

Highlands Development Credit Bank
Operating Procedures
Adopted _____, 2009

Section I - General

A. Scope

Unless otherwise provided by rule or statute, the following shall constitute the operating procedures of the Highlands Development Credit Bank ("Bank") governing the processes and standards for carrying out the duties and responsibilities of the Bank pursuant to "The Highlands Water Protection and Planning Act," N.J.S.A. 13:20-13, ("Highlands Act") and the Highlands Regional Master Plan.

B. Purposes

1. The purposes of these procedures are to:
 - a. Establish an efficient and effective method for documenting the sale, transfer, conveyance, encumbrance, and use of Highlands Development Credits which are allocated pursuant to the policies of the Highlands Regional Master Plan; and
 - b. Facilitate the effective operation of the Highlands Transfer of Development Rights Program through the Bank's participation in the purchase and sale of Highlands Development Credits where and when appropriate.

C. Applicability

The operating procedures contained herein shall apply to all sales, transfers, conveyances, encumbrances and redemptions of Highlands Development Credits and shall be supplemental to the provisions of the Highlands Regional Master Plan.

D. Construction

These operating procedures shall be liberally construed to permit the Bank to effectuate the purposes of the Highlands Act, the Highlands Regional Master Plan and the Highlands Transfer of Development Rights ("TDR") Program.

E. Severability

If any section, part, phrase, or provision of these operating procedures or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and it

shall not affect or impair the validity of the remainder of these operating procedures or the application thereof to other persons.

Section II

A. Word usage

1. In the interpretation of these operating procedures, the provisions of this section shall be observed and applied, except when the context clearly requires otherwise:
 - a. Words used or defined in one tense or form shall include other tenses and derivative forms.
 - b. Words in the singular shall include plural and words in the plural shall include the singular.
 - c. The masculine gender shall include the feminine and the feminine gender shall include the masculine.
 - d. The word "shall" is mandatory.
 - e. The word "may" is permissive.
 - f. In case of any difference of meaning or implication between the text of these operating procedures and any caption, the text shall control.

B. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Allocation Determination Letter" means a letter issued by the Highlands Council attesting to the number of Highlands Development Credits allocated to a given parcel of land.

"Bank" means the Highlands Development Credit Bank created pursuant to N.J.S.A. 13:20-13 et seq. by Highlands Council Resolution 2008-24.

"Board" means the Board of Directors of the Highlands Development Credit Bank.

"Certificate" means the document issued by the Executive Director pursuant to these operating procedures.

"Encumber" means the act of burdening a Highlands Development Credit with a financial liability such as that created when a Highlands Development Credit is pledged as security or

collateral.

"Executive Director" means the Executive Director of the Highlands Council who shall, pursuant to the Bank bylaws, serve as the administrative officer of the Highlands Development Credit Bank.

"Grantee" means the person to whom an interest in a Highlands Development Credit is conveyed.

"Grantor" means the person who conveys an interest in a Highlands Development Credit.

"Highlands Act" means the Highlands Water Protection and Planning Act, P.L.2004, c.120 (N.J.S.A. 13:20-1 et seq.)

"Highlands Council" means the Highlands Water Protection and Planning Council created pursuant to Section 4 of the Highlands Act.

"Highlands Development Credit" or "HDC" means an entitlement in the form of transferable interest allocated to land with limited capacity for development without adversely affecting ecological integrity, which can be used to increase the density or intensity of development in a designated Receiving Zone.

"Highlands Regional Master Plan" means the master plan adopted by the Highlands Council for the Highlands Region.

"Marketable title" means title free and clear of objectionable liens or encumbrances, free from reasonable doubts or defects, and insurable by a reputable title insurance company authorized to do business in New Jersey.

"Person" means an individual, corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest or any other legal entity.

"Prime interest rate" means the base rate on corporate loans at large United States money center commercial banks. This rate is published in the Wall Street Journal under money rates.

"Redeemed" means any Highlands Development Credit which is used to increase residential or non-residential density on a parcel of land in any municipality designated to receive such credits.

"Registry" means a permanent record established and maintained by the Executive Director documenting all Highlands Development Credit Certificates issued, sold, conveyed, transferred, encumbered, redeemed and retired.

"Retired" means any Highlands Development Credit owned by the Bank which is permanently

withdrawn from use prior to its redemption.

Section III

A. Duties and powers of the Board of Directors

The Board of Directors is the governing body of the Highlands Development Credit Bank and bears the ultimate responsibility for implementing and enforcing the provisions of these operating procedures. The Board shall exercise the powers necessary to implement the objectives of the Highlands Act, the Highlands Regional Master Plan and these operating procedures.

B. Meetings, hearings, procedures and operating procedures of the Board of Directors

1. The Board of Directors shall adopt its own bylaws and procedures for the conduct of its business, meetings and hearings not inconsistent with the Highlands Act. Copies of those bylaws and procedures shall be available to any person upon request.
2. The Board shall adopt and revise, as appropriate, the form and content of the Highlands Development Credit Certificate.

C. Duties and powers of the Executive Director

1. The Highlands Council Executive Director (“Executive Director”) shall be the administrative officer of the Board and, subject to the approval of the Executive Director’s actions by the Board as provided herein, shall be responsible for the administration and enforcement of these operating procedures. In order to effectively implement these operating procedures, the Executive Director shall exercise the following duties and powers:
 - a. Administrative Procedures: The Executive Director shall, consistent with the express standards, purposes and intent of these operating procedures, establish administrative procedures and forms as are necessary for the effective administration and enforcement of these operating procedures.
 - b. Highlands Development Credit Certificates: The Executive Director shall, consistent with the express standards, purposes, and intent of these operating procedures, issue Highlands Development Credit Certificates.
 - c. Records: The Executive Director shall maintain:
 - i. Current and permanent records of the Bank, including a registry of all Highlands Development Credit Certificates issued, sold, conveyed, transferred, encumbered, retired and redeemed; and

- ii. Current and permanent records of the Bank pertaining to Highlands Development Credits the Bank purchases, sells or conveys, and credit encumbrances extended by the Bank.

Section IV – Highlands Development Credit Certificates

A. Applicability

1. No person shall sell, transfer, convey or encumber any Highlands Development Credits or any interest therein without first obtaining a Highlands Development Credit Certificate from the Bank. The Bank shall not issue a Highlands Development Credit Certificate until all standards for issuance of the certificate have been satisfied pursuant to Paragraph C below, including the preparation and recording of a conservation restriction limiting future development of the property in perpetuity.
2. Within 30 business days following the sale, transfer, conveyance or encumbrance of a Highlands Development Credit or any interest therein, the person acquiring such Highlands Development Credit or interest therein shall notify the Executive Director of her ownership or interest in the Highlands Development Credit. Within 30 business days of the receipt of the above notice, the Executive Director shall re-issue a Highlands Development Credit Certificate indicating new ownership of the Highlands Development Credit.
3. Within 30 business days of the redemption of any Highlands Development Credit, the person redeeming such Highlands Development Credit shall notify the Executive Director of said redemption.

B. Application for Highlands Development Credit Certificate

Application for a Highlands Development Credit Certificate shall be made to the Executive Director in such form and number as he/she shall from time to time specify.

1. The Executive Director may waive or modify any of the application requirements set forth in (2) below if he/she determines that any required information is not relevant or necessary for purposes of issuing a Highlands Development Credit Certificate.
2. The following information shall be included in applications for Highlands Development Credit Certificates:
 - a. The applicant's name and mailing address;
 - b. The property owner's name and address, if different from the applicant's, and a signed consent to the filing of the application;
 - c. The deed to the property to which Highlands Development Credits are allocated;

- d. 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;
- e. An Allocation Determination Letter from the Highlands Council attesting to the number of Highlands Development Credits allocated to the property;
- f. 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;
- g. A certification from the property owner that 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;
- h. A properly executed and recorded conservation restriction on the deed to the property in accordance with the conservation restriction attached hereto as Appendix A; and
- i. Such other information as the Executive Director may determine is necessary in order to issue a Highlands Development Credit Certificate.

C. Issuance of Highlands Development Credit Certificates

1. The Executive Director shall review the application and shall issue a Highlands Development Credit Certificate, in such form as shall from time to time be specified by the Board, upon determining that the standards of (2) below are met. If the Executive Director determines that the standards are not met, he/she shall notify the applicant in writing of the reasons which prevent the issuance of a Certificate.
 - a. The Certificate shall, at a minimum, specify the following:
 - i. The owner(s) of the Highlands Development Credits;
 - ii. The number of Highlands Development Credits owned;
 - iii. The municipality, block and lot of the property to which the Highlands Development Credits are allocated;
 - iv. The date on which the Certificate is issued; and
 - v. The information to be reported to the Executive Director when the Highlands Development Credits are sold, conveyed, transferred, encumbered or redeemed.
2. The Executive Director shall issue a Certificate only if he/she finds that:

- a. The Highlands Development Credit allocation set forth in the Highlands Council's Allocation Determination Letter has not changed;
- b. 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. 7:38-1 et seq., and the Highlands Regional Master Plan;
- c. The conservation restriction prohibits the future development of the property in perpetuity.
 - i. Nothing herein shall be construed to require the conservation restriction from prohibiting or limiting 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. 7:38-1 et seq., and the Highlands Regional Master Plan.
 - ii. The restriction shall 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 Board.
- d. 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 (b) above. If the Executive Director then determines that the title questions are resolved, he/she shall issue the Certificate.

D. Sale, transfer, conveyance or encumbrance of Highlands Development Credits after issuance of the Certificate

1. Within 30 business days of the sale, transfer, conveyance or encumbrance of a Highlands Development Credit, the grantee shall deliver to the Executive Director the Certificate properly documented as to the specifics of the transaction as set forth in 3 below.
2. Upon receipt of the Certificate, the Executive Director shall re-issue a Certificate, or Certificates as the case may be, in the name of the person or persons who have secured an interest in the Highlands Development Credits.
3. Notification to the Executive Director shall include, but is not necessarily limited to, the following:

- a. The name(s) of the grantee(s);
 - b. The name(s) of the grantor(s);
 - c. The number of Highlands Development Credits sold, conveyed, transferred, or encumbered;
 - d. The date of the transaction;
 - e. The interest in the Highlands Development Credits acquired by the grantee and written evidence of the transaction; and
 - f. The consideration involved in the transaction.
4. In the case of a Highlands Development Credit pledged as collateral, the name and address of any person who has pledged a Highlands Development Credit as security on any loan or other obligation, the name and address of the lender, and the date, amount and term of the loan or obligation.

E. Redemption of Highlands Development Credits

1. When Highlands Development Credits are redeemed in association with a development project approved by a municipal approval agency, the person redeeming the Highlands Development Credits shall, within 30 business days thereafter, deliver to the Executive Director the Certificate properly documented as to the specifics of the redemption as set forth in (2) below.
2. Notification to the Executive Director shall include, but is not necessarily limited to, the following:
 - a. The name of the person redeeming;
 - b. The municipality in which the Highlands Development Credits were redeemed;
 - c. The municipal tax block and lot number of the property for which the Highlands Development Credits were redeemed;
 - d. The number of Highlands Development Credits redeemed; and
 - e. The date on which the municipal development approval was issued and endorsement by the responsible municipal official.
3. The Executive Director shall notify the person redeeming and the appropriate municipal official that the Highlands Development Credits have been redeemed and shall so

indicate in the Highlands Development Credit Registry upon his/her determination that:

- a. The Highlands Development Credits have not been previously redeemed;
 - b. The Highlands Council has concurred with the municipal approval; and
 - c. The number of Highlands Development Credits redeemed were adequate to secure the increased number of residential units or non-residential development permitted pursuant to the applicable municipal transfer of development rights ordinance.
4. 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.
 5. A Highlands Development Credit shall be redeemed at the time of final subdivision or site plan or, if no such approval is required, when construction permits are issued.

Section V – Registry; Annual Report

A. Responsibilities of the Executive Director

1. The Executive Director shall maintain a registry of Highlands Development Credits, the purpose of which shall be to organize information on the following:
 - a. The issuance of Highlands Development Credit Certificates;
 - b. The sale, transfer, conveyance, or encumbrance of Highlands Development Credits;
 - c. The use of Highlands Development Credits as security on loans and other obligations; and
 - d. The redemption and retirement of Highlands Development Credits.

B. Content of registry

1. The registry shall at a minimum include the following information:
 - a. The name and address of every owner to whom a Highlands Development Credit Certificate is issued pursuant to Section IV.C above; the date of its issuance; the municipal tax lot and block identification of the parcels of land to which the Highlands Development Credit has been allocated; the number of Highlands Development Credits allocated to each parcel; the total number of Highlands Development Credits allocated; and the total acreage to which Highlands Development Credits have been allocated;

- b. The name and address of every person to whom a Highlands Development Credit is sold, transferred, conveyed, or encumbered; the date of the conveyance; and the consideration, if any, received therefor;
- c. The name and address of any person who has pledged a Highlands Development Credit as security on any loan or other obligation; the name and address of the lender; and the date, amount and term of the loan or obligation;
- d. The name and address of any person who has redeemed a Highlands Development Credit; the location of the land to which the credit was transferred; and the date this redemption was made; and
- e. An annual enumeration of the total number of Highlands Development Credits purchased and transferred, listing the municipality in which the land for which each Highlands Development Credit was issued is located, and the municipality to which the Highlands Development Credit was transferred and redeemed.

C. Availability of registry

1. The Executive Director shall, upon reasonable notice, make the registry available for public inspection at the principal offices of the Bank.
2. The Executive Director shall, upon request from any person, provide copies of the registry or any portion thereof.

D. Annual report

1. On or before March 30 of each calendar year, the Board shall issue an annual report of its activities for the preceding calendar year to the Highlands Council, the Governor, the Legislature and each county and municipality located in whole or in part within the Highlands Region. Such report shall incorporate and summarize the information contained in the registry for the fiscal year just concluded.
2. The annual report shall also be made available to any person upon request.

Section VI – Purchase of Highlands Development Credits

A. Applicability

1. The Board may purchase Highlands Development Credits from any person to:
 - a. Further the objectives of the Highlands Act and the Highlands Regional Master Plan; or

- b. Alleviate a demonstrated unique and extenuating financial circumstance.

B. Application to the Board

1. An application for the Board's purchase of Highlands Development Credits shall be made to the Executive Director in such form and number as he/she shall from time to time specify.
2. The Executive Director may waive or modify any of the application requirements set forth in (3) below if he/she determines that any required information is not relevant or necessary for purposes of evaluating and acting on the application.
3. The following information shall be included in the application:
 - a. The applicant's name and mailing address;
 - b. The name of the person(s) who own(s) the Highlands Development Credits, if different from the applicant's, and a signed consent to the filing of the application;
 - c. A duplicate of the Highlands Development Credit Certificate or, if a Certificate has not been issued, the information required pursuant to Section IV.B above.
 - d. The number of Highlands Development Credits to be sold;
 - e. A statement detailing the applicant's basis for believing that the Board can make one of the findings required in Section VI.C below; and
 - f. Such other information as the Executive Director may determine is necessary in order to review and act on the application.

C. Standards governing the Board's decision to purchase

1. The Board shall, after considering the recommendation of the Executive Director, determine whether or not to authorize the purchase of all or a portion of the Highlands Development Credits proposed for sale in the application in accordance with the criteria set forth in (2), (3) and (4) below, as appropriate.
2. The Board may authorize a purchase of Highlands Development Credits to further the objectives of the Highlands Act and the Highlands Regional Master Plan if:
 - a. Adequate funds are available for the purchase; and

- b. The expenditure of funds does not substantially impair the Board's ability to carry out its duties and responsibilities with respect to guarantees which have already been extended; and
 - c. The purchase will result in:
 - i. The protection of property which is of significant ecological or agricultural importance; or
 - ii. The protection of property which serves to complement or buffer publicly owned and managed conservation lands; or
 - iii. The Highlands Development Credits which the 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 (c)i or ii above; or
 - iv. The timing and nature of the Board's purchase will result in a significant and positive example of the Highlands Transfer of Development Rights Program at work; or
 - v. The transaction otherwise furthering the purposes of the Highlands Act and the Highlands Regional Master Plan.
3. The Board may authorize the purchase of Highlands Development Credits to alleviate a demonstrated unique and extenuating financial circumstance if:
- a. Adequate funds are available for the purchase; and
 - b. The expenditure of funds does not substantially impair the Board's ability to carry out its duties and responsibilities with respect to Highlands Development Credit guarantees which may have already been extended; and
 - c. The owner's investment in the land to which the Highlands Development Credits are allocated is substantial in relation to her net worth; and
 - d. A unique and extenuating circumstance exists on the basis that the owner is experiencing an extraordinary financial hardship which may only be ameliorated through an expedient sale of her Highlands Development Credits.
4. The Board shall give priority consideration to a property for purchase of Highlands Development Credits where the Highlands Development Credits are offered to the Highlands Development Credit Bank at less than the price established in Paragraph F of Section VI, below.

5. The Board shall give priority consideration to any property that comprises a major Highlands development that would have qualified for an exemption pursuant to paragraph (3) of subsection a. of section 30 of the Highlands Act but for the lack of a necessary State permit as specified in subparagraph (b) or (c), as appropriate, of paragraph (3) of subsection a. of section 30 of the Highlands Act, and for which an application for such a permit had been submitted to the Department of Environmental Protection and deemed by the department to be complete for review on or before March 29, 2004.

D. Notification to applicant

Upon the Board's decision to purchase or not purchase Highlands Development Credits, the Executive Director shall notify the applicant, in writing, setting forth the basis for the Board's decision, and where the Board has determined to purchase Highlands Development Credits shall enclose a copy of the Board's resolution.

E. Completion of Board authorized purchases

The Executive Director is authorized to complete any and all administrative procedures necessary to consummate the purchase of Highlands Development Credits once approved for purchase by the Board.

F. Purchase price

1. The purchase price for Highlands Development Credits acquired by the Board shall be \$16,000 for each Highlands Development Credit so acquired.
2. The Board may adjust the purchase price set forth in (a) above if it determines that the purchase price, as adjusted, will not substantially impair the private sale of Highlands Development Credits.

Section VII – Sale of Highlands Development Credits

A. Board decision to hold sale

1. The Board may from time to time authorize the Executive Director to sell all or a portion of those Highlands Development Credits owned by the Bank.
2. The Board shall authorize such a sale and determine how many Highlands Development Credits will be made available for sale only upon a finding that:
 1. There is sufficient interest in the purchase of its Highlands Development Credits to warrant a sale; and

2. The timing of the sale and the number of Highlands Development Credits to be sold will not substantially impair the private sale of Highlands Development Credits.
3. All sales authorized by the Board will be conducted by open bidding through a public auction or by closed bidding through the receipt of sealed, written bids.
4. When authorizing these sales, the Board shall determine a minimum acceptable bid pursuant to Section VII.C below and shall also determine which method of sale is most advantageous for the purpose of stimulating competitive bidding.
5. The Board may establish such conditions for the bidding and sale as are necessary and desirable to advance the Highlands Transfer of Development Rights Program, provided that any such conditions do not otherwise conflict with the minimum requirements set forth in this Section VII.

B. Notifications of upcoming sales

1. All sales of Bank-owned Highlands Development Credits shall be held only after due notice has been given by the Executive Director at least 10 business days prior to the date of the sale.
2. At a minimum, the Executive Director shall:
 - a. Have notices of the sale published in the Board's newspapers of record; and
 - b. Transmit notices to every person who has submitted to the Bank a written request to be informed of upcoming sales.
3. The notice shall contain, but not necessarily be limited to, the following information:
 - a. The method by which the sales shall be conducted;
 - b. The date, time and location for the auction or bid opening;
 - c. The number of Highlands Development Credits available for sale;
 - d. The minimum acceptable bid and deposit;
 - e. The date, time and location when the sales must be completed;
 - f. A summary of the operating procedures governing the sale and the terms and conditions of the sale; and

- g. How an interested person can obtain a complete set of instructions for, and the terms and conditions of, the sale.

C. Requirements governing all bidding

1. Bidders who are acting on behalf of another person shall supply to the Executive Director with their sealed written bid or prior to the commencement of an auction the following:
 - a. If the bidder is representing an individual, a notarized statement from the individual duly authorizing the bidder to act on his/her behalf; or
 - b. If the bidder is representing a corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity, a duly adopted resolution or other legal instrument authorizing the bidder to act on the entity's behalf.
2. The minimum acceptable bid shall be \$16,000 for each Highlands Development Credit to be sold, provided, however, that the Board may establish a higher minimum acceptable bid if it determines that, based upon recent Highlands Development Credit sales prices, a higher amount is necessary to avoid a substantial impairment of the private sale of Highlands Development Credits.
3. Highlands Development Credits will be sold to the highest bidder or bidders.
4. No bid or sale shall be conditioned upon a bidder obtaining financing or any municipal, county, State or Federal permit or development approval.
5. All bids, whether they be submitted verbally or in writing, shall be deemed to be an acceptance of all terms and conditions of the sale as specified in the written instructions.
6. Except as provided in Section VII.H, successful bidders shall be required to complete the purchase within 30 days of the date of award.

D. Additional requirements governing open bidding

1. All bidders shall sign a register before the auction begins. After signing the register, no bidder shall be permitted to leave and re-enter the room except at intervals pre-determined by the Executive Director.
2. Each time a bid is made, the bidder shall state his or her name and the amount of the bid clearly.

3. All bids during the auction shall be in increments of \$100.00.
4. A deposit equal to 10 percent or more of the highest bid shall be required at the completion of the auction.
 - a. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.
 - b. If the highest bidder does not have the required deposit, the Executive Director may cancel all bids for that Highlands Development Credit, or may award the bid to the second highest bidder.
5. Successful bidders will be required to sign an agreement of sale following the auction, which specifies the conditions and terms of the sale.

E. Additional requirements governing sealed bids

1. All sealed bids shall be submitted to the Executive Director in such form as he/she shall from time to time specify.
2. Sealed bids shall specify the maximum number of Highlands Development Credits the bidder wishes to purchase. Submission of a sealed bid shall be deemed to be a bid for each Highlands Development Credit and the Board reserves the right to award a bid for less than the maximum number of Highlands Development Credits specified by the bidder.
3. Sealed bids will be publicly opened, read and tabulated on the date, time and the location specified in the notice of sale.
4. Within five business days of the bid opening, the Executive Director will notify all successful and unsuccessful bidders.
5. A deposit equal to 10 percent of the bid shall accompany all sealed bids.
 - a. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.
 - b. If a bid is received without the required deposit, the bid shall be deemed to be invalid and will not receive any further consideration.
 - c. The Executive Director shall return all deposits to all unsuccessful bidders within five business days of the bid opening date.

- d. In cases where a bidder is awarded a portion of the Highlands Development Credits it bid on, the Executive Director shall provide the bidder an opportunity to submit, in lieu of the original deposit, a deposit equal to 10 percent of the award within five business days of the bid opening date. If no such deposit is received, the Executive Director shall accept the original deposit and apply any excess amount toward the payment due at the time of closing.

F. Bid awards

1. Awards shall be made for each Highlands Development Credit offered for sale.
2. The total number of Highlands Development Credits awarded for valid bids shall equal the total number of Highlands Development Credits offered for sale, except as provided in paragraph 5 below.
3. In the case of sealed bids, successful bidders shall be determined by tabulating the bids on the basis of the highest per unit bid.
4. Once the highest per unit bid is established, the highest bidder will be awarded the total number of Highlands Development Credits specified in his or her bid. If there is more than one highest bidder and the total number of Highlands Development Credits specified in those bids exceed the number available, no award shall be made and the Executive Director shall immediately arrange for another open or closed bid.
5. In the event any Highlands Development Credits remain, the Executive Director will offer them to the other bidders at a per unit price equal to that of the highest bid.
 - a. The Executive Director will tender this offer in writing to each bidder within five days of the bid opening.
 - b. Each bidder may supplement his or her bid in writing and enclose a certified check, cashier check, or money order for the balance of the deposit no later than 10 days of the bid opening.
 - c. In the event that the maximum number of Highlands Development Credits specified in those bids exceed that available for sale, the Executive Director shall award the available Highlands Development Credits to the bidders in descending order of their original bid. If the original bids are equivalent and the number of Highlands Development Credits specified in those bids exceed the number available, no award shall be made.

G. Completion of sales

1. Except as otherwise provided in Section VII.H below, all sales shall be completed no earlier than 21 days and no later than 30 days following the award.
2. Failure of the bidder to pay the balance of the purchase price as scheduled shall be considered to be a breach of contract and the deposit shall be retained by the Bank as liquidated damages.
3. Payment of the balance shall be in the form of a certified or cashier check only, made payable to the State of New Jersey – Highlands Development Credit Bank.
4. Upon receipt of payment, the Executive Director shall issue a duly executed Highlands Development Credit Certificate to the purchaser.

H. Deferring the date for completion of sales

1. When authorizing a sale, the Board may also authorize the Executive Director to defer the date on which sales to the highest bidder(s) are to be completed. Such authorization shall specify the maximum period of time for such a deferral and all notices of the sale shall include such a notation.
2. If the Board authorizes deferrals, any successful bidder may, at his or her option, enter into an agreement with the Executive Director which extends the date for completing the sale.
3. All such agreements shall require that a payment be made for each year, or portion thereof, that the sale completion date is deferred.
 - a. The thirty-first day following bid award shall be considered the first day when calculating deferral periods.
 - b. The payment shall be equal to the sum of the prime interest rate in effect on the date of the bid award plus two percentage points times the remaining balance of the purchase price of the Highlands Development Credits for each year that the completion date is deferred. The payment shall be pro-rated for portions of a year.
 - c. Payment for the first year, or portion thereof as specified in the agreement, shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey – Highlands Development Credit Bank. This first payment shall be due no later than 30 days following the award.
 - d. Payments for each succeeding year, or portion thereof as specified in the

agreement, shall be due no later than the anniversary date of the first payment.

- e. These payments shall be in addition to the purchase price for the Highlands Development Credits and shall be non-refundable except as provided in (h) below.
- f. The successful bidder may at his or her option choose to complete the sale prior to the date specified in the agreement.
- g. The bidder shall notify the Executive Director in writing of his or her intent to complete the sale and the sale shall be completed within 10 business days of the Executive Director's receipt of the notification.
- h. The bidder shall be entitled to receive a pro-rated refund of any payment for that portion of the deferral period which he did not utilize.

I. Board authorization to convey Highlands Development Credits at no cost

- 1. The Board may authorize the Executive Director to convey at no cost Highlands Development Credits when it determines that:
 - a. The proposed development will serve a compelling public purpose;
 - b. The proposed development could not proceed without the conveyance of Highlands Development Credits at no cost;
 - c. The benefit of the conveyance of Highlands Development Credits at no cost will inure to the public and will be made to a governmental agency or incorporated, not for profit organization;
 - d. The conveyances of Highlands Development Credits at no cost will not substantially impair the sale of Highlands Development Credits in the private market; and
 - e. The Highlands Development Credit being conveyed will be redeemed within one year of the Board's authorization.
- 2. Such authorizations shall be made upon an affirmative vote of a majority of the Board's members.

J. Application for conveyance of Board-owned Highlands Development Credits at no cost

- 1. Application for conveyance of Board-owned Highlands Development Credits at no cost shall be made to the Executive Director in such form and number as he or she shall from

time to time specify.

2. The Executive Director may waive or modify any of the application requirements set forth in (3) below if he or she determines that any required information is not relevant or necessary for the purposes of conveying Highlands Development Credits at no cost.
3. The following information shall be included in applications for conveyance of Board-owned Highlands Development Credits at no cost:
 - a. The applicant's name and mailing address;
 - b. The municipality in which the Highlands Development Credits are to be redeemed;
 - c. The number of Highlands Development Credits needed;
 - d. A duly adopted resolution granting preliminary subdivision or site plan approval pursuant to the Municipal Land Use Law (N.J.S.A. 40:55-1 et seq.);
 - e. Written affirmation of the subdivision or site plan approval from the Highlands Commission;
 - f. The municipal tax block and lot number for which the Highlands Development Credits will be redeemed;
 - g. A written description of the property along with any relevant plans; and
 - h. A written statement addressing the project's consistency with the standards set forth in Section VII.I.1.

K. Notification to applicant

Upon the Board's decision on an application for conveyance of Board-owned Highlands Development Credits, the Executive Director shall notify the applicant, in writing, setting forth the basis for the Board's decision.

L. Completion of Board-authorized conveyances

The Executive Director is authorized to complete any and all administrative procedures to consummate the conveyance after approval by the Board provided that no conveyance shall be made until such time as the applicant is required to redeem the Highlands Development Credits.

M. Voiding conveyances

1. No Highlands Development Credits conveyed pursuant to this part shall be:
 - a. Conveyed, sold or transferred to a person other than that who received the Board's approval;
 - b. Redeemed for use in a project other than that which received the Board's approval; and/or
 - c. Redeemed after one year following the Board's authorization.
2. The Executive Director shall void any such conveyance of Highlands Development Credits which is in violation of (1) above.

Section VIII - Amendments

A. Board initiated proposals

The Board may, at its own initiative or upon the recommendation of the Executive Director, periodically consider amendments to these operating procedures.