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Gouveia, Susan

From: Lashway, Lisa
Sent: Monday, August 17, 2015 12:53 PM
To: Canning, Sean; Gouveia, Susan; Natafalusy, Catherine; Kathy Murphy
Subject: FW: Rules for public comment
Attachments: PRN 2015-100 (47 NJR 2025(a)).pdf

From: Annette Tagliareni [mailto:Annette.Tagliareni@highlands.nj.gov] **On Behalf Of** Margaret Nordstrom
Sent: Monday, August 17, 2015 10:19 AM
To: Annette Tagliareni
Subject: Rules for public comment

As referenced in my August 10 email, please find attached a copy of the proposed Rules related to a Highlands Open Space Partnership Funding Program and Highlands Development Credit Purchase program, which was published today in the New Jersey Register – Proposal Number 2015-100. The proposed Rules will be available for public comment through Friday, October 16, 2015. Instructions for comment are provided in the proposal. A complete copy of the proposed Rules is also available on the Highlands Council website (www.nj.gov/njhighlands/rules/) or by contacting the Highlands Council office. A public hearing regarding the proposed Rules will be held at the regularly scheduled Highlands Council meeting on Thursday, September 17, 2015 at 4 p.m. in the Highlands Council office, located at 100 North Road, Chester, NJ.

Sincerely,

Margaret

Margaret Nordstrom
Executive Director

New Jersey Highlands Council
100 North Road (Route 513)
Chester, NJ 07930-2322
(908) 879-6737 ext. 101
(908) 879-4205 Fax

margaret.nordstrom@highlands.nj.gov
www.nj.gov/njhighlands/

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potable water source, the water supply shall be protected by one of the following:

- (i) Reduced pressure backflow preventer assembly; or
- (ii) Reduced pressure detector assembly."

[vii.] vi. In Section 10.8.1, **Water Pressure Booster Systems Required**, [insert "as required by the Authority Having Jurisdiction" after] "**and in accordance with good practice" in the third and fourth lines shall be deleted.**

[viii.] vii. In Section 10.15.1, Hot water supply system, [shall be amended to add the phrase] "Outlet temperature of hot water from lavatory faucets in public use facility restrooms or public toilet rooms shall be provided with a means to limit the maximum temperature to 110 degrees F." **shall be inserted after the first sentence.**

[ix. Insert] viii. **Section 10.20, NFPA 13D Multipurpose Residential Fire Sprinkler Systems, shall be deleted and new section 10.20, [Multi-purpose] Dwelling unit fire sprinkler systems, shall be inserted,** as follows: Section P2904, [Multi-purpose] **Dwelling unit fire sprinkler systems, of the [2009 International Residential Code] one- and two-family dwelling subcode shall be considered part of the plumbing subcode.**

[11. Chapter 11 of the plumbing subcode, entitled "Sanitary Drainage Systems," is amended as follows:

i. Section 11.4.3 is amended at the end to add the sentence "Diversity factors shall be established in accordance with N.J.A.C. 5:23-3.3."

[12.] 10. Chapter 12 of the plumbing subcode, entitled "Vents and Venting," shall be amended as follows:

i. Section 12.5, **Frost Closure**, is deleted in its entirety.

ii. Section 12.8.2, **Provision for Venting Future Fixtures**, is deleted in its entirety.

[13.] 11. Chapter 13 of the plumbing subcode, entitled "Storm Water Drainage," shall be amended as follows:

i. In Section 13.1.5, Foundation drains, Notes a. through d. shall be **deleted and the following shall be inserted:** [amended to read] "a. [subsoil] **Foundation drains shall be provided in accordance with the building subcode.**"

ii.-iii. (No change.)

[14.] 12. (No change in text.)

[15.] 13. Chapter 16 of the plumbing subcode, entitled "Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewer Systems Are Not Available," [shall be amended as follows:

i. Except as otherwise indicated in (b)15ii below, Sections 16.1 through 16.12.1.13] shall be deleted [in their entirety.] **and the following shall be inserted:**

i. "**16.1 General. On-site sewage disposal systems are under the jurisdiction of the Department of Environmental Protection and the county or local boards of health, as applicable.**"

ii. [In Section 16.1.7, Abandoned disposal systems, insert] "**16.2 Abandoned disposal systems.** When an existing building is being demolished and the existing sewage disposal system is abandoned or an existing sewage disposal system is being abandoned and a connection is being made to the public sewer disposal system or new sewage disposal system, the plumbing subcode official shall ensure that the existing abandoned tank is disconnected from the building, pumped out, and filled with gravel, stones, or soil material."

[Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site sewage disposal systems remain in effect.]"

[16.] 14. Chapter 17 of the plumbing subcode entitled, "Potable Water Supply Systems," shall be deleted [in their entirety.] **and the following shall be inserted:**

[Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site water supply systems remain in effect.]

i. "**17.1 General. On-site water supply systems are under the jurisdiction of the Department of Environmental Protection and county or local boards of health, as applicable.**"

[17.] 15. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Travel Trailer Park Plumbing [Standards] Requirements," shall be amended as follows:

i. In Section 18.2.1, General, the last sentence [beginning with "Trailer home park"] shall be deleted.

ii.-iii. (No change.)

iv. Section 18.2.2, **Plans and Specifications**, is amended to delete the words "or sewerage disposal facilities" [on line 1] **in the first sentence.**

[v. Section 18.5.8, is amended to add the phrase "and as provided by the authority having jurisdiction" after the words "chapter 10 of this code."]

[vi.] v. Section 18.8.1.2, **Independent Trailer**, is deleted.

[vii.] vi. Section 18.8.3, **Showers**, is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

[viii.] vii. Section 18.8.4, **Laundry Facilities**, is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

[ix.] viii. Section 18.9, **Maintenance**, is deleted.

[x.] ix. Section 18.10, **Operator's Responsibility-Violations**, is deleted.

16. Chapter 19 of the plumbing subcode, entitled Referenced Standards, shall be amended as follows:

i. In Section 19.2 **Standards Organizations**, insert the following: "APSP—The Association of Pool and Spa Professionals, 2110 Eisenhower Avenue, Alexandria, VA 22314, tel: 703-838-0083, fax: 703-549-0493."

[18.] 17. Appendix A of the plumbing subcode, entitled "Sizing Storm Drainage Systems," shall be deleted in its entirety.

[19.] 18. (No change in text.)

19. Appendix G of the plumbing subcode, entitled "Green Plumbing and Mechanical Code Supplement," shall be deleted in its entirety.

ENVIRONMENTAL PROTECTION

(a)

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

Highlands Open Space Partnership Funding Program and Highlands Development Credit Purchase Program

Proposed New Rules: N.J.A.C. 7:70

Authorized By: New Jersey Highlands Water Protection and Planning Council, Margaret Nordstrom, Executive Director.

Authority: N.J.S.A. 13:20-6.y.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-100.

A public hearing concerning this notice of proposal will be held on:

September 17, 2015, at 4:00 P.M. at:
New Jersey Highlands Water Protection and Planning Council
Office
100 North Road (Route 513)
Chester, NJ 07930

Submit written comment by regular mail, facsimile, or e-mail by Friday, October 16, 2015, to:

James Humphries, P.P., AICP
NJ Highlands Council
100 North Road (Route 513)
Chester, NJ 07930
E-mail: james.humphries@highlands.nj.gov
Fax: (908) 879-4205

The agency proposal follows:

Summary

The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Act), at N.J.S.A. 13:20-2, includes, among its findings, that "[t]he new regional planning approach and the more stringent environmental regulatory standards should be accompanied, as a matter

of wise public policy and fairness to property owners, by a strong and significant commitment by the State to fund the acquisition of exceptional natural resource value lands..."

With this mandate in mind, the Highlands Water Protection and Planning Council (Highlands Council) is proposing to establish a program that would meet the dual goals of preserving exceptional natural resource value lands and providing private property owners of such lands a reasonable financial incentive to participate in the program.

The proposed new rules would establish new programs initially funded through money received by the Highlands Council as mitigation for negative impacts to scenic resources or the removal of forests created by linear development/utility projects. The proposed new rules will create an Open Space Partnership Funding Program through which the Highlands Council will partner with government and non-profit land agencies to preserve privately owned land in the Highlands Region by contributing up to 50 percent of the total purchase price of the property for the acquisition of development rights. It will also create a Highlands Development Credit Purchase Program that, in connection with the Highlands Development Credit Bank, would purchase highlands development credits (HDCs) on a priority basis as established by the Highlands Regional Master Plan and any resource specific mitigation funding requirements for a particular project.

As the Council has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Detailed summaries of each subchapter and the appendices follows:

Subchapter 1 General Provisions

N.J.A.C. 7:70-1.1, Purposes and objectives, provides the overall purposes and objectives of the proposed programs.

N.J.A.C. 7:70-1.2, Scope, provides a summary of the proposed Open Space Partnership Funding Program and the HDC Purchase Program. The Open Space Partnership Funding Program will provide funding matches of up to 50 percent of the total purchase price of properties for the acquisition of development rights. The HDC Purchase Program will be a program operated in accordance with the Highlands Act and the RMP in cooperation with the HDC Bank to purchase HDCs from land owners in the preservation area.

N.J.A.C. 7:70-1.3, Program information; address for submissions, provides the address for application submissions under the proposed programs.

N.J.A.C. 7:70-1.4, Relaxation of procedural requirements, provides for the relaxation of the strict application of the requirements of the program by the Highlands Council.

Subchapter 2 Definitions

N.J.A.C. 7:70-2, Definitions, provides definitions used throughout the proposed rules.

Subchapter 3 Highlands Open Space Partnership Funding Program

N.J.A.C. 7:70-3.1, Eligibility, delineates the entities and properties which are eligible for participation in the program. Only government and non-profit entities are permitted to apply. However, a property owned by a private landowner may be purchased as long as the applicant is one of the eligible applicants. Eligible properties include those proposed for fee simple acquisition for preservation and those properties proposed for preservation by the acquisition of a conservation easement. The Highlands Council will not hold any fee simple title to any property and will not accept any application which proposes such. The section also lists those properties and uses that are ineligible for participation in the program.

N.J.A.C. 7:70-3.2, Application process, discusses the method of applying for the Open Space Partnership Funding Program, those items that must be submitted, and the process for reviewing and determining that an application is complete.

N.J.A.C. 7:70-3.3, Review of applications, provides requirements for how the Highlands Council will review, prioritize, and approve applications for the Open Space Partnership Funding Program.

N.J.A.C. 7:70-3.4, Closing process, provides the processes for completing the purchase of properties and the issuance of funds by the Highlands Council.

Subchapter 4 Highlands Development Credit Purchase Program

N.J.A.C. 7:70-4.1, Application contents and completeness reviews, provides the method of applying for the HDC Purchase Program, those items that must be submitted, and the process for reviewing and determining that an application is complete.

N.J.A.C. 7:70-4.2, Application review process, provides requirements on how the HDC Bank will review, prioritize, and approve applications for the HDC Purchase Program.

N.J.A.C. 7:70-4.3, Highlands Development Credit Bank Board authorization process, provides the process for authorizing the purchase of HDCs.

N.J.A.C. 7:70-4.4, Highlands development credit issuance and purchase, provides the requirements on how highlands development credits will be issued, the information provided in the certificate, final payment for credits, and procedures for partial highlands development credit purchases.

N.J.A.C. 7:70 Appendix A is a map of agricultural preservation priority areas in the Highlands Region as shown in the Highlands Regional Master Plan.

N.J.A.C. 7:70 Appendix B is a map of conservation preservation priority areas in the Highlands Region as shown in the Highlands Regional Master Plan.

N.J.A.C. 7:70 Appendix C is a map of special environmental zone areas in the Highlands Region as shown in the Highlands Regional Master Plan.

Social Impact

No adverse social impact is anticipated as a consequence of the proposed new rules. In fact, social impacts are expected to be positive. By regulating the distribution of available funds to preserve and protect lands of exceptional natural resource value, and simultaneously offering inducements to private owners of such property to sell or deed restrict such lands, the goals of the Highlands Act to balance stricter protection of the environment with providing adequate compensation to private property owners will be achieved, and thus a positive social outcome is anticipated. Furthermore the increased preservation of farmland will increase access to a local food supply. Finally evidence shows that when people have access to parks, they exercise more. In a study published by the Centers for Disease Control, creation of, or enhanced access to places for physical activity led to a 25.6 percent increase in the percentage of people exercising on three or more days per week.

Economic Impact

The proposed new rules are expected to have a positive economic impact on several bases. First, by partnering with other entities in order to prioritize properties targeted for acquisition, scarce dollars currently providing a funding source will be leveraged and extended farther than would otherwise occur. It is estimated that for every \$1.00 invested in land preservation there is a \$10.00 return in economic value. Second, in concert with the "dual appraisal" method recently extended by the Legislature, which calls for compensation to be made to private property owners willing to sell their lands for preservation purposes based on "pre-Highlands Act values," this program will have a greater reach than otherwise. Additionally, private property owners who are induced by the prospect of negotiating based on pre-Highlands Act value for their lands will have an additional program in which to participate. The preservation of land will in addition increase opportunities for outdoor and wildlife related recreation in the State of New Jersey, which accounts for an estimated \$3.1 billion in economic activity and supports approximately 37,000 jobs.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require administrative agencies which adopt, readopt, or amend any rule or regulation to which the Order and statute apply to provide a comparison with Federal law and to provide further discussion and analysis (including a cost-benefit analysis) if the standards or requirements by the agency exceed standards or requirements imposed by Federal law.

There are two Federal acts that are related to the national Highlands Region, which includes areas in New York, Connecticut, Pennsylvania, and New Jersey. The two acts are the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624) and Highlands Conservation Act

(P.L. 108-421). These two Federal acts provide the basis for the Highlands Act but do not set any standards or requirements related to the subject matter covered by the proposed new rules.

Federal involvement with the Highlands Region began with the passage of the Food, Agriculture, Conservation, and Trade Act of 1990, which authorized the Secretary of Agriculture "to conduct a study of the region known as the New York-New Jersey Highlands..." in section 1244(b). Among the objectives of the study were: defining the boundaries of the region, identifying forest, ecological, and economic resources, and proposing alternative conservation strategies. As a result of the study, the United States Forest Service issued a report in 1992 that served as an impetus to reignite the effort to protect the critical natural resources of the region. New York - New Jersey Highlands Regional Study, USDA Forest Service, Northeast Area State and Private Forest, Joseph A. Michaels et al. (1992). The study identified unprecedented development pressure from commercial, industrial, and residential uses in the study area and concluded that this pressure was causing the loss of natural and cultural heritage, agricultural lands, wildlife habitat, and recreational opportunities, in addition to deteriorating the air quality and the quality of the region's drinking water supplies.

The Highlands Conservation Act (P.L. 108-421) is designed to assist Connecticut, New Jersey, New York, and Pennsylvania (Highlands States) in conserving land and natural resources in the national Highlands Region through Federal assistance for land conservation projects in which a state entity acquires land or an interest in land from a willing seller to permanently protect resources of high conservation value. The Highlands Conservation Act authorizes Federal assistance to the Highlands States for land conservation partnership projects in which any Highlands State, or any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission, acquires land or an interest in land from a willing seller to permanently protect land in the national Highlands Region. At present the Highlands Conservation Act has no funding and no additional funding is currently anticipated. However, should funding be made available, the proposed new rules would permit funding available from the Highlands Council to be used to meet the 50 percent non-Federal share requirement of the Highlands Conservation Act, thereby extending the benefits of the program while reducing costs to the State.

Jobs Impact

The proposed new rules provide a program to facilitate the preservation of environmentally sensitive lands and are not expected to cause the generation or loss of any jobs, if adopted.

Agricultural Industry Impact

In accordance with P.L. 1998, c. 48, which amends the Right to Farm Act, and in accordance with N.J.S.A. 52:14B-4(a)(2), which requires that an Agriculture Industry Impact statement be included in the notice of proposal, the Highlands Council has evaluated the proposed new rules to determine the nature and extent of the impact on the agriculture industry.

The Highlands Act, at N.J.S.A. 13:20-2, declares that "[t]he agricultural industry in the region is a vital component of the economy, welfare, and cultural landscape of the Garden State; and that in order to preserve the agricultural industry in the region, it is necessary and important to recognize and reaffirm the goals, purposes, policies, and provisions of the "Right to Farm Act," P.L. 1983, c. 31 (C. 4:1C-1 et seq.) and the protections afforded to farmers thereby." The findings of the Legislature in the Highlands Act further declare that "the maintenance of agricultural production and a positive agricultural business climate should be encouraged to the maximum extent possible wherever appropriate in the New Jersey Highlands..." These findings are reiterated and amplified upon in the Highlands Regional Master Plan.

The proposed new rules would support the preservation of farmland and tracts of land in the vicinity of agricultural resources and therefore further protect agricultural resources. An effective way to preserve agricultural land is to amass contiguous acreage (agricultural land mass that is not separated by intervening non-agricultural development). The larger the mass of contiguous farmland, the greater the opportunity to preserve sufficient acreage for productivity; retain dealers of agricultural equipment and supplies nearby; and maintain a sense of support for an

agricultural community. As a result, farmland that is reasonably contiguous to other preserved land, permanently deed restricted farmland, or active farmland located where farmland preservation programs already exist, is important. It has also been shown that a higher percentage of farmers of preserved farms (66 percent) invest more in their farm versus farmers of non-preserved farms (55 percent). In addition, a higher percentage of farmers of preserved farms (66 percent) are more likely to attend workshops to enhance their farming skills compared to 38 percent of farmers of non-preserved farms. Therefore, the program will have a positive impact on the agricultural industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Highlands Council has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed new rules would impose upon charitable conservancies. A "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)), whose purpose includes the acquisition and preservation of lands in a natural, scenic, or other open condition.

The requirements of the proposed new rules do not establish any additional reporting or recordkeeping requirements other than those already required in land acquisition and preservation transactions. Reduced standards are not being proposed for charitable conservancies because of the necessity to ensure fair and equitable application of the funding program. The following are required to support the acquisition and preservation of lands in a natural, scenic, or other open condition: physical details of the property, proof of ownership, examination of certain environmental records for contamination or violations, property appraisal, matching purchase fund commitment statement, and identification of preservation priority areas in accordance with the Highlands Regional Master Plan. In addition, for participation in the HDC Purchase Program, an HDC allocation letter prepared by the Highlands Council and a HDC certificate prepared by the Highlands Council would also need to be obtained.

The proposed new rules may require the retention of certain professional services to facilitate preparation of documents such as surveys, deeds, title reports, and planning and legal analyses that are typical in the processes used for the conveyance of real property. This notwithstanding, the proposed new rules do not impose any reporting or recordkeeping requirements upon small businesses.

Housing Affordability Impact Analysis

The proposed new rules are for the preservation of property identified in the RMP as appropriate for conservation and/or passive recreation purposes. Thus, the Highlands Council finds that the proposed new rules are unlikely to have an impact on the affordability of housing or evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The proposed new rules are expected to have a positive impact on smart growth, by prioritizing the preservation of properties identified in the Regional Master Plan (RMP) as areas of priority for conservation and agricultural preservation purposes. Areas identified as a priority for preservation in the RMP are undeveloped areas primarily outside of Planning Areas 1 and 2 and outside of designated centers. Accordingly, there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 70
HIGHLANDS OPEN SPACE PARTNERSHIP FUNDING PROGRAM
AND HIGHLANDS DEVELOPMENT CREDIT PURCHASE
PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:70-1.1 Purposes and objectives

(a) This chapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.);
2. To implement the Highlands Regional Master Plan (RMP);
3. To establish the procedures by which the Highlands Council will provide funding in partnership with the State of New Jersey, local government units, and charitable conservancies, to acquire lands that further the goals of the Highlands Act and the RMP;
4. To provide criteria for the acquisition of highlands development credits by the HDC Bank; and
5. To establish the procedures by which the Highlands Council will ensure that lands acquired with funding from the programs created herein, permanently remain in use for passive recreation and/or conservation purposes.

7:70-1.2 Scope

This chapter constitutes the Highlands Open Space Partnership Funding Program and Highlands Development Credit Purchase Program, governing the partnership with eligible state and local governments, and charitable conservancies for the acquisition of land for passive recreation and conservation purposes. In addition, this chapter establishes the criteria for acquisition of highlands development credits by the HDC Bank. This chapter establishes project eligibility requirements, application requirements, funding award criteria, partnership funding terms, and program administrative requirements.

7:70-1.3 Program information; address for submissions

Unless otherwise specified, any questions arising from, and all submissions required under this chapter, should be directed to the New Jersey Highlands Water Protection and Planning Council, 100 North Road, Chester, NJ 07930. Additional information about this program, is also available on the Highlands Council's website at: <http://www.nj.gov/njhighlands/>.

7:70-1.4 Relaxation of procedural requirements

The Highlands Council may, in its discretion, and if consistent with Highlands Act and the RMP, relax the strict application of any of the administrative or procedural requirements of this chapter when necessary and in the public interest, for good cause shown. Such authority does not extend to statutory requirements, legislative mandates, or substantive requirements of the chapter.

SUBCHAPTER 2. DEFINITIONS

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 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.

"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.

"Landowner Equity and Land Preservation Committee" or "Land Preservation Committee" means the committee established by the chairperson of the Highlands Council for the review of 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.

SUBCHAPTER 3. HIGHLANDS OPEN SPACE PARTNERSHIP FUNDING PROGRAM

7:70-3.1 Eligibility

(a) The following partnership entities are eligible to apply for partnership funds:

1. The State of New Jersey, in accordance with the State funding source requirements;
2. Any of the seven counties located in the Highlands Region;
3. Any of the 88 municipalities located in the Highlands Region; and
4. Charitable conservancies.

(b) Properties and activities within the Highlands Region eligible for consideration for funding from the Highlands Open Space Partnership

Funding Program, that are submitted by partnership entities as defined in (a) above, include:

1. The fee simple acquisition of land for conservation and/or passive recreation purposes, including, but not limited to:
 - i. Parkland, natural areas, and/or greenways; or
 - ii. The protection of ecologically sensitive areas as identified in the Highlands Regional Master Plan; and
2. The acquisition of development easements for conservation purposes, including, but not limited to:
 - i. Parkland, natural areas, and/or greenways;
 - ii. Farmland preservation; and
 - iii. The protection of ecologically sensitive areas and/or agricultural preservation priority areas.

(c) The following properties and activities are ineligible for funding under the Highlands Open Space Partnership Funding Program:

1. Properties to be held in fee simple title by the Highlands Council;
2. Properties which require condemnation;
3. Properties 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 New Jersey Department of Environmental Protection's Known Contaminated Sites List;
4. Properties already preserved or acquired during the application process by municipalities, counties, the State, or a qualified charitable conservancy;
5. Administrative or operational costs of the applicant or current or former owners;
6. 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 eligible underlying lands);
7. Maintenance, care, custodial, or policing expenditures, including, but not limited to, grounds maintenance, restoration, or reconstruction;
8. Ceremonial or publicity expenses;
9. Interest, bonding expenses, or other financing costs;
10. Fundraising or lobbying expenses; and
11. Interpretive activities, such as displays or signs.

(d) The partnership entity may propose either a fee simple acquisition or the acquisition of the development rights through a conservation easement.

1. Under the Highlands Open Space Partnership Funding Program, the Highlands Council will not hold fee simple title to a property. Only the partnership entity or its designee shall hold fee simple title.

2. The property shall be restricted in perpetuity from future development to protect any existing resources located on the property in accordance with requirements of the conservation easement.

7:70-3.2 Application process

(a) The Executive Director shall prepare an outreach program. The outreach program shall, at a minimum:

1. Provide information and training on the availability of the Highlands Open Space Partnership Funding Program to: all municipalities and counties within the Highlands Region, all State agencies, and to charitable conservancies that are known to operate or have funding assigned to be expended within, or immediately adjacent to, the Highlands Region.
2. Provide notice of each application round through publication in the Highlands Council's official newspapers posted on the Highlands Council's website <http://www.nj.gov/njhighlands/>.

(b) Requirements for acceptance of applications are as follows:

1. Partnership entities shall complete and sign an application form, prepared by the Executive Director, which includes the submission requirements in (b)2 below.

2. The following information must be submitted with any application for partnership funding under this chapter:

- i. Name and address of the applicant;
- ii. Where the applicant is a charitable conservancy:

(1) Documentation indicating that the entity is 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)); and

(2) Documentation indicating that the entity's purpose includes the acquisition and preservation of lands in a natural, scenic, or other open condition;

iii. Where the applicant is a county or local government, a copy of an adopted resolution authorizing the submission of the application for the property in question;

iv. A description of property including:

- (1) Tax block(s) and lot(s);
- (2) Street address;
- (3) Acreage of the property;
- (4) List of any structures or other improvements on the property;

(5) If the acquisition of part of a lot is proposed, both the area (in acres) of the part to be acquired and the area of the remainder shall be denoted;

(6) Any significant environmental, recreational, structures, or other resources, and/or access issues;

(7) The location and area of all known existing easements, road right-of-ways, encroachments, and similar features, with the source of such information identified, and any proposed area(s) to be excepted from the property; and

(8) Any adjacent properties proposed for preservation;

v. Current owner's name and mailing address;

vi. List of all proposed funding sources including:

- (1) Commitment letters or other available proof of these sources;
- (2) Any adopted resolutions from government entities authorizing or approving funding; and

(3) Any time limits or other restrictions related to the specific funding sources;

vii. A copy of the proposed deed restriction or easement language; and

viii. Valuation of the property as follows:

(1) Where appraisals have already been prepared, copies of such must be submitted;

(2) Where no appraisals have been prepared, an estimated total cost must be submitted;

(3) Where a specific valuation has already been negotiated, that valuation must be submitted; or

(4) Where a contract of sale has been agreed upon, copies of the contract must be submitted.

(c) The Highlands Council shall approve deadlines for the submission of applications.

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

1. The Executive Director shall conduct a completeness review for each application which shall be deemed complete upon receipt of all information required pursuant to (b)2 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. Applicants 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 the applicant to supply the necessary information where deemed appropriate by the specific conditions of the application.

7:70-3.3 Review of applications

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

1. The Executive Director shall prepare 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. Review of the following environmental records:
 - (1) New Jersey Known Contaminated Sites List (<http://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 (http://datamine2.state.nj.us/dep/DEP_OPRA/adv_search.html);
- iv. Staff site inspections and photographic record; and
- v. Summary of priority ranking against other complete applications based on the standards in (b) below.

3. The Land Preservation Committee shall:

i. Review the information provided in the report on eligibility from (a)2 above, and make a decision on the eligibility of the project based on the standards in N.J.A.C. 7:70-3.1 and 3.2, and the priority of the project based upon the standards in (b) below;

ii. Prepare a summary of the report on eligibility and the findings, including a final recommendation, and provide it to the Highlands Council; and

iii. Upon receipt of final appraisal and funding commitment information, prepare an updated report on eligibility on each property and provide it to the Highlands Council.

(b) Property acquisitions shall be based on the following applicable criteria, in no specific order:

1. Designation as an identified special environmental zone area in the RMP.

2. Designation as a high conservation and/or high agricultural preservation priority area in the RMP.

3. Designation as a moderate conservation and/or moderate agricultural preservation priority area in the RMP.

4. Additional priority will be given to properties that, when purchased together, provide or improve connectivity to existing open space or otherwise improve access to existing open space and/or recreational facilities.

5. Any specific criteria that has been approved by the Highlands Council, in a Highlands Council resolution on any project review where funding is received as part of mitigation for the project.

6. Applicants that provide for a higher proportion of outside matching funds will be provided with a higher priority than those that do not.

(c) Applicants shall submit draft conservation easement language to the Highlands Council for review. The State of New Jersey will be included as Grantee in any deed restriction or easement.

(d) In accordance with N.J.S.A. 13:8C-26.j(1) or 38.j(1), the property owner shall obtain appraisals containing values detailing the pre- and post-Highlands Act values. The owner shall have the opportunity to negotiate the sale price of the property based on these values. The Highlands Council will provide for reasonable costs related to these additional appraisals, provided the appraiser has been approved by New Jersey Department of Environmental Protection Green Acres Program or the State Agriculture Development Committee (SADC).

(e) Commitment and partnership funds will be determined as follows:

1. The Highlands Council shall provide a maximum award of up to 50 percent of the total purchase price of the property, for the acquisition of the development rights.

2. All applicants shall supply commitment letters from any other partnership entities providing funding.

3. An applicant may use as its matching share of the cost of acquisition, its own funds, any grant, contribution, donation, or reimbursement from State or Federal programs, and/or any other public or private funding source.

(f) The applicant must provide a summary of a plan for the long-term stewardship of the property, including enforcement, monitoring, ownership, access, and any maintenance or proposed restoration.

(g) At a public meeting of the Highlands Council, the summary of the report and the findings, including the final recommendation of the Land Preservation Committee, will be presented. The Highlands Council shall, based upon the findings of the updated report of eligibility pursuant to (b)3iii above, adopt a resolution issuing an approval for funding and authorization to proceed at that meeting. The effective date of the approval shall be the date of the adoption of the resolution following the expiration of the Governor's statutory period of review.

7:70-3.4 Closing process

(a) Partnership entities shall have 12 months to complete the closing on the property from the effective date of the Highlands Council's adoption of a resolution approving issuance of an approval for funding.

1. All partnership entities can obtain up to two six-month extensions, if it is shown that there are circumstances that inhibit the property's acquisition within the initial 12-month deadline, provided there is a reasonable expectation of closing within the extended deadline, as follows:

i. The Executive Director shall have the ability to grant a first extension upon showing of good cause.

ii. The Executive Director shall have the ability to grant a second extension upon showing of good cause and the submission of a fully executed contract with the owner.

2. Should the partnership entity fail to close on the property within these time frames, the partnership entity shall forfeit the funding, but may reapply in any subsequent rounds.

(b) The partnership entity shall provide notice to the Highlands Council that the closing or final acquisition is ready to proceed and shall request issuance of payment to the property owner.

1. After review by the Executive Director that the release of funding is consistent with the approval of funding, the Executive Director shall authorize payment to the property owner at the closing for the acquisition of development rights.

2. The partnership entity shall provide the Executive Director with copies of the filed deed or deed of easement.

3. The Executive Director shall provide a report to the Highlands Council upon the final completion of each acquisition. A summary of the completed acquisitions shall be posted to the Highlands Council's website.

(c) Closing requirements are as follows:

1. A title search update shall be required prior to the filing of any deed or deed of easement on a property indicating that the property owner has the authority to deed restrict the land.

2. The final form of any deed or deed of easement shall be submitted for approval to the Highlands Council prior to the final release of funds.

SUBCHAPTER 4. HIGHLANDS DEVELOPMENT CREDIT PURCHASE PROGRAM

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:

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;

iv. Review of the following environmental records:

- (1) New Jersey known contaminated sites list (<http://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 (http://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 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.

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. 7:70-4.2(a)1, 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:

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

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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.

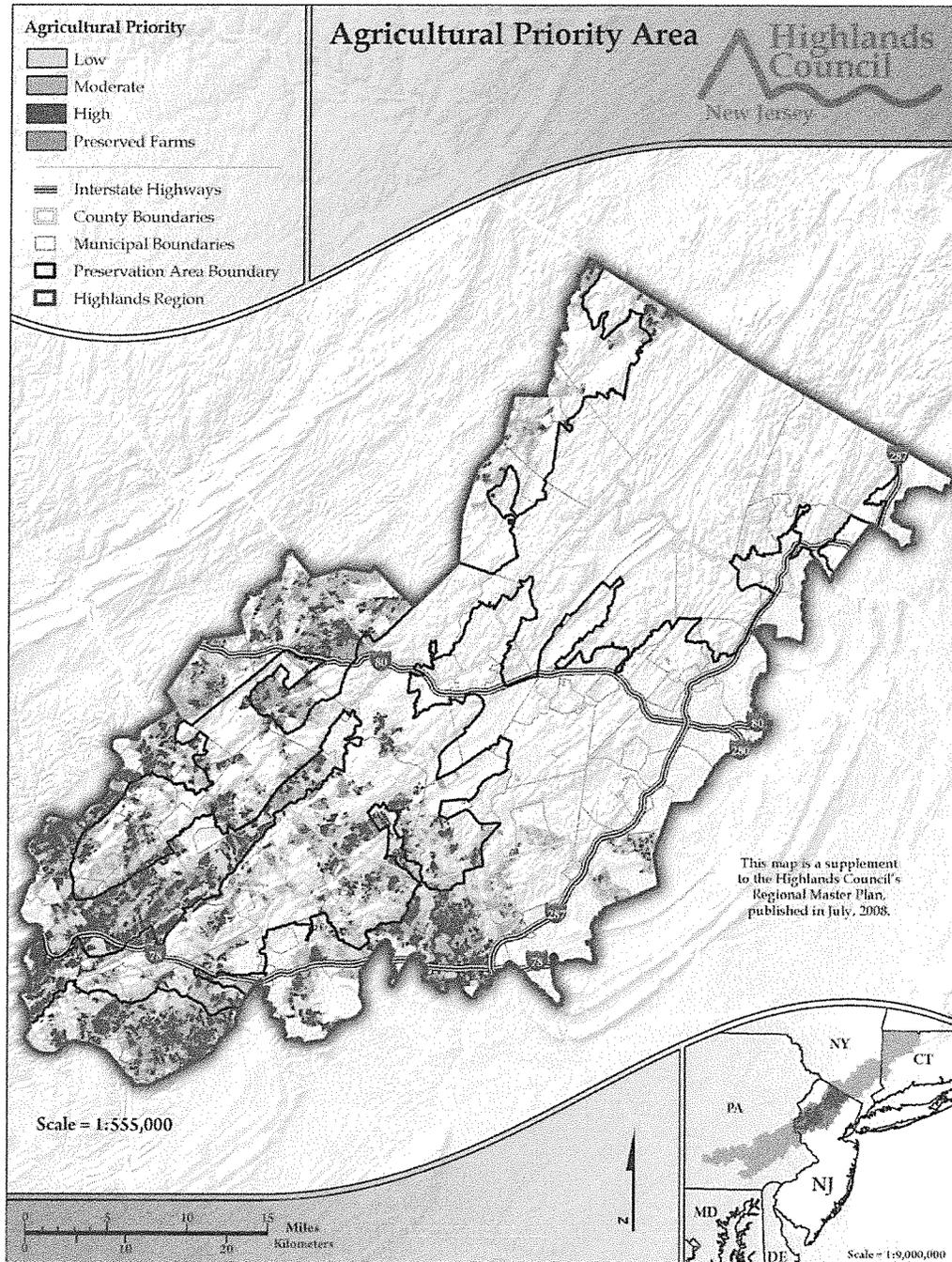
(e) The process for partial highlands development credit purchases is as follows:

1. An applicant may apply to the HDC bank for the purchase of all or part of the HDC certificates issued to an owner.

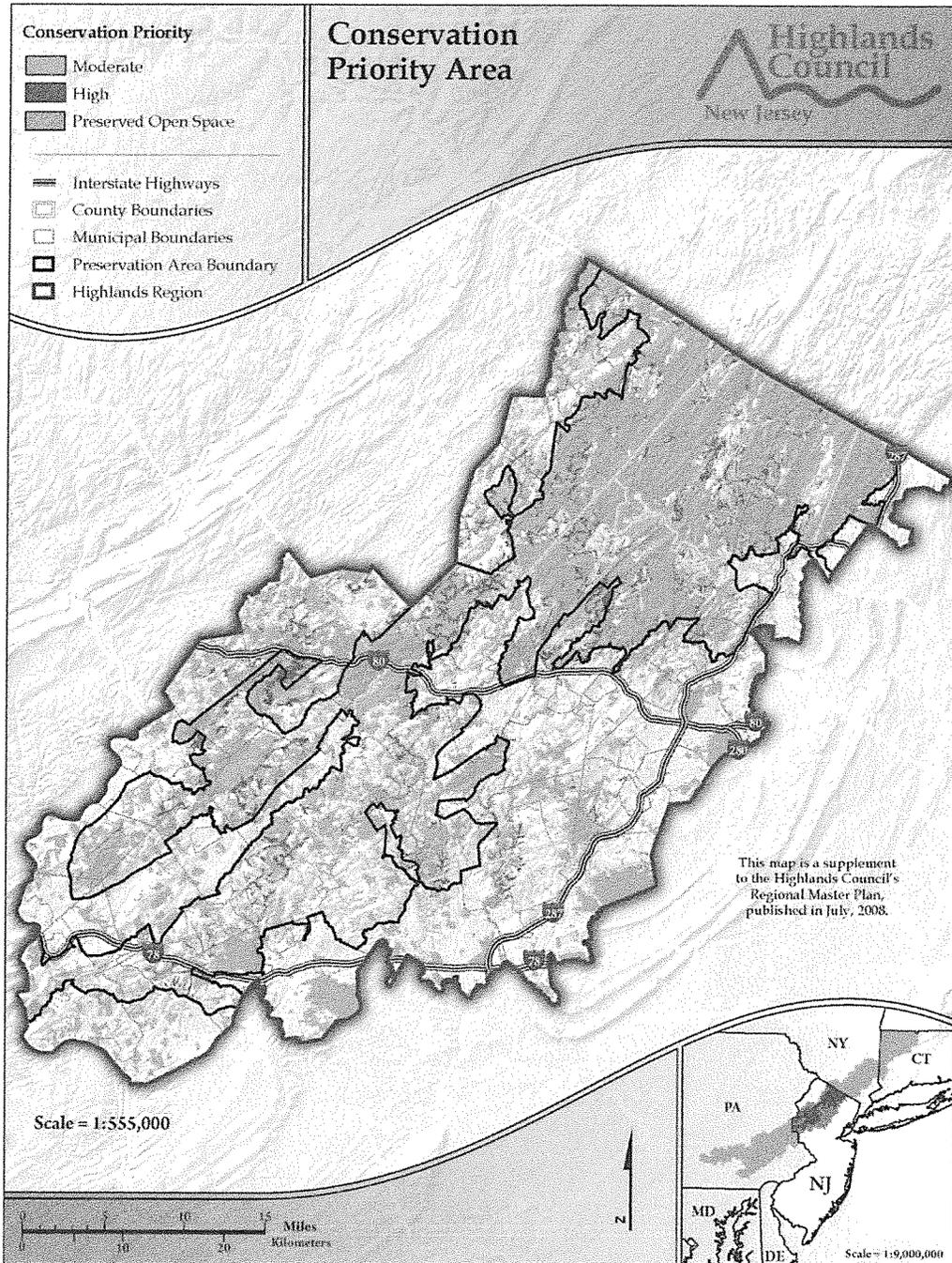
2. A partial purchase of HDC certificates shall be based upon the priority review in N.J.A.C. 7:70-4.2(a)1 iv of the entire property.

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.

APPENDIX A



APPENDIX B



APPENDIX C

