also recognizes the need to set priorities for acquisition or purchase of conservation easements in those lands within the Region that have the most significant resource values. To this end, the Plan includes numerous policies to address open space acquisition and farmland preservation.

Additionally, the Highlands Act includes seventeen (17) exemptions. If a project or activity falls within one of these seventeen exemptions, the project or activity is exempt from the Highlands Act, the Highlands Preservation Area rules adopted by the NJDEP, the Regional Master Plan, and any municipal master plan or development regulations that are revised to conform to the Regional Master Plan.

Tens of thousands of acres throughout the Region could potentially be developed under the exemptions based upon an analysis conduct by the Highlands Council. While the exemptions are one of the primary means for landowners to utilize their properties where development potential is limited by the Highlands Act, the exercise of these exemptions may result in further fragmentation of the Region's ecosystems due to the construction of additional impervious surface. Given this circumstance, the Regional Master Plan addresses the need to develop voluntary programs that attempt to mitigate these impacts, including programs to encourage non-contiguous clustering, intra-local government transfers of development rights and economic incentives.

Lastly, the Act provides NJDEP with the authority to grant waivers from its Highlands rules on a case by case basis under certain circumstances. Under this authority, NJDEP may issue waivers (1) where a project or activity is necessary in order to protect public health and safety; (2) for redevelopment in previously developed areas as identified by the Highlands Council, provided that the areas are either a brownfield site designated by NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface; or (3) necessary to avoid a taking of property without just compensation.

GOAL 7A

PROTECTION OF LANDS THAT HAVE LIMITED OR NO CAPACITY TO SUPPORT HUMAN DEVELOPMENT WITHOUT COMPROMISING THE ECOLOGICAL INTEGRITY OF THE HIGHLANDS REGION, THROUGH MECHANISMS INCLUDING BUT NOT LIMITED TO A REGION-WIDE TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.

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Policy 7A1	Transferable development rights shall be used by willing municipalities to guide growth and development away from ecologically sensitive lands and towards lands which have the capacity to support additional human development without compromising the ecological integrity of the Highlands Region. These rights shall also be used to guide growth towards lands outside of the Highlands Region, but within the seven Highlands counties, to willing municipalities.
Objective 7A1a	Creation of a region-wide Highlands TDR program as soon as practicable.
Objective 7A1b	Identification and implementation of any and all program elements which would promote the transfer and use of development rights.
Policy 7A2	To maximize the preservation of Preservation Area properties outside of the Existing Community Zone or a Highlands Redevelopment Area, with emphasis on properties with the highest Conservation Priority scores and Agricultural Priority scores, through acquisition or donation of fee simple and easement ownership.
GOAL 7B	PROVISION FOR COMPENSATION THROUGH A REGION-WIDE PROGRAM OF TRANSFERABLE DEVELOPMENT RIGHTS TO LANDOWNERS WHOSE PROPERTIES HAVE LIMITED OR NO CAPACITY TO SUPPORT ADDITIONAL DEVELOPMENT BASED UPON ANALYSES CONDUCTED BY THE HIGHLANDS COUNCIL AND WHO ARE DISPROPORTIONATELY BURDENED BY THE PROVISIONS OF THE HIGHLANDS ACT.
Policy 7B1	The Highlands TDR program shall seek to mitigate impacts of the Highlands Act and the Highlands RMP on reasonable landowner development expectations which have been disproportionately affected.
Policy 7B2	The Highlands TDR program shall establish a transferable development right to be known as a “Highlands Development Credit.”
Policy 7B3	All lands within the Preservation Area, except for those in the Existing Community Zone and approved Highlands Redevelopment Areas, shall be eligible to serve as Sending Zones under the Highlands TDR Program.
Policy 7B4	Upon municipal conformance, all lands within the Planning Area, except for those in the Existing Community Zone and approved Highlands Redevelopment Areas, shall be eligible to serve as Sending Zones under the Highlands TDR Program.
Policy 7B5	The Highlands TDR program shall provide for the allocation of Highlands Development Credits to eligible Sending Zone parcels where reasonable future development expectations have been disproportionately limited by the provisions of the Highlands Act or implementation of the programs established by the RMP.
Policy 7B6	Lands in the Existing Community Zone and approved Highlands Redevelopment Areas shall not be eligible for an allocation of Highlands Development Credits.
Policy 7B7	Establish a Highlands TDR program which is sufficiently certain and predictable to allow Sending Zone landowners to sell Highlands Development Credits or borrow against the value of such credits.
Objective 7B7a	Establishment of eligibility criteria for an allocation of Highlands Development Credits.

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Objective 7B7b	Creation of a process by which affected landowners can apply to the Highlands Council for an allocation of Highlands Development Credits.
Objective 7B7c	Establishment of a Highlands Development Credit conveyance system, including covenants and restrictions on the use of Sending Zone parcels.
Objective 7B7d	Creation of a tracking system for Highlands Development Credits which provides public records for the transfer and use of Highlands Development Credits.
Objective 7B7e	Establishment of Receiving Zones where Highland Development Credits can be used as soon as possible.
Objective 7B7f	Active transfer and use of Highlands Development Credits throughout the Highlands Region and the seven Highlands counties.
Objective 7B7g	Review and assessment of the Highlands TDR Program five (5) years after the effective date of the Highlands RMP.
Policy 7B8	The determination as to whether a particular parcel of land is disproportionately limited by the provisions of the Highlands Act or implementation of the Highlands RMP shall be based upon the development potential as of August 9, 2004, based upon municipal zoning and land use regulations then in effect; State and federal environmental laws and regulations then in effect; and a determination of whether development is precluded or severely constrained by the restrictions imposed pursuant to the Highlands Act.
Policy 7B9	The allocation of Highlands Development Credits to individual Sending Zone parcels shall be adjusted according to the location of the parcel within the Highlands Region, the comparative development potential of the parcel, and whether a Sending Zone landowner chooses to exercise an applicable Highlands Act exemption.

GOAL 7C	CREATION OF A HIGHLANDS DEVELOPMENT CREDIT BANK
Policy 7C1	A Highlands Development Credit Bank shall be created and become operational as soon as possible.
Policy 7C2	The Highlands Development Credit Bank shall be authorized to serve and shall serve as a region-wide information clearinghouse.
Policy 7C3	The Highlands Development Credit Bank shall be authorized to buy and sell Highlands Development Credits.
Policy 7C4	The Highlands Development Credit Bank shall be authorized to serve as the official records keeper of the Highlands TDR Program, including recording and tracking all Highlands Development Credit transactions and use.
Policy 7C5	The Highlands Development Credit Bank shall be authorized to enter into any agreement which promotes the transfer and use of Highlands Development Credits, provided that the substance of the agreement is not in conflict with any express provision of the Highlands Act or the State Transfer of Development Rights Act (N.J.S.A. 40:55D-137 et seq.).
Policy 7C6	The Highlands Development Credit Bank should establish a program for the purchase of Highlands Development Credits as soon as possible.

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Policy 7C7	The Highlands Development Credit Bank should seek to provide an opportunity for Sending Zone landowners to sell their Highlands Development Credits in advance of the establishment of Receiving Zones.
Objective 7C7a	Funding for the purchase of Highlands Development Credits prior to the establishment of Receiving Zones pursuant to municipal Plan Conformance.
Objective 7C7b	A purchase of Highlands Development Credits program which gives priority to landowners who can demonstrate unique and extenuating financial circumstances as a direct result of the Highlands Act.
Policy 7C8	The Highlands Development Credit Bank shall monitor real estate values throughout the Highlands region and shall submit an annual report to the Highlands Council, including a recommendation with regard to the minimum value of a Highlands Development Credit.
Policy 7C9	To secure sufficient capitalization for operation of the Highlands Development Credit Bank.
GOAL 7D	ESTABLISHMENT OF SUFFICIENT HIGHLANDS RECEIVING ZONES TO CREATE A POSITIVE MARKET FOR TDR CREDITS
Policy 7D1	Lands located within the Existing Community Zone or Highlands Redevelopment Areas 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 RMP.
Policy 7D2	Lands located within the Conservation Zone may be designated as Receiving Zones by a Highlands municipality upon approval of the Highlands Council, provided that such Receiving Zones are consistent with the RMP and the development does not conflict with the maintenance of viable agriculture.
Policy 7D3	A municipality located within a Highlands County, but not within the Highlands Region, may also designate Receiving Zones to participate in the Highlands TDR Program upon approval of the Highlands Council, provided that the municipality seeks endorsement by the State Planning Commission as required by subsection 1 of section 13 of the Highlands Act.
Policy 7D4	A Highlands municipality in the Planning Area may seek designation of Receiving Zones and participate in the Highlands TDR program without regard to whether such municipality is in conformance with the Highlands RMP upon approval of the Highlands Council, provided that the municipality seeks endorsement by the State Planning Commission as required by the State Transfer of Development Rights Act.
Policy 7D5	The Highlands Council shall provide technical assistance to Highlands municipalities in support of designating appropriate Receiving Zones.
Policy 7D6	The Highlands Council shall provide Highlands municipalities with financial grants-in-aid for planning and feasibility studies in support of designating appropriate Receiving Zones.
Policy 7D7	A Highlands municipality may limit the use of Highlands Development Credits to intra-municipal transfers in designated Receiving Zones if the Highlands Council determines that the goals, policies and objectives of the Highlands RMP will be best served by a

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Policy 7D8	determination of conformance, notwithstanding the limited use of Highlands Development Credits within the municipality. The Highlands Council shall seek legislation that permits municipalities outside of the seven Highlands counties to designate Receiving Zones that may accept Highlands Development Credits.
GOAL 7E MAXIMIZATION OF THE TRANSFER AND USE OF HIGHLANDS DEVELOPMENT CREDITS.	
Policy 7E1	The Highlands Council shall develop and implement incentive mechanisms to create the highest possible demand for Highlands Development Credits.
Policy 7E2	The Highlands Council shall identify ways and means by which the highest possible value of Highlands Development Credits can be achieved.
Policy 7E3	The Highlands Council shall promote the availability of capital funding for municipal infrastructure which is required to support additional human development achieved using Highlands Development Credits.
Policy 7E4	The Highlands Council shall seek and support priority allocation of available State and federal funding for Highlands municipalities which have established Receiving Zones for Highlands Development Credits.
Policy 7E5	The Highlands Council shall seek legislation that requires the payment of a fee to the Highlands Development Credit Bank for any increases in density or intensity of development beyond the allowable development yield as of the effective date of the act, where that development relies on a potable water source located in the Highlands Region and the development is situated in any municipality other than a conforming municipality.
Policy 7E6	The Highlands Council shall not find a Highlands municipality in conformance with the Highlands RMP unless the municipal master plan and development regulations require the use of equivalent Highlands Development Credits for any locally approved increases in development or redevelopment density or intensity of use through variances or municipal ordinance modification that occur after the date of Highlands Council determination of conformance.
GOAL 7F MITIGATION TO THE MAXIMUM EXTENT POSSIBLE OF THE IMPACTS OF EXEMPT DEVELOPMENT ON THE ECOSYSTEM INTEGRITY OF THE HIGHLANDS REGION THROUGH USE OF INNOVATIVE LAND USE PROGRAMS.	
Policy 7F1	To encourage municipalities with jurisdiction over lands which are entitled to an exemption under Section 30 of the Highlands Act to establish voluntary, incentive-based innovative land use programs to avoid adverse impacts on the Highlands ecosystem or the fiscal integrity of the municipality.
Objective 7F1a	Establish an intra-municipal transfer of development rights program for landowners whose property is entitled to an exemption under Section 30 of the Highlands Act and who voluntarily apply for and receive transferable development rights under a

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Objective 7F1b	municipal TDR program. Establish municipal clustering programs which allow landowners whose property is entitled to an exemption under the Highlands Act, for both contiguous and non-contiguous properties, to minimize the impact of such exempted development on the ecological integrity of the Highlands Region or the fiscal integrity of the municipality.
Policy 7F2	To provide an opportunity for landowners whose property is entitled to an exemption under the Highlands Act to voluntarily apply for and receive an allocation of Highlands Development Credits in lieu of developing on-site under the provisions of Section 30.