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Highlands Development Credit Purchase Program Details

The following is excerpted from the Highlands Open Space Partnership Funding Program and Highlands Development Credit Purchase Program, N.J.A.C. 7:70. The complete rule is available online at www.nj.gov/njhighlands/rules/loelp/njac_7_70.pdf.

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Additional information is available by contacting James Humphries, Highlands Open Space Coordinator, at 908-879-6737 or james.humphries@highlands.nj.gov.

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7:70-4.1 Application contents and completeness reviews

(a) An application for the Highlands Development Credit Purchase Program shall include the following:

1. Owner's name and address;
2. Tax block(s) and lot(s);
3. Street address;
4. Completed and signed HDC certificate application with relevant attachments which include the following information:
 - i. The applicant's name and mailing address;
 - ii. The property owner's name and address, if different from the applicant's, and a signed consent to the filing of the application;
 - iii. A copy of the deed to the property to which highlands development credits are allocated;
 - iv. The municipal tax block and lot number and a copy of the municipal tax map sheet(s) showing the property to which highlands development credits are allocated;
 - v. An HDC allocation letter from the Highlands Council attesting to the number of highlands development credits allocated to the property;
 - vi. A title search, by a duly licensed title insurance producer, of the property to which highlands development credits are allocated which covers at least the 60 years preceding the date of application;
 - vii. A certification from the property owner that he or she has marketable title to the property to which highlands development credits are allocated and is legally empowered to restrict the use of this property;
 - viii. A copy of a draft conservation restriction on the deed to the property agreed to by the applicant that is in accordance with the conservation restriction adopted by the Highlands Council; and
 - ix. Such other information as the Executive Director may determine is necessary in order to issue a highlands development credit certificate.

(b) Completeness reviews of applications shall be performed as follows:

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1. The Executive Director shall conduct a completeness review for each application and shall deem it complete upon receipt of all information required in (a) above. The Executive Director shall provide written notice to the applicant when an application is deemed complete.
2. If the application is not deemed complete, the Executive Director shall provide written notice to the applicant, who shall have 60 days after notification of an incomplete application to provide any missing information to complete the application.
3. The Executive Director may provide an additional 60-day extension to provide the necessary information where deemed appropriate by the specific conditions of the application.

7:70-4.2 Application review process

(a) Once an application is deemed complete by the Executive Director, the application will be forwarded for review to the Land Preservation Committee. The Land Preservation Committee review process is as follows:

1. The Executive Director shall prepare and submit a complete report on eligibility to the Land Preservation Committee for each application. The report on eligibility shall include:
 - i. Physical details of the property including:
 - (1) Size;
 - (2) Location;
 - (3) Current owner;
 - (4) Structures present;
 - (5) Municipal zoning;
 - (6) Location in the preservation area or planning area;
 - (7) Location adjacent to scenic resources identified in the RMP;
 - (8) Adjacency to any existing preserved lands;
 - (9) Environmental resources present as identified in the RMP;
 - (10) Areas of conservation preservation priority;
 - (11) Areas of agricultural preservation priority; and
 - (12) Areas of special environmental zone;
 - ii. Confirmation of the current owner's title to the property, including a title search;
 - iii. A copy of any HDC allocation letter;

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- iv. Review of the following environmental records:
 - (1) New Jersey known contaminated sites list (www.state.nj.us/dep/srp/kcsnj/);
 - (2) New Jersey Department of Environmental Protection Mapping (DGS03-2 - Abandoned Mines of New Jersey); and
 - (3) New Jersey Department of Environmental Protection site records for environmental contamination or violations
(datamine2.state.nj.us/dep/DEP_OPRA/adv_search.html);
 - v. Staff site inspections and photographic record;
 - vi. Summary of priority ranking against other complete applications based on the following, in no specific order:
 - (1) Designation as special environmental zone property in the RMP.
 - (2) Designation as high conservation and high agricultural priority area in the RMP.
 - (3) Designation as moderate conservation and moderate agricultural priority area in the RMP.
 - (4) Additional priority will be given to properties that, when purchased together, may provide or improve connectivity to existing open space, are contiguous to existing preserved farmland, or otherwise improve access to existing open space and/or recreational facilities.
 - (5) Project specific criteria for a highlands project review that has been approved by the Highlands Council, in a Highlands Council resolution, where public comment was provided.
2. The Land Preservation Committee shall:
- i. Review the information provided in the report on eligibility, and make a decision on the eligibility of the property based on (a)1vi above; and
 - ii. Provide a summary of the report on eligibility and the findings, including a final recommendation, to the HDC Bank Board.
3. The HDC Bank Board shall review the findings of the Land Preservation Committee in the summary in (a)2ii above at a public meeting. The HDC Bank Board may provide authorization to proceed with the purchase of HDCs at that meeting.

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7:70-4.3 Highlands Development Credit Bank Board authorization process

(a) The HDC Bank Board shall, after considering the recommendation of the Land Preservation Committee in N.J.A.C. 7:704.2(a)2, determine whether or not to authorize the purchase of all or a portion of the highlands development credits proposed for sale. The HDC Bank Board may authorize a purchase of highlands development credits to further the objectives of the Highlands Act and the Highlands Regional Master Plan if:

1. Adequate funds are available for the purchase;
2. The expenditure of funds does not substantially impair the HDC Bank Board's ability to carry out its duties and responsibilities with respect to guarantees which have already been extended; and
3. The purchase will result in one or more of the following:
 - i. The protection of property which is of significant ecological or agricultural importance;
 - ii. The protection of property which serves to complement or buffer publicly owned and managed conservation lands;
 - iii. The highlands development credits which the HDC Bank Board purchases are likely to be resold, transferred, or conveyed for redemption in a residential development project that satisfies compelling public need or that will result in the protection of other properties which satisfy (a)3i or ii above; and/or
 - iv. The transaction otherwise furthers the purposes of the Highlands Act and the Highlands Regional Master Plan.

7:70-4.4 Highlands development credit issuance and purchase

- (a) The Executive Director shall issue a HDC certificate provided:
1. The highlands development credit allocation set forth in the Highlands Council's HDC allocation letter has not changed;
 2. The property owner has marketable title and is legally empowered to restrict the use of his property in a manner consistent with the Highlands Act, the New Jersey Department of Environmental Protection's Highlands Rules at N.J.A.C. 7:38, and the Highlands Regional Master Plan; and
 3. The conservation restriction prohibits the future development of the property in perpetuity. The conservation restriction shall:

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- i. Not prohibit or limit uses which are otherwise permitted pursuant to the Highlands Act, the New Jersey Department of Environmental Protection's Highlands Rules at N.J.A.C. 7:38, and the Highlands Regional Master Plan; and
- ii. Be in favor of a public agency or not-for-profit incorporated conservation organization and shall be specifically and expressly enforceable by the Highlands Council. In no case, however, shall the restrictions be in favor of the HDC Bank Board.

(b) A title search shall be required prior to the issuance of any credit certificate confirming that the owner has sufficient rights to grant an easement to the Highlands Council. In the event that the Executive Director determines that a question exists as to marketable title or the legal ability of the property owner to impose the necessary restrictions on the use of the property, the applicant may elect to conduct a more extensive search of the title or secure insurance which guarantees that the owner has an interest in the property sufficient to meet the standards set forth in (a)2 above. If the Executive Director then determines that the title questions are resolved, he or she shall issue the certificate. If the Executive Director determines that the standards are not met, he or she shall notify the applicant in writing of the reasons which prevent the issuance of a HDC certificate.

(c) The HDC certificate shall, at a minimum, specify the following:

1. The owner(s) of the highlands development credits;
2. The number of highlands development credits owned; and
3. The municipality, block, and lot of the property to which the highlands development credits are allocated.

(d) The highlands development credit certificate purchase process is as follows:

1. All the HDC certificates allocated to a property are issued at one time after the placement of a development easement on the entire property.
2. The highlands development credit certificate shall be signed over to the HDC Bank by the owner; and
3. The Executive Director shall approve final payment for the number of credits approved for purchase by the HDC Bank.

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- (e) The process for partial highlands development credit purchases is as follows:
1. An applicant may apply to the HDC bank for the purchase of all or part of the HDC certificates issued to an owner.
 2. A partial purchase of HDC certificates shall be based upon the priority review in N.J.A.C. 7:70-4.2(a)1vi of the entire property.
 3. In the event that only a portion of the highlands development credits specified in the certificate are redeemed, the Executive Director shall re-issue a certificate for the highlands development credits not so redeemed.

Definitions

[N.J.A.C. 7:70, Subchapter 2]

7:70-2.1 Definitions

The following terms as used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

“Agricultural preservation priority areas” means those areas identified in Figure 5.3 in the RMP as agricultural priority areas, incorporated herein by reference as N.J.A.C. 7:70 Appendix A.

“Approval for funding” means the Highlands Council’s authorization for the issuance of partnership funding for a property by the adoption of a resolution at a public meeting.

“Charitable conservancy” means a corporation or trust exempt from Federal income taxation under paragraph (3) of subsection (c) of section 501 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)), which purpose includes the acquisition and preservation of lands in a natural, scenic, or other open condition.

“Conservation easement” means a deeded transfer of an interest in real property under which the landowner permanently agrees to restrict the property from future development and to conserve and protect open space, scenic, agricultural, or other natural resource values on the land covered by the easement.

“Conservation preservation priority areas” means those areas identified in Figure 5.1, in the RMP as conservation priority areas, incorporated herein by reference as N.J.A.C. 7:70 Appendix B.

“Executive Director” means the Executive Director of the Highlands Council.

“Highlands Act” means the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

“Highlands Council” means the Highlands Water Protection and Planning Council established pursuant to the Highlands Act.

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“Highlands development credit” or **“HDC”** means the transfer of development rights credit for the Highlands Transfer of Development Rights Program that may be bought, sold, or transferred in accordance with the Highlands Act and the State Transfer of Development Rights Act (N.J.S.A. 40:55D-137 et seq.).

“Highlands development credit allocation” or **“HDC allocation”** means the number of credits a property located in the Highlands Region qualifies for based on the methodology established in the RMP.

“Highlands development credit allocation letter” or **“HDC allocation letter”** means the letter indicating how many HDCs a property qualifies for, issued by the Highlands Council to a property owner that has applied for an HDC allocation.

“Highlands development credit bank” or **“HDC bank”** means the transfer of development rights bank created by the Highlands Council pursuant to the Highlands Act.

“Highlands Development Credit Bank Board” means the nine member board of directors comprised of those members as established by the Highlands Council pursuant to the Highlands Act.

“Highlands development credit certificate” means the document issued by the Executive Director, upon authorization by the HDC Bank Board, that gives the holder of the certificate the right to the number of highlands development credits indicated on the certificate.

“Highlands development credit certificate application” means the application prepared by the applicant for the purposes of obtaining HDC credits from a property that has been issued an HDC allocation letter.

“Highlands Region” means the region so designated by N.J.S.A. 13:20-7.

“Highlands Regional Master Plan” or **“Highlands RMP”** or **“RMP”** means the Regional Master Plan, adopted by the Highlands Council, pursuant to the Highlands Act.

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“Landowner Equity and Land Preservation Committee” or “Land Preservation Committee”

means the committee established by the chairperson of the Highlands Council and which reviews applications pursuant to this chapter.

“Mitigation” means methods for the alleviation of negative impacts to and loss of Highlands resources identified in the RMP. Such methods include, but are not limited to, the provision of physical restoration of resources (such as scenic or environmental resources) or financial compensation for impacts to the resources.

“Partnership entity” or “partnership entities” means those entities entitled to apply for partnership funds under the Highlands Open Space Partnership Funding Program as set forth in N.J.A.C. 7:70-3.1(a).

“Passive recreation” means non-motorized outdoor recreational activities, such as nature observation, hiking, biking, and canoeing or kayaking, that require a minimum of facilities or development and that have minimal environmental impact on natural resources.

“Planning area” means that area of the Highlands Region defined at N.J.S.A. 13:20-3.

“Preservation area” means that area of the Highlands Region defined at N.J.S.A. 13:20-3.

“Special environmental zone” means those areas identified in Figure 5.2 in the RMP as a special environmental zone, incorporated herein by reference as N.J.A.C. 7:70 Appendix C.

“State of New Jersey” means any State department, agency, board, commission, or other entity, district water supply commission, independent State authority or commission, or bi-state entity.

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HIGHLANDS DEVELOPMENT CREDIT (HDC) APPLICATION FOR CREDIT PURCHASE

Owner Information

Property Owner Name: _____

Phone #: _____ Email: _____

Co-Owner (if any) Name: _____

Property Owner Mailing Address: _____

Property Information (Complete one application for each property)

Municipality: _____ County: _____

Block #: _____ Lot #: _____

Street Address: _____

HDC Allocation

HDC Allocation Letter

(Where an HDC Allocation Letter has been issued by the Highlands Council please complete this section. If no Allocation Letter has been applied for and issued, please leave this section blank and complete the next section.)

Allocation Letter Number: _____ Date of Allocation Letter: _____

Number of Credits Allocated: _____

Has the property been altered or developed in any manner since the Allocation Letter was issued?

Yes No

If yes, please explain changes to the property: _____

Have there been any changes in the ownership or title of the property since the Allocation was issued?

Yes No

If yes, please explain changes to the ownership or title: _____

Number of Credits Proposed for Sale to HDC Bank: _____

HDC Allocation Application

(Where an HDC Allocation Letter has not been previously applied for, please complete this section.)

Are there any homes located on the property? Yes No

If yes, how many homes and when were they built? _____

Are there any other buildings on the property? Yes No

If yes, how many, what are they used for & when were they built? _____

If the property is not currently developed with a single family home, do you wish to reserve the right to an exemption to allow you to build a future home on this property? Yes No

Are there any other commercial uses on the property? Yes No

Describe any commercial activities taking place on this property:

Are there any easements or deed restrictions affecting the subject property? Yes No

Date Recorded: _____

Please attach a copy of the easements or deed restrictions.

Do you own any additional property adjoining this property? Yes No

Block(s) and Lot(s): _____

Have you ever submitted an application for a Highlands Applicability Determination, Highlands Preservation Area Approval or Highlands Act waiver to the Department of Environmental Protection (NJDEP)? Yes No

If yes, please provide the status of that application and submit any documentation received from NJDEP. _____

If there are any previous site plans, subdivision plans, or other approvals or permits (not including building permits) for the property, please submit any available copies of these documents.

