

## **Highlands TDR Program – Creating Voluntary Receiving Zones**

### **Highlands Water Protection and Planning Council**

In the Highlands Region, undeveloped lands are a finite resource and provide drinking water for Highlands residents and nearly half the State's population. Protecting and enhancing these undeveloped lands, and the resources on and within them, is the primary objective of the Highlands Water Protection and Planning Act (Highlands Act). As a means of achieving this objective, the Highlands Act empowers the Highlands Water Protection and Planning Council (Highlands Council) with establishing a regional transfer of development rights (TDR) program for the 860,000-acre Highlands Region.

TDR is as a land use tool that permits a community to utilize market forces to encourage the transfer of development potential from areas that the community wants to preserve, called sending zones, to areas that are more appropriate to accommodate increased growth, called receiving zones. Landowners in the sending zones receive compensation for restricting development on their property. As a market-based system, payment for this lost development potential comes from purchasers who buy credits representing the lost development potential in the sending zones. The credits then entitle the purchaser to build in a receiving zone at a density greater than that permitted in the underlying zoning.

As part of the Highlands TDR program, the Council is to identify areas within the Highlands Region that may be suitable for locating receiving zones. The Highlands Act precludes the Highlands Council from requiring conforming municipalities to accept its recommendations concerning the location of voluntary receiving zones. The Final Draft Regional Master Plan, available on the Highlands Council's website at [www.highlands.state.nj.us](http://www.highlands.state.nj.us), includes a regional GIS-based analysis of the potential voluntary receiving zones in the Highlands. Whether the potential voluntary receiving zone areas identified by the Council, as well as areas outside of the Highlands Region but within the seven counties, serve as voluntary receiving zones is left to the determination of the municipalities themselves. Given the voluntary nature of the TDR program's receiving zones, the Council must work cooperatively with municipalities to identify what areas, if any, are appropriate to serve as receiving zones.

Recognizing that planning for a receiving zone involves costs, the Highlands Council established a \$1 million Voluntary 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), will 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, two municipalities have been awarded grants under the program while several others are currently preparing applications.

This grant program is incremental to allow municipalities to first conduct an initial examination of proposed receiving zones and hold discussions with the Highlands Council before studying the impacts of any receiving zone development scenarios. Specifically, in Phase 1 of the grant program,

municipalities will be required to understand and document the character of proposed receiving zone, including its zoning, environmental condition, infrastructure needs, and maximum development potential given the local and regional real estate market. Municipalities are also required to devise at least two conceptual development scenarios for the proposed receiving zone. Once municipalities have completed this work, the Highlands Council will assess and consider the information provided. Individual grant amounts for the first phase of work are capped at \$25,000, but may be increased with authorization by the Council upon a demonstration of a particularized need.

Municipal participation in Phase 2 of the program will be based upon the scope and merits of work conducted in Phase 1, and will be subject to subsequent review and authorization by the Council. Municipalities eligible to enter Phase 2 will conduct an impact analysis comparing base zoning development to at least two conceptual TDR receiving zone development scenarios. This impact analysis will look at the affect of the development scenarios on water supply needs, wastewater generation, number of school children, affordable housing obligations, and traffic generation, and fiscal consequences. The evaluation shall also include a discussion of how the development scenarios address local community character and support surrounding land use conditions and local planning initiatives. Importantly, information derived from this analysis will aid municipalities in determining whether they want to seek receiving zone designation by the Highlands Council and proceed with planning for a receiving zone. Grant amounts for the second phase of work will be based upon the scope of the work to be conducted under that phase.

### **Municipal Benefits**

As specified by the Highlands Act, receiving zones under the Highlands TDR Program are voluntary. To encourage municipalities to designate voluntary receiving zones, the Highlands Act provides a number of benefits to municipalities in the Planning Area that conform to the Regional Master Plan and establish a receiving zone which provides for a minimum density of five (5) dwelling units per acre for the residential portion of the receiving zone. Planning Area municipalities that meet these criteria may:

- charge up to \$15,000 per unit impact fee for all new development within the voluntary receiving zone;
- receive up to \$250,000 in an enhanced planning grant to offset the planning and other related costs of designating and accommodating voluntary receiving zones;
- receive a grant to reimburse the reasonable costs of amending municipal development regulations to accommodate voluntary receiving zones;
- receive legal representation by the State in actions challenging municipal decisions regarding TDR, provided that certain pre-requisites are met; and
- receive priority status in for any State capital or infrastructure programs.

For municipalities outside of the Region but within the seven Highlands counties, they are entitled to the same benefits above except for legal representation and priority status. Importantly, municipalities outside the Region must receive plan endorsement from the State Planning Commission to participate in the Highlands TDR Program.

For Preservation Area municipalities or Planning Area municipalities that choose not to conform to the Regional Master Plan, the Highlands Council has separate authority to provide financial and

technical assistance to implement participation in the Highlands TDR Program. Additionally, such authority may be used to provide financial and technical assistance to those municipalities that choose not to satisfy the five (5) dwelling unit per acre threshold and instead seek to designate a receiving zone with a lower residential density.

## **Process**

The process is initiated by a municipality submitting to the Highlands Council a resolution from the governing body indicating the municipality's interest in assessing the feasibility of establishing a voluntary receiving zone. Along with the resolution, the municipality must complete and submit the grant application. As part of the application, the municipality must attach a scope of work, cost proposal, and schedule addressing the requirements of the grant program. Additionally, the municipality must identify any outside consultants and sub-consultants that will be assisting the municipality with work under the grant and include a detailed scope and cost proposal submitted by the consultants in support of grant activities.

Upon receipt of the grant application, the Highlands Council Staff will review the application and make a recommendation to the Highlands Council for approval and award of the grant. Upon grant award, the municipality is entitled to receive half of the grant amount. The remainder of the grant will be provided on a reimbursement basis upon submission of the final Phase 1 report and acceptance by the Highlands Council. If the results of Phase 1 indicate that a proposed receiving zone may be feasible and the municipality desires to proceed, then the Highlands Council may award a grant to complete an impact analysis and development scenario evaluation required during Phase 2.

## **Grant Activities**

There are a number of discrete tasks to be conducted by a municipality under the grant. First, the municipality must identify and evaluate potential receiving zones based upon municipal vision as articulated in the municipality's master plan, and if within the Highlands Region, the Highlands Regional Master Plan. The municipality must explain why particular sites were selected and the criteria used in making the selection.

Second, the municipality must provide a description of the physical characteristics and zoning of the potential receiving zone. This information includes identifying environmental constraints within one (1) mile of the potential zone such as streams corridors/buffers, wetlands, 100-year floodplains, threatened and endangered species habitat, steep slopes, forest and woodlands, existing open space, and important soils/recharge areas. The municipality must also describe the extent of development currently built within the potential zone along with that permitted by the municipality's development regulations. Additionally, the municipality must identify the water supply and wastewater utilities provided to the zone, discuss whether those utilities have capacity to service additional development and described whether there is public transportation access to the zone.

Third, the municipality must conduct a real estate market analysis of the potential receiving zone. This includes discussing the unit values of various residential and non-residential development, underlying land values, and the local real estate market's ability to absorb additional development within the potential receiving zone.

Fourth, the municipality must devise at least two conceptual development scenarios for the potential receiving zone based upon the results of the real estate market analysis. This requires describing the

type and number of additional units (including commercial and mixed use if appropriate) above base density that is acceptable to the municipality; discussing how parking, ingress, egress, infrastructure needs and emergency services will be addressed; and providing an estimate of the potential project value of the two development scenarios. It is also critical that the municipality state whether existing utilities have the capacity to service the additional development by providing either an Intent to Serve letter from the local utility authority or an engineering report indicating that there is sufficient capacity to meet increased utility demand.

Fifth, and finally, the municipality must prepare a draft Phase 1 report to the Highlands Council comprehensively discussing each of the items above.

In order to fulfill the resource protections contemplated by the Highlands Act, the Legislature realized that there must be various mechanisms to preserve environmentally sensitive lands in the Highlands Region. TDR is to serve as one of those tools. Successful implementation of the Highlands TDR program will ensure that additional growth is properly planned and help support ongoing regional land preservation needs. For further information regarding the Highlands Receiving Zone Feasibility Grant Program, please contact Jeffrey LeJava, Highlands TDR Program Administrator & Staff Attorney, at (908) 879-6737 ext. 131 or by e-mail at [jeff.lejava@highlands.state.nj.us](mailto:jeff.lejava@highlands.state.nj.us).