

For Discussion Purposes



TAC CHARRETTE WORKBOOK

Transfer of Development Rights

NEW JERSEY HIGHLANDS COUNCIL

March 28, 2006



Overview of RMP Goals and Structure

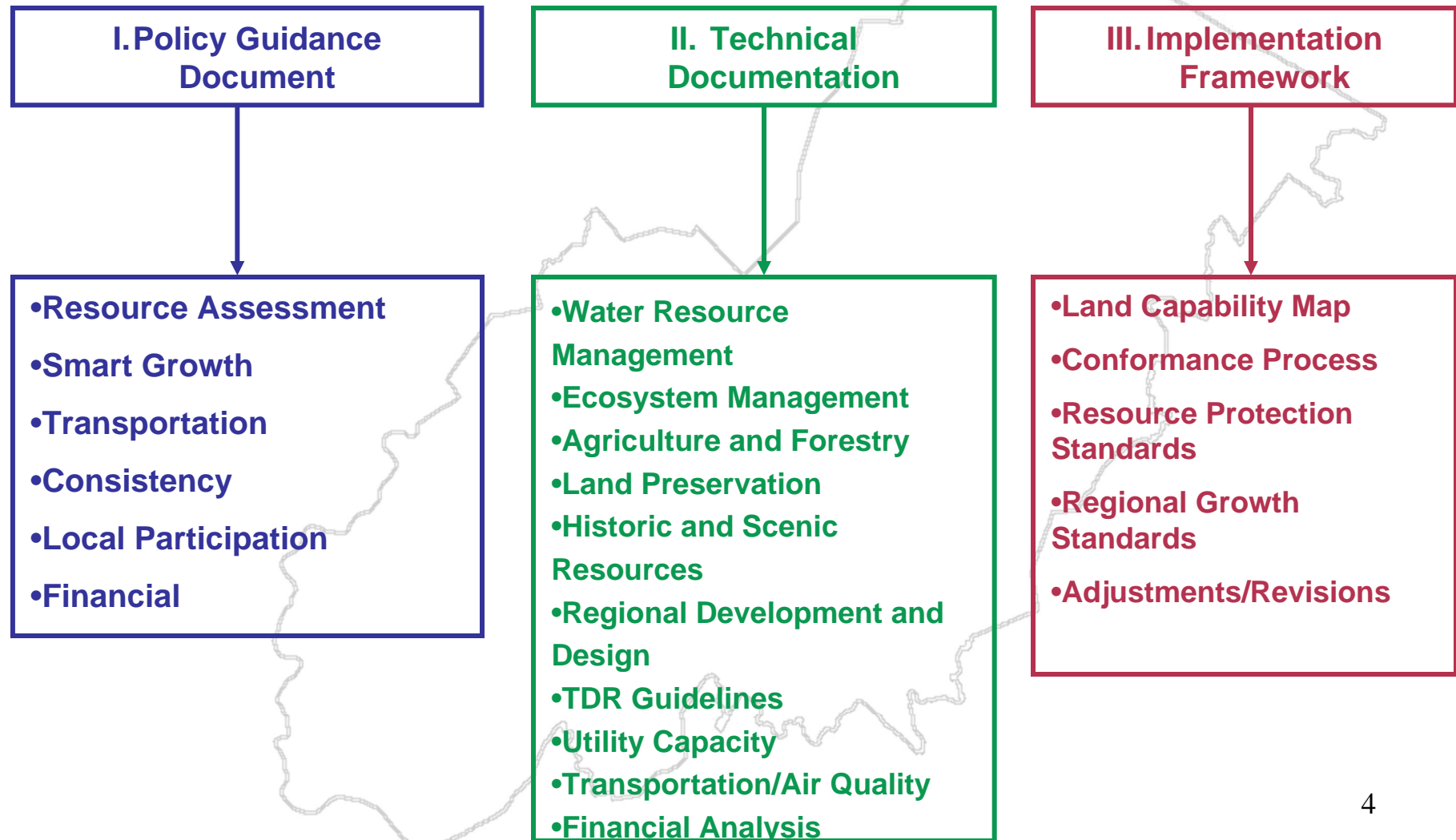
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New Jersey Highlands

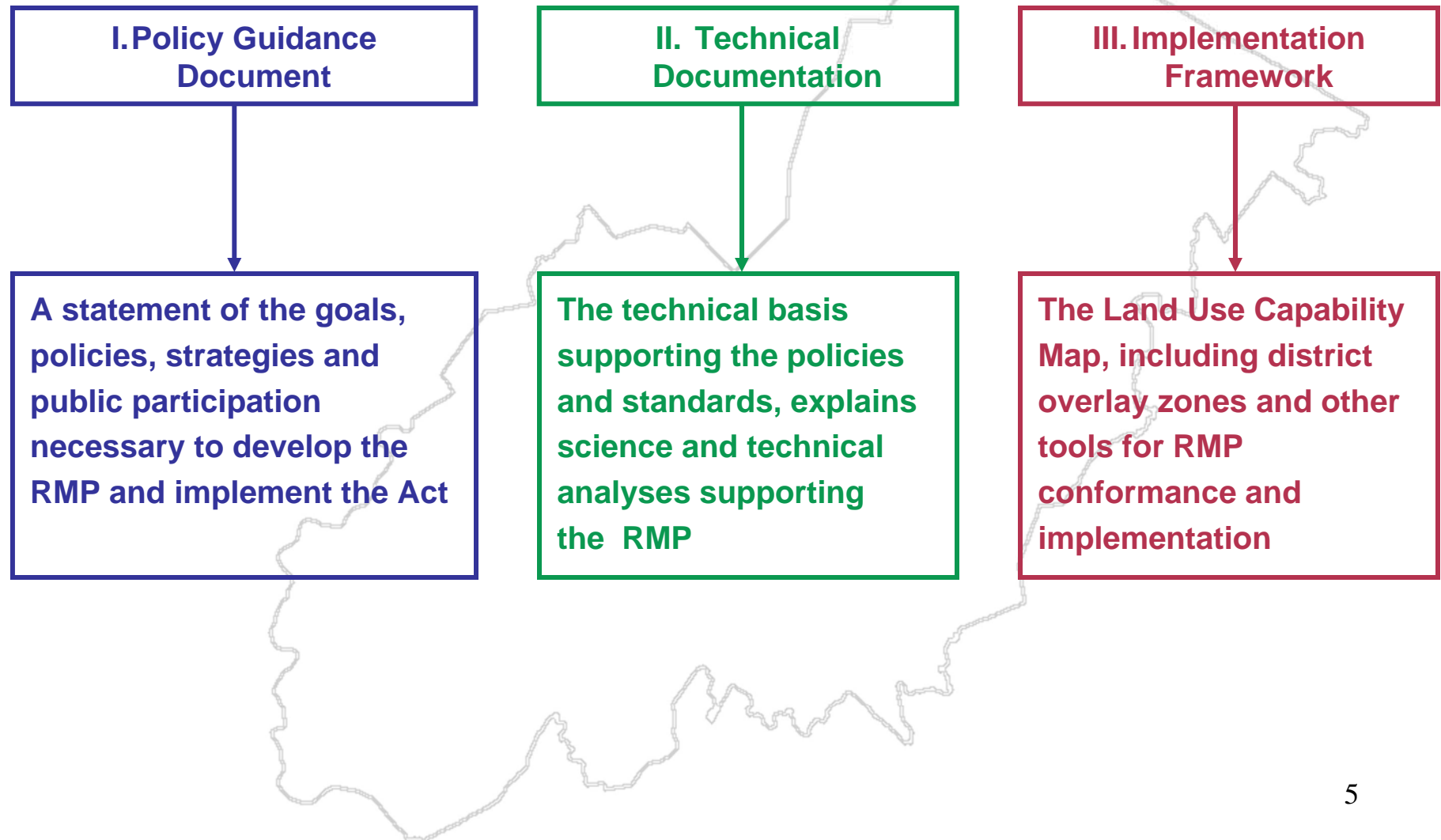
Goals of the Act

- **Protect and conserve the quality and quantity of drinking water**
- **Protect natural, scenic, recreational, cultural and historic resources**
- **Preserve contiguous lands in their natural state**
- **Preserve farmland and farming**
- **Promote appropriate patterns of development, redevelopment and economic growth**
- **Promote a sound and balanced transportation system**

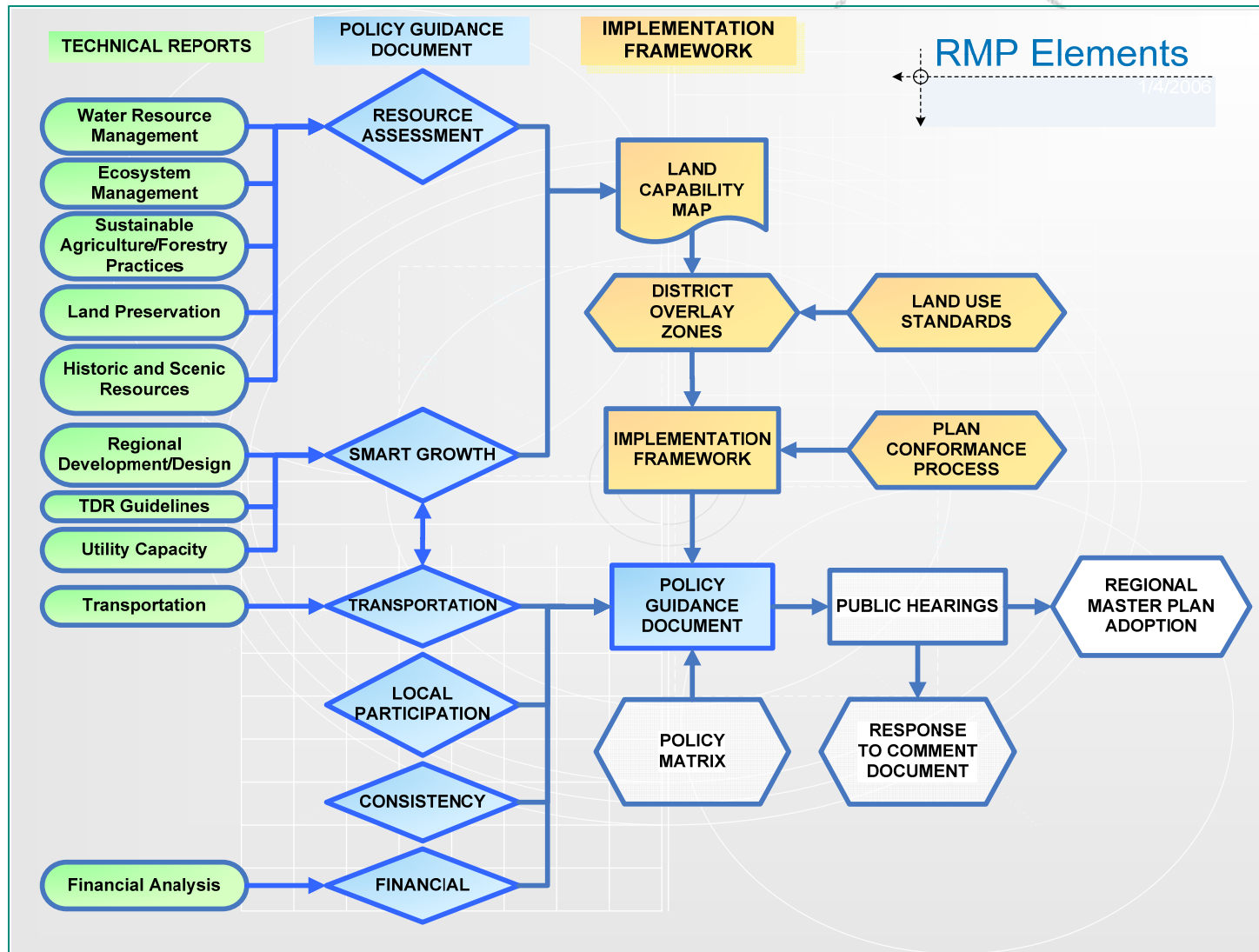
Highlands Regional Master Plan



Highlands Regional Master Plan



Highlands Regional Master Plan





TDR Requirements of the Highlands Act

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“The council shall use the regional master plan elements prepared pursuant to sections 11 and 12 of this act, including the resource assessment and the smart growth component, to establish a transfer of development rights program for the Highlands Region that furthers the goals of the regional master plan.”

Highlands Act, N.J.S.A. 13:20-13.a

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The Highlands Council shall:

- Identify sending zones and voluntary receiving zones;
- Working with municipalities, identify centers, designated by SPC as voluntary receiving zones;
- Develop advisory or model TDR ordinances;
- Conduct a real estate analysis of the Highlands Region;
- Set the initial value of a development right; and
- Give priority consideration to any lands that comprise a major Highlands development that would have qualified for exemption 3 but for the lack of a necessary State permit.



Technical Approach and Methods Transfer of Development Rights

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Program Objectives

- Establish sustainable land use capacity consistent with the natural resource protection goals of the Act
- Identify Sending and Receiving areas consistent with the RMP
- Provide a predictable process that provides a fair return on the use and utility of land in the sending areas
- Develop a simple and understandable program that addresses the concerns of the development market and affected land owners
- Develop a program that balances the equity interest of landowners to mitigate losses due to regional resource protection goals
- Develop sufficient incentive mechanisms and broad-based stakeholder support to create the highest possible demand for credits, which in turn will maximize the value of credits/rights from the sending areas

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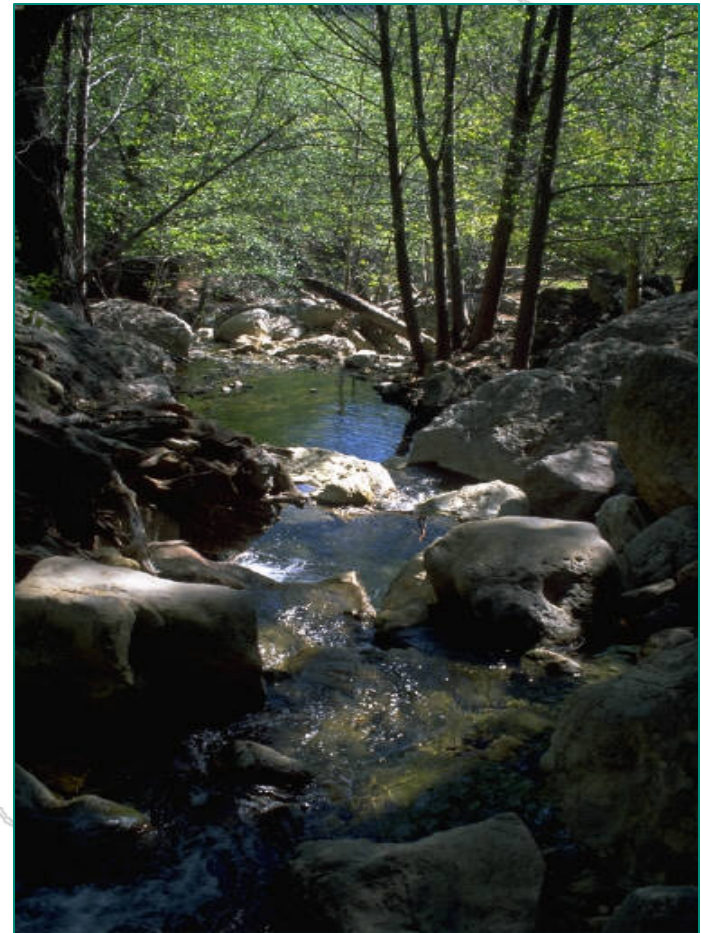
Program Development Process

- Identifying key TDR Program goals and objectives, including identification of preliminary criteria for establishing Sending/Receiving Zones
- Utilizing stakeholder groups meetings to explore program opportunities
- Reviewing existing TDR programs for identification of best mechanisms to accomplish TDR Program goals and objectives
- Detailing best program mechanisms and proposed valuation methodology to determine minimum Highlands Development Credit values

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TDR & Farmland Preservation Programs that the Council is Reviewing

- NJ Pinelands
- Chesterfield and Lumberton, NJ
- Long Island Pine Barrens
- Tahoe Regional Planning Agency
- Boulder County, CO
- Collier County, FL
- Dade County, FL
- Montgomery County, MD
- Lancaster County, PA
- King County, WA
- Skagit County, WA



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TDR Program Key Issues

- Determine which landowners can participate in the Highlands TDR program
- Evaluate criteria for determining areas appropriate as sending zones and voluntary receiving zones
- Establish criteria for property prioritization for inclusion in the TDR program
- Explore techniques for allocation of Highlands Development Credits
- Assess methods for valuing Highlands Development Credits
- Evaluate efficacy of establishing a Highlands TDR Bank
- Investigate various methods for Highlands Development Credit acquisition



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Determine which landowners can participate in the Highlands TDR Program

- Assess the number of Preservation Area property owners whose land has been impacted by application of the Highlands Act
- Evaluate merits of extending TDR program participation to subsequent purchasers of Preservation Area property
- Explore the possibility of Planning Area property owners participating in the TDR program where the Regional Master Plan identifies certain Planning Area lands for conservation, and the municipality in which those properties are located “opts-in”

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Establish criteria for prioritizing properties for inclusion in the TDR Program

- Determine which development projects in the Preservation Area received municipal approval as of March 29, 2004, but had not yet received approval of a required DEP permit for which an administratively complete application was pending
- Evaluate the use of ecological, agricultural, and/or historical criteria as a means to rank properties for acquisition of Highlands Development Credits



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Explore techniques for allocation of Highlands Development Credits

- Assess the feasibility of allocating credits based upon the lost development potential of a sending zone parcel expressed as lost units or lost square feet
- Explore the possibility of allocating credits to a sending zone parcel based on the value of the lost development potential
- Investigate the use of other allocation techniques, including the use of a parcel's natural resource attributes, agricultural importance to award bonus credits or bonus value

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Assess methods for valuing Highlands Development Credits

- Investigate the costs and benefits of determining credit values through the use of appraisals of sending zone parcels and voluntary receiving area project
- Explore the costs and benefits of determining sending zone parcel credit values through a points-based appraisal
- Examine the costs and benefits of utilizing statistical regression analysis to determine credit values



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Evaluate efficacy of establishing a Highlands TDR Bank

- Determine what role a Highlands TDR Bank will play in implementation of the Highlands TDR program
- Explore legal mechanisms to establish a Highlands TDR Bank
- Assess the process for recording all development transfers to ensure transparency and efficiency
- Investigate use of State TDR Bank and determine what limitations, if any, prevent the bank from being used to implement the TDR program



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Investigate various methods for Highlands Development Credit acquisition

- Explore innovative techniques to leverage available capital for purchase of Highlands Development Credits, such as annuities and land installment purchases
- Investigate tax benefits to property owners who agree to spread payments of acquisition monies over time



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Adoption of Sending Zone and Voluntary Receiving Zone Criteria Sending Zone Criteria

- In consultation with municipal, county and State entities, the Highlands Council may identify any land in the Preservation Area as an area appropriate as a TDR sending zone provided that the land could have been developed as of August 9, 2004, based upon municipal zoning and land use regulations then in effect, and State and federal environmental laws and regulations then in effect, but which development is now precluded or severely constrained by the restrictions imposed pursuant to the Highlands Act.

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Sending Zone Criteria (continued)

- **The Highlands Council may deem land within the Preservation Area inappropriate as a sending zone where that land is appropriate for redevelopment as either a brownfield site designated by the Department of Environmental Protection or a site at which at least 70% of the area thereof is covered with impervious surface, or such land otherwise qualifies for an exemption or waiver from strict compliance with the standards at N.J.A.C. 7:38.**
- **The above criteria are preliminary and do not preclude the Highlands Council in the future from modifying these criteria or identifying other areas within the Highlands Region as TDR sending zones.**

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Adoption of Sending Zone and Voluntary Receiving Zone Criteria

Voluntary Receiving Zone Criteria

- Any area in the Planning Area that is appropriate and suitable for development utilizing existing resource assessment information and exhibits one or more of the following characteristics may be appropriate as a voluntary TDR receiving zone provided that it has been approved by the Highlands Council in consultation with municipal, county and State entities:
 - Land with access to multi-modal transportation utilizing the existing transportation network;
 - Land that is proximate to existing areas of concentrated development patterns and existing population centers; or
 - Land that is underutilized or previously developed.

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- In addition, a voluntary TDR receiving zone must demonstrate access to available water supply and wastewater infrastructure with the capacity to support increased development, and the proposed zoning must be economically viable and be shown to be able to accommodate an increase in density above that allowed in municipal zoning in place at the time of adoption of a voluntary TDR ordinance. The Highlands Council will work with municipalities and the State Planning Commission to identify centers, designated by the State Planning Commission, as voluntary receiving zones for the transfer of development rights program.
- The above criteria are preliminary and do not preclude the Highlands Council in the future from modifying these criteria or identifying other areas within the Highlands Region or within the seven Highlands counties as voluntary TDR receiving zones.



Problem Statements Transfer of Development Rights

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Problem Statement #1

- How can development rights or TDR credits be allocated among affected property owners to ensure that their equity concerns are met?

Potential Approaches

- Determine which lands in the Preservation Area have been impacted by the Highlands Act
- Investigate methods of credit allocation including gross acreage, units lost, or lost development value
- Examine the use of bonus credits or value for lands deemed ecologically sensitive or agriculturally important, and establish criteria for identifying such lands
- Establish a fair and equitable TDR credit allocation process that recognizes various underlying zoning differences and resource constraints as of August 9, 2004
- Establish process for property owners to determine number or value of TDR credits to which their property is entitled

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Problem Statement #2

- How can development rights or TDR credits be valued to ensure that the TDR program addresses affected landowners' equity concerns?

Potential Approaches

- Examine the use of case-by-case appraisals and identify limitations to such a valuation method
- Investigate the use of statistical regression analysis by examining sales data for vacant/unimproved lands throughout the Highlands Region and seven Highlands counties
- Explore the use of a points-based appraisal system to expedite appraisal process

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Problem Statement #3

- What incentives are necessary to encourage municipalities in the Planning Area and within the seven counties outside of the Highlands Region to serve as voluntary receiving zones?

Potential Approaches

- Determine whether existing incentives such as \$15,000 impact fee/unit and \$250,000 enhanced planning grant are enough to attract municipalities to serve as voluntary receiving zones
- Identify other possible incentives that the Highlands Council could provide to municipalities to encourage their participation as voluntary receiving zones

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Problem Statement #4

- What incentives can be provided to farmers to encourage their participation in a Highlands Region TDR program?

Potential Approaches

- Examine the use of land installment purchases or annuities for realization of certain tax benefits
- Determine what reasonable land use limitations may be placed on farmland through deed restrictions recognizing farmers' needs for flexibility to address changing market conditions and consumer preferences

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Problem Statement #5

- What incentives can be provided to developers to encourage their participation in a Highlands Region TDR program?

Potential Approaches

- Work with Office of Smart Growth to expedite process for State Plan Endorsement for those communities outside the Highlands Region but within the 7 counties that wish to serve as voluntary receiving zones
- Explore the ability to streamline local approval process where developers are building in voluntary receiving zones
- Work with DEP to investigate streamlining of state permit processes for development in voluntary receiving areas