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## **Land Owner Equity and Land Preservation Program**

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## **Introduction**

The Highlands Act acknowledges that implementation of the Regional Master Plan (RMP) and the Preservation Area Rules, which direct and guide future development, have an impact on landowner expectations regarding future land use potential. The Act requires the Highlands Council to establish a regional Highlands transfer of development rights (TDR) Program. The TDR Program is designed to be an equitable means of guiding development away from sensitive lands in the Highlands Region and redirecting development to alternate locations, both within the Region as well as other areas of the State. The Highlands RMP 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 RMP includes numerous policies to address open space acquisition and farmland preservation. The Highlands Council has devised a Land Owner Equity and Land Preservation Program to implement these preservation goals. This program includes the purchase of Highlands Development Credits (HDCs) by the Highlands Development Credit Bank (HDC Bank) and the creation of an open space matching grant program. Both programs will provide for protection of Highlands resources, compensation for land owners, as well as management of contributions for future mitigation projects. The mitigation component of the program will provide a framework for directing mitigation and other preservation funding to be utilized by the Highlands Council. Should the Highlands Council approve a future mitigation program that is intended to make funds available under this program, it is recommended that the Council's resolution of approval specifically outline the mitigation funding criteria to be utilized under this program be approved by a resolution of the Council and be included as an Appendix hereto

## **I. Land Owner Equity and Land Preservation Program**

### **A. Open Space Matching Grant Program**

The Highlands Act and the RMP recognize the need to provide for the protection of environmentally sensitive lands through the creation of innovative methods for preservation. To address property preservation and land owner equity that has not otherwise been addressed through the HDC program, the Highlands Council herein creates an Open Space Matching Grant program. The program is designed to provide a source of open space funding for acquisition of property in fee simple and conservation easements. In the instance where mitigation funding is contributed as part of an approval of a project within the Highlands Region, the program allows for incorporation of the specific mitigation requirements for the use of such funds within the overall Open Space Matching Grant Program. The Open Space Matching Grant Program has been devised to provide for the protection of Highlands resources, mitigation of project impacts, and equity for land owners. Priority review of projects will be conducted by the Committee created herein which will make recommendations to the Highlands Council. The Highlands Council will review and may take action on the acquisition of properties presented to it.

### **B. Highlands Development Credit (HDC) Purchase Program**

Utilizing the existing HDC program, the HDC Bank will purchase HDC Certificates on a priority basis. The priority basis is established herein and will reflect any mitigation requirements the funding may be required to meet. The previous initial purchase program of the HDC Bank has been closed, and the new HDC Purchase Program will take its place. The Purchase Program will provide a mechanism for the HDC Bank's purchase of HDCs until such time that a functioning private market exists for HDC certificates. Priority review of

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projects will be conducted by the Committee created herein which will make recommendations to the HDC Bank Board. The HDC Bank Board will review and may take action on the acquisitions presented to it. All closing and other requirements shall follow those established by the HDC Bank.

### **II. Open Space Matching Grant Program**

#### **A. Eligible Applicants**

The following entities are eligible to apply for funds:

1. The State of New Jersey, including any State department, agency, board, commission, or other entity, district water supply commission, independent State authority or commission, or bi-state entity;
2. Any of the 7 Counties located in the Highlands Region;
3. Any of the 88 Municipalities located in the Highlands Region;
4. Charitable conservancies. (A corporation or trust exempt from federal income taxation under paragraph (3) of the subsection (c) of section 501 of the federal Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)), whose purpose includes the acquisition and preservation of lands in a natural, scenic, or other open condition.)

#### **B. Eligible Projects**

Projects eligible for consideration for funding from the Highlands Council Open Space Matching Grant Program include:

1. The fee simple acquisition of land within the Highlands Region for conservation and passive recreation purposes, including but not limited to:
  - a. Parkland, natural areas and greenways;
  - b. The protection of ecologically sensitive areas as identified in the Highlands Regional Master Plan.
2. The acquisition of development easements within the Highlands Region for conservation purposes, including but not limited to:
  - a. Parkland, natural areas and greenways;
  - b. Farmland preservation;
  - c. The protection of ecologically sensitive areas and Agricultural Priority Areas as identified in the Regional Master Plan.

#### **C. Ineligible Projects**

The following projects or activities are ineligible for funding under the Open Space Matching Grant program.

1. Sites containing significant environmental contamination, including but not limited to former landfill sites, sites having a history of operating as a facility with substantial likelihood for on-site contamination, and sites listed on the NJDEP Known Contaminated Sites List (remediated sites may be eligible);
2. Sites already preserved (or acquired during the application process) by municipalities, counties, the State, or a qualified charitable conservancy;
3. Administrative or operational costs of the applicant or current or former owners;

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4. Construction or development projects, including capital improvements, recreation improvements, infrastructure projects and the restoration, rehabilitation or reconstruction of any structure (*however this shall not preclude the purchase of the underlying lands*);
5. Maintenance, care, custodial or policing expenditures, including grounds maintenance, restoration or reconstruction;
6. Ceremonial or publicity expenses;
7. Interest or bonding expenses (or other financing costs);
8. Fundraising or lobbying expenses;
9. Interpretive activities, such as displays, signs, etc.

### D. Process

1. Outreach
  - a. The Highlands Council Executive Director shall prepare an outreach program.
  - b. The outreach program shall, at a minimum, provide information and training on the availability of the Open Space Matching Grant program to all municipalities and counties within the Highlands Region and to all state agencies and charitable conservancies that are known to operate or have funding assigned to be expended within, or immediately adjacent to, the Highlands Region.
  - c. Notice of each application round shall also be published in the Highlands Council's newspapers of record and on the Council's website.
2. Acceptance of Applications
  - a. The Executive Director shall prepare a checklist and application form for the Open Space Matching Grant Program (example attached as Appendix A).
  - b. The Highlands Council's Executive Director shall approve deadlines for the submission of applications for the Open Space Matching Grant Program.
3. Completeness Review
  - a. The Executive Director shall conduct a completeness review for each application based on the information required by the Open Space Matching Grant program application (example attached as Appendix A).
  - b. Applicants shall have 60 days after notification of an incomplete application to provide any missing information to complete the application.
  - c. 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.
  - d. Should an application remain incomplete, the applicant will be notified that the application is incomplete and may re-submit the application for a future application round.
4. Land Owner Equity and Land Preservation Committee Review
  - a. Committee Review
    - i. Executive Director Review and Report on Eligibility:
      1. The Executive Director shall complete a report summarizing the conditions of the property, any due diligence review, the relationship to the established priority, and any mitigation criteria's noted below.
      2. Additional or supplemental information may be provided where necessary.

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- ii. Due diligence review
  - 1. Confirmation of Title;
  - 2. Review of environmental records;
  - 3. Staff site inspections and photographic record;
  - 4. Any other documents or information deemed relevant for consideration of the project.
- iii. Confirmation of funding commitments and ability to complete the project;
- iv. Report on Eligibility:
  - 1. The Committee shall review the information provided and make a decision on the eligibility of the project based on the standards herein;
  - 2. A summary of the report and the findings shall be provided to the Highlands Council;
- v. Final Recommendation:
  - 1. Upon receipt of final appraisal and funding commitment information, the Committee shall prepare a summary report on each property to be provided to the Highlands Council.
- 5. Approval to Fund
  - a. Highlands Council Public Meeting: For projects under the Open Space Matching Grant Program, the Highlands Council shall review the findings of final recommendation of the Committee at a public meeting. The Highlands Council may issue an Approval for Funding and authorization to proceed at that meeting.
- 6. Deadlines to Complete Acquisition
  - a. Applicants shall have 12 months to complete the closing on the property from the effective date of the Highlands Council's issuance of an Approval for Funding;
  - b. All approved applicants can obtain up to two 6 month grant extensions if it is shown that there are circumstances which inhibit the project's acquisition within the initial 12 month deadline so long as there is a reasonable expectation of closing within the extended deadline.
    - i. Applicants shall have a fully executed contract by the end of the first grant extension to be eligible for a second grant extension;
    - ii. The Executive Director shall have the ability to grant the extensions upon showing of good cause;
  - c. Should the applicant fail to complete the project within these time frames, the applicant shall forfeit the grant and may reapply in any subsequent rounds.
- 7. Notice to Proceed with Closing/Acquisition, Issuance of Payment
  - a. The applicant shall provide notice to the Highlands Council that the closing or final acquisition is ready to proceed;
  - b. After review of the above notice and all materials required under sections E.1.d&e have been submitted to confirm that the release of funding is consistent with the Approval of Eligibility, the Executive Director shall authorize payment to the applicant at the closing
  - c. The applicant shall provide copies of all filed deeds, easements or other documents to the Executive Director;
  - d. The Executive Director shall provide a report to the Highlands Council upon the final completion of all acquisitions.

### E. Application Review

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### **1. Project Priority**

Priority for property acquisitions shall be based on the following criteria:

#### **a. RMP**

- i. Identified Special Environmental Zone Property: As designated in the RMP, updated to reflect any new development that has taken place.
- ii. High Conservation and Agricultural Priority: As designated in the RMP, updated to reflect any new development that has taken place.
- iii. Moderate Conservation and Agricultural Priority: As designated in the RMP, updated to reflect any new development that has taken place.
- iv. Adjacent to Existing Open Space. Additional priority will be given to properties that, when purchased together, may provide or improve connectivity to existing open space or otherwise improve access to existing open space and/or recreational facilities.

#### **b. Mitigation Funding Requirements**

- i. Funding received as part of a mitigation program shall use the above outlined project priority in addition to any specific mitigation criteria identified by the Highlands Council in its development review decision, which shall be attached as an appendix hereto. The initial program shall utilize the mitigation funding criteria identified in Appendix B attached hereto.
- ii. Should the Highlands Council approve a future mitigation program that is intended to make funding available under this program, it is recommended that the mitigation funding criteria to be utilized under this program be approved by a resolution of the Council and be included as an Appendix hereto.

#### **c. Funding, Timing and Stewardship**

- i. Timeline for Completion: A project must be able to be completed within 12 months of the approval for funding eligibility by the Highlands Council or any extension period(s) thereof.
- ii. Dual Appraisal Method: The property owner shall be presented with appraisals detailing the pre- and post-Highlands Act values and shall have the opportunity to negotiate the sale price of the property based on these appraisals. The Highlands Council will provide for reasonable costs related to these additional appraisals, provided the appraiser has been approved by Green Acres or the SADC.
- iii. Commitment and Matching of funds:
  - a) The Highlands Council shall provide a maximum grant award of 50% of the total purchase price of the property.
  - b) Applicants that provide for a higher outside matching fund percentage will be provided with a higher priority.
  - c) Applicants with a higher security of funding will receive higher priority;
  - d) All applicants shall supply written commitment letters from any other agencies providing funding.
- iv. Stewardship: The applicant must provide a summary of the long term stewardship of the property, including enforcement, monitoring, ownership, access, and any maintenance or restoration proposed.

#### **d. Deed Restriction, Conservation, and/or Mitigation Easement Requirements**

- i. The applicant may propose either a fee simple acquisition or the acquisition of the development rights through a conservation/mitigation easement;



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- ii. Under the matching grant program the Highlands Council will not hold title to a property;
- iii. The property must be restricted in perpetuity from future development and protect any existing resources located on the property in accordance with requirements of the Highlands Council and shall incorporate the requirements of the proposed Stewardship Plan noted above;
- iv. The State of New Jersey will be included as Grantee in any deed restriction or easement;
- v. Draft deed restriction and/or easement language shall be submitted for approval prior to the final release of funds.
- e. Closing Requirements
  - i. Closing Costs: The Executive Director may approve the reimbursement of closing costs directly associated with the property acquisition in an amount not to exceed \$2500;
  - ii. Title Search Required: A title search shall be required prior to the filing of any deed or easement on a property indicating that the property owner has the authority to deed restrict the land in accordance with the program requirements;
  - iii. Final review of easement/deeds: The final form of any deed or easement shall be submitted for approval to the Highlands Council prior to the final release of funds.

### **III. Highlands Development Credit Purchase Program**

- A. Program standards: The program shall follow the HDC Bank Operating Procedures except as outlined specifically below.
- B. HDC Certificate Purchase Cap:
  - 1. The HDC Bank may consider a maximum purchase cap per funding round, per property in order to most equitably distribute available funds.
  - 2. Partial HDC Certificate purchases:
    - a. A property owner that has deed restricted his/her entire property in accordance with the HDC program requirements will be issued HDC certificates in accordance with the HDC program;
    - b. The HDC Bank may purchase all or part of the total HDC certificates allocated to an individual property;
    - c. The purchase of those HDC certificates shall be based upon the priority review of the entire property;
    - d. The property owner may hold the remaining certificates for sale on the private market, for use in a TDR Receiving Area, for distribution to an estate, for use as collateral, for donation, for purchase by the HDC Bank under a future funding round or for any other use permitted under the HDC program.
    - e. The partial purchase of credits by the HDC Bank only applies to the HDC Priority Purchase Program created herein.
- C. Credit Issuance and Closing Requirements:
  - 1. Closing Costs: The Executive Director may approve the reimbursement of closing costs directly associated with the credit acquisition in an amount not to exceed \$2500;

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2. Title Search Required: A title search shall be required prior to the issuance of any credit certificates.
- D. Land Owner Equity and Land Preservation Committee Review
  1. Executive Director Review and Report on Eligibility:
    - a. The Executive Director shall complete a report summarizing the conditions of the property (including the required due diligence review), the relationship to the established priority and any mitigation criteria as noted below.
    - b. Additional or supplemental information may be provided where necessary
  2. Due diligence review
    - a. Confirmation of Title;
    - b. Review of environmental records;
    - c. Staff site inspections and photographic record;
    - d. Any other document or information deemed relevant for consideration of the application.
  3. Report on Eligibility: A summary report on the eligibility of each property and the action recommended by the Committee will be prepared by the Executive Director and provided to the HDC Bank.
- E. Approval of Eligibility: For projects under the HDC Purchase Program, the HDC Bank shall review the findings of the Committee at a public meeting. The HDC Bank may issue an Approval for Funding and authorization to proceed at that meeting.
- F. Project Priority
  1. RMP: Priority for property acquisitions shall be based on the following categories:
    - a. Identified Special Environmental Zone Property: As designated in the RMP, updated to reflect any new development that has taken place.
    - b. High Conservation and Agricultural Priority: As designated in the RMP, updated to reflect any new development that has taken place.
    - c. Moderate Conservation and Agricultural Priority: As designated in the RMP, updated to reflect any new development that has taken place.
    - d. Adjacent to Existing Open Space. Additional priority will be given to properties that, when purchased together, may provide or improve connectivity to existing open space or otherwise improve access to existing open space and/or recreational facilities.
  2. Mitigation Funding Requirements:
    - a. Funding received as part of a mitigation program shall use the above outlined project priority in addition to any specific mitigation criteria identified by the Highlands Council in its development review decision, which shall be attached as an appendix hereto. The initial program shall utilize the mitigation funding criteria identified in Appendix B attached hereto.
    - b. Should the Highlands Council approve a future mitigation program that is intended to make funding available under this program, it is recommended that the mitigation funding criteria to be utilized under this program be approved by a resolution of the Council and be included as an Appendix hereto.



**Appendix A– Sample Application Materials:**

**Checklist**

1. Completed and signed Application Form.
2. Description of property including:
  - a. any significant environmental, recreational, structures, access issues or other resources (maps, surveys, deeds, etc.)
  - b. Any documented development pressure;
  - c. Any adjacent properties proposed for preservation;
3. List of all proposed funding sources.
  - a. Please include any commitment letters or other available proof of these sources.
  - b. Include any time limits or other restrictions related to the specific funding sources.
4. Where available a copy of the proposed deed restriction or easement language. Where not available, a written description of the proposed property restrictions should be provided.
5. Valuation:
  - a. Where appraisals have already been prepared copies of such must be submitted;
  - b. Where no appraisals have been prepared an estimated total cost must be submitted;
  - c. Where a specific valuation has already been negotiated, that valuation must be submitted;
  - d. Where a contract of sale has been agreed upon, copies of the contract must be submitted.

**Appendix B- Susquehanna Roseland Transmission Line Project Mitigation Criteria**

In the case of the mitigation funding received as part of the Susquehanna Roseland Transmission Line project, the mitigation criteria that is to be utilized is as follows (in addition to the RMP Project Priority Criteria noted herein):

1. Those properties that are in proximity to and have a view of the power lines;
2. Those properties that are within proximity to the power lines; or
3. Those properties that are adjacent to or provide protection to scenic resources.