



JON S. CORZINE  
*Governor*

**State of New Jersey**  
Highlands Water Protection and Planning Council  
100 North Road (Route 513)  
Chester, New Jersey 07930-2322  
(908) 879-6737  
(908) 879-4205 (fax)  
www.highlands.state.nj.us



JOHN R. WEINGART  
*Chairman*

EILEEN SWAN  
*Executive Director*

## **Highlands TDR Program Overview**

April 2, 2009

---

The Highlands Council set forth the parameters of a regional transfer of development rights (TDR) program as an element of the Highlands Regional Master Plan. The Highlands TDR Program has five main components: (1) Sending Zones; (2) Receiving Zones; (3) allocation of highlands development credits (HDCs); (4) the initial HDC target price; and (5) the Highlands Development Credit Bank. Each of these components is discussed below.

### **Sending Zones**

Under the Highlands TDR Program, a Sending Zone is any parcel in the Preservation Area within the Protection Zone, Conservation Zone, or environmentally-constrained subzone that has lost development potential as a result of the Highlands Act. In addition to being located in one of these overlay zones, the parcel must also be at least five (5) acres in size or, if less than five acres, have lost at least three development opportunities due to the Highlands Act. The underlying use of the parcel (i.e., residential, non-residential) does not affect eligibility to serve as a sending zone. Where these requirements are met, a landowner may submit an application to the Highlands Council for a determination as to how many HDCs the parcel is entitled to receive under the Council's allocation method.

It is important to note that, upon a Planning Area municipality conforming to the Regional Master Plan, parcels of land that are located in the above overlay zones and which satisfy the minimum parcel size or lost development opportunities thresholds, will also be eligible to seek an allocation determination from the Highlands Council.

### **Receiving Zones**

A crucial component to establishing the Highlands TDR Program is the identification of areas that may serve as voluntary Receiving Zones. It is within these areas that the HDCs allocated to landowners in the Sending Zones may be used to increase the density or intensity of uses permitted by underlying zoning. In turn, the ability to use the HDCs in Receiving Zones for more development than would otherwise be permitted creates demand for the credits and ultimately establishes their value.

Under the provisions of the Regional Master Plan, the following lands are eligible to serve as Receiving Zones upon approval of the Highlands Council:

- Lands located in the Existing Community Zone;
- Lands located with a Highlands Redevelopment Area designated by the Highlands Council;
- Lands located within the Conservation Zone provided that designating a Receiving Zone is consistent with the RMP and the development does not conflict with the maintenance of viable agriculture; and
- Lands located within a municipality outside of the Highlands Region but within the seven Highlands counties.

Consistent with the requirements of the Highlands Act, designation of any receiving zone is voluntary. Thus, although the Highlands Council conducted a preliminary GIS-based analysis of lands within the Highlands Region that may be appropriate to serve as receiving zones (please see pages 20-22 of the TDR Technical Report), municipalities in which these areas have been identified are under no obligation to accept the designation.

To encourage municipalities to explore the possibility of establishing voluntary Receiving Zones, the Highlands Council launched the TDR Receiving Zone Feasibility Grant Program in the spring of 2007. This grant program is designed to assist municipalities in assessing the potential for locating a Receiving Zone within their communities. Eligible municipalities, which need not be within the Highlands Region but must be in one of the seven Highlands counties (Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren), receive both financial support and technical assistance from the Council. Participation in the grant program requires a commitment by a municipality to fully evaluate the feasibility and desirability of designating a Receiving Zone, but does not obligate a municipality to establish such a zone. To date, five municipalities have been awarded grants under the program while several others are currently preparing applications. For more information on the grant program, please see pages 24-27 of the TDR Technical Report.

### **Allocation of HDCs to Eligible Parcels**

A key component of any TDR program is the allocation of transferable development rights to properties in the designated Sending Zones. Allocation consists of defining what these rights are and how many rights should be given to a particular lot. For a more detailed discussion regarding the allocation methods devised by the Highlands Council, please see pages 27-31 of the TDR Technical Report.

#### *(a) Residentially Zoned Land*

In the context of establishing a Highlands TDR Program allocation method, the distinct and variable real estate markets that exist within the Highlands Region present a challenge to uniformly allocating credits. From north to south and from east to west in the Highlands Region, land values and real estate development markets vary significantly. Whereas New Jersey based TDR programs in the Pinelands and in Chesterfield Township assigned credits uniformly, based primarily on the land based development potential of a given parcel, such an approach is problematic in the Highlands.

The Highlands Region does not enjoy the relatively uniform land values that existed in the Pinelands Preservation Area in the 1980's or the generally similar values that can exist within a single municipality.

Within the vast Highlands Region, a development right in one municipality may vary significantly from the value of a development right in another. So, while assigning credits on a uniform basis, tied to the development potential of the land (soils, building constraints, underlying pre-Highlands zoning, etc.) is attractive for its simplicity, such an approach does not provide a means to reflect the influence of varied markets on the value of credits. This creates inequities and it also creates a real market imbalance. In a TDR market where the value of a credit to a developer is the same wherever it is used, credit buyers will tend to seek out Sending Zone credits in lower land-value markets.

In light of these challenges, the Highlands Council developed an allocation method for HDCs for residentially zoned property using a hybrid approach. Specifically, HDCs are allocated on the basis of lost development potential (i.e. lost lots) but adjusted for relative differences in land value occasioned by property location and the type of development that could have been constructed onsite prior to enactment of the Highlands Act. Consequently, the formula for allocating HDCs to residentially zoned eligible parcels is expressed as: **(Net Yield) x (Location Factor) x (Zoning Factor) = HDC Allocation.**

*(b) Non-Residentially Zoned Land*

The Highlands TDR Program permits the allocation of HDCs to eligible, non-residentially zoned parcels located in the Protection and Conservation Zones. The basis for allowing such allocation is that non-residentially zoned parcels have fewer options than residentially zoned property for extracting equity out of these lands. Additionally, the Highlands Council has envisioned since program inception that HDCs could be used for residential and non-residential development in designated Receiving Zones.

The Highlands Council set out to develop a non-residential allocation method that incorporates the same elements developed for the residential allocation method, namely lost development potential adjusted for market conditions. In developing this method the Highlands Council considered several important circumstances. First, there are less than 3,500 discrete acres of undeveloped non-residentially zoned land in the Highlands Preservation Area. Second, consolidation of non-residential parcels further reduces the number of discrete landowners affected, and relative to the overall scale of the residential impacts, the non-residential formula is likely to be applied in far less instances. Third, the Highlands Council specifically acknowledges that non-residential properties not currently developed do not have an applicable Highlands Act exemption, and therefore, the allocation method must be broadly applicable, even though a specific non-residential property may not be considered "prime" in terms of location and physical characteristics.

In light of these considerations, the Highlands Council adopted an allocation method for non-residentially zoned property that considers lost development potential and unit values for different types of non-residential uses. This allocation method is expressed in the following formula: **(Permitted Square Footage) ÷ (Non-Residential SF for Specified Use) = HDC Allocation.**

### **Initial HDC Target Price**

The Highlands Act TDR provision charges the Highlands Council with establishing the initial value of a development right. (N.J.S.A. 13:20-13.h) Establishing this price requires balancing two critical interests. First, the initial Highlands Development Credit (HDC) price must be sufficient so that a sending zone property owner realizes an economic return from the sale of credit. Second, the initial HDC price cannot be so great that it reduces a developer's profit to such an extent that a proposed project is rendered uneconomical. Only by finding a balance between these two competing interests will an appropriate initial HDC price be established.

The Highlands Council conducted an analysis of developed residential lot values to determine the marginal value of increasing density from four units to the acre to five units to the acre. The results of this analysis reveal that adding the additional unit of density results in a regional lot value average of \$64,657.25 when adjusted for the fact that lots in an approved and improved condition were evaluated. This lot value is then reduced by 75% to account for a measure known as "developer's willingness to pay." When this deduction is applied, it results in an initial HDC price of \$16,000. For more detailed information regarding the Highlands Council method of determining the initial HDC target price, please see pages 34-35 of the TDR Technical Report.

### **Highlands Development Credit (HDC) Bank**

Recognizing the important roles that a development transfer bank plays in implementing and administering a TDR program, the Highlands Council adopted goals, policies and objectives in the Regional Master Plan to establish a TDR bank called the Highlands Development Credit Bank. Under the provisions of the Regional Master Plan, the Highlands Development Credit Bank will serve as (i) a regional clearinghouse for information with regard to the Highlands TDR Program; (ii) the administrator and official recording agency for the Highlands TDR Program; and (iii) a buyer and seller of Highlands Development Credits. The Highlands Council established the Highlands Development Credit Bank by resolution on June 26, 2008. For more detailed information regarding the HDC Bank, please see pages 32-34 of the TDR Technical Report.