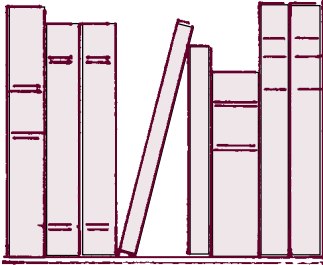


# RESOURCE PAPER



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# Transfer of Development Rights: A Market-Driven Planning Tool

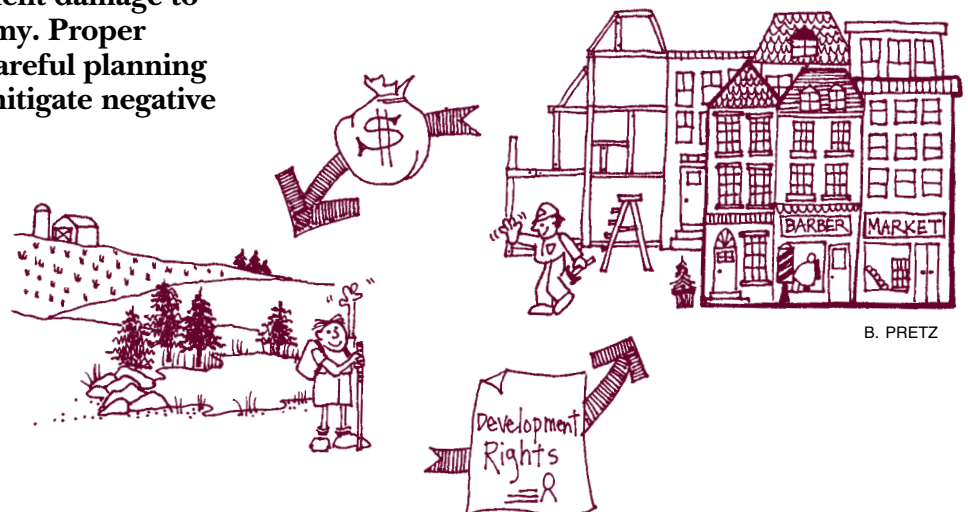
Only recently have people begun to realize that good land use planning is its own reward. Without it, unmanaged growth wreaks havoc on the economy, drinking water resources and other quality of life factors. The loss of valuable natural assets, including once pristine forests, productive farmland and wetlands, has compromised the purity of the drinking water in many aquifers and surface waters. Traffic congestion contaminates the air and significantly contributes to global warming.

Sprawl development also has resulted in significant unintended economic impacts, including higher local tax burdens and escalating infrastructure costs for additional equipment, maintenance and repair. Any perceived “gains” to the economy from such consumptive sprawl development are short lived and unsustainable. However, the long-term impacts pose serious and sometimes permanent damage to our community and our economy. Proper growth management through careful planning and regulatory initiatives can mitigate negative impacts of development.

## Regional and Statewide Planning

In the 1970's, the state began to recognize the consequences of unmanaged development and the need to plan for the preservation and management of New Jersey's environmental assets. In the 1980's, the state began coordinated planning for land use and infrastructure in order to maximize the value derived from publicly funded improvements and to protect natural resources. This effort resulted in the *State Planning Act*, and the 1992 adoption of the first *State Development and Redevelopment Plan* (the State Plan), a key document that delineates a vision for desired growth and preservation patterns throughout the state.

### Transfer of Development Rights



Among the tools suggested by the State Plan are transfer of development rights (TDR) (already in use in the Pinelands) and tax revenue sharing, now used in the Meadowlands. The *Municipal Land Use Law* (MLUL) has been amended to allow municipalities to use mandatory cluster zoning. In 2004, passage of the *State Transfer of Development Rights Act* (the TDR Act) authorized municipalities throughout New Jersey to use TDR programs in local land use planning.

Ideally, local, regional and state land use planning decision-making should ensure protection of natural resources. An Environmental Resources Inventory (ERI) provides, in map and text form, a description of the environmental assets of a community. The ERI should serve as the basis for evaluating impacts of zoning and density choices on natural resources. The inventory and impact analyses can support zoning decisions to rezone for growth, or less intensive uses or densities, or to justify further analysis.

Unfortunately, many communities have made planning decisions without sufficient consideration of natural resource limitations and impacts. They need to reassess and re-plan and potentially rezone to avoid negative impacts such as contamination of drinking water and to protect sensitive features like steep slopes, flood plains and stream corridors. New planning tools such as clustering provisions and the transfer of development rights can help achieve protection of resources and ensure the landowner's right to beneficial land use.

## Municipal Land Use Planning

Municipal land use planning involves making certain decisions on permitted uses and density of development on land. Specifically, the land use map designates "development zones" that will implement the master plan. For each

zone, ordinances determine restrictions for permitted uses and allowable densities. The purpose of zone designations is to separate incompatible uses and protect natural resources. For example, noisy industrial operations are separated from residential homes to protect a homeowner's quiet enjoyment of his property.

Many municipalities have actively sought to acquire environmentally significant lands in order to protect their ability to provide clean water, viewsheds, quality of life and other features. However, direct acquisition alone is too expensive a method to provide all the protection needed and desired by most municipalities.

One technique municipalities have to manage growth is through clustering provisions. In cluster development, a section of a parcel remains open space, with the permitted density clustered on the

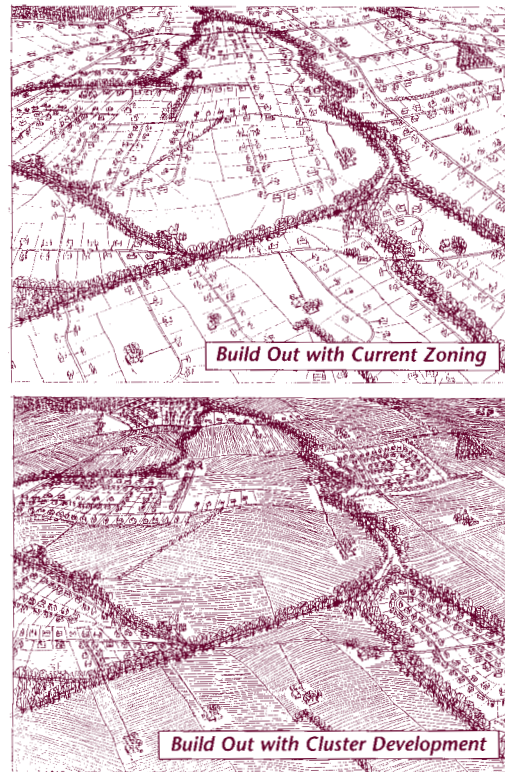
remainder of the lot. With this type of zoning, the ultimate density and use on a parcel is unchanged, it is merely spatially redistributed.

## How Does TDR Work?

In TDR, a community sets up a system where the right to develop is transferred from land parcels in a "sending zone" to separate land parcels in a "receiving zone." Usually, the sending zone has a resource worthy of protection, such as historic sites, farmland, forests or water supply. The receiving zone will most likely either have existing infrastructure, such as roads and sewers, or will be able to accommodate new infrastructure. This minimizes the negative impacts seen in uncontrolled or poorly managed growth. TDR helps communities to develop a coordinated approach to growth.

Transfer of the right to develop is possible because of the legal ability to convey a partial interest in land. Land ownership is often described as including a "bundle" of rights that collectively "run with and can be sepa-

East Amwell Build-out Scenarios



Brown & Koener Urban Design

rated from the land.” These include the right to possess, to develop, to sell, to lease, to mortgage, to extract valuable elements such as coal, and to use the space above the land. The right to develop can be permanently severed from the land. It can then be sold, separate and apart from the underlying land parcel from which it has been severed.

A landowner in a sending zone is able to transfer the “right” to develop property while maintaining the other rights of ownership, including possession and non-development use of the property. The severance of rights is accomplished through an easement that “runs with the land” in perpetuity. The easement describes and records the prohibited activities, permitted activities and reserved rights, along with any qualifications to the reserved rights. The land still retains marketable value based on what rights remain. For farmland, the value can be substantial, depending on variables such as soil quality and the value of the crops grown. For most other types of land, the residual value is not as great, unless significant rights to develop (albeit at a lesser density and/or use) remain after credits are severed.

Generally, the “severed” development rights become a commodity. The landowner can sell the severed development rights, in the form of “TDR credits,” on an open market for cash. A landowner may also borrow against the market value of credits or retain them as an investment.

In a TDR program, buyers may buy credits to use to achieve a development density and/or use in a receiving zone. Buyers may also act as investors and hold purchased credits for later sale. Availability of sending zone credits must match the demand for development in the receiving zone so that supply and demand in the open market drive the purchase of credits.

## Why Use TDR?

TDR is advantageous because it:

- promotes a superior development pattern;
- conserves open space, natural resources, historic resources, and/or farmland;
- provides development opportunities in marketable areas that benefit landowners in restricted areas; and
- provides an opportunity to reduce the publicly funded costs of infrastructure.

Use of TDR as a development management tool is based on several basic premises:

- there is a demand for growth;
- land use planning will both allow and manage growth;
- the demand for growth can be used to create a market for development credits; and
- sale of credits harnesses private investment to preserve land where further growth will harm environmental resources.

TDR is market driven. Sale and purchase of credits must occur in order to achieve the new development pattern. Financial benefits accrue to landowners and to developers, because TDR allows landowners in sending zones to convert their land’s development rights into cash without having to perform actual development. It also enables landowners in receiving zones to profit from the increased marketability of their land. Finally, it allows developers in receiving zones to realize additional profits.

TDR offers a workable option for growth management and resource protection by harnessing the real estate market to fund natural resource, farmland, open space and/or historic preservation. By requiring purchase of TDR credits to increase development intensity in receiving areas, a community can encourage or require sale of credits in environmentally sensitive areas, thereby limiting or even stopping development there. In this way, TDR compliments other land management tools such as purchase of open space and conservation easements, because it provides another option to improve the community’s development pattern.

## How to Create a TDR Program

### Step 1: Evaluate Community Interest

Community acceptance is a primary factor in determining whether or not a TDR program will succeed. Even with a viable market, ample designation of receiving areas and an interest by municipal leaders, a TDR program will not be viable without community acceptance. Every effort must be made to explain TDR to members of a community – not only the public at large – but particularly the landowners who will be participating. Residents must understand and agree with the scope and objectives

of the program. They need to accept the following objectives:

- to direct growth away from environmentally sensitive lands having little or no infrastructure and direct it toward areas of more concentrated development;
- to manage density to reduce costs of publicly-funded infrastructure and risks of environmental degradation;
- to increase density in specific areas;
- to change zoning and design standards for increased density in receiving areas; and
- to downzone and/or allow less intensive uses in sending areas;
- provide landowners in sensitive areas with more flexible marketing opportunities.

Once the community accepts the TDR program objectives, then the details must be decided. Planners can use an Environmental Resources Inventory (ERI), buildout analysis, fiscal impact studies, and comparisons between the existing development pattern and a desired development pattern to illustrate how TDR will impact their community.

## Step 2: Identify Sending Zones

In developing a TDR program, municipal officials must identify what land and/or resources to preserve and protect from additional development. An ERI provides data on the critical resources to target for protection, such as fertile farmland, contiguous forests, habitat for threatened and endangered species, historic sites, wetlands, aquifers and scenic landscapes.

Areas with critical resources but lacking infrastructure are appropriate sending zones. The municipality can rezone sending zones to less intensive uses and/or densities to protect resources there. The new zoning can be mandatory or voluntary, depending on how the program is structured. With a voluntary program for sending zones, an overlay zone is

created that allows owners either to retain the option to build at the original density and use, or to sell credits and develop at the new (reduced) density and use (if any). If the program is mandatory for the sending zone, then the sending zone is rezoned so that owners in the sending zone are limited to developing at the new (lesser) density and use limitations.

## Step 3: Allocate TDR Credits

Next, the program must decide how to allocate credits in a sending area.<sup>1</sup> The credit allocation process assigns the number of credits to land parcels in a sending zone. It involves:

- defining the nature of the severed rights, and
- identifying the amount of credits to “allocate” to the severed rights.

Credit allocation can be determined through a number of different methods. These include:

- gross acreage,
- development suitability (i.e., environmental features such as wetlands or prime farmland),
- comparison of pre- and post-TDR ordinance development potential.

The allocation process should be fair and transparent. Often the first two methods are easier to administer while the third is perceived as being more equitable. With the third method, appraisal methods must be used to provide consistency. Also referred to as the “development easement value,” this represents the difference between a property’s value for development and its resource value. Generally, the number of credits allocated to a parcel increases with the amount of development potential that is being severed.

Assessing the development easement value is usually a multi-step process. Accordingly, if one credit is equal to the right to develop one residential unit, then an owner of a 100-acre parcel zoned for one residential unit per 5 acres will be entitled to a maximum of 20 credits for that parcel. Factors besides zoning and natural features may increase or decrease credit allocations. For example, with zoning that allowed one residential unit per five acres, a 100-acre parcel, with 50 acres of undevelopable wetlands, would have maximum development potential of ten



<sup>1</sup> Note: The order of selection of receiving zones and allocation of credits can be reversed or an iterative process.

residential units. Factors such as community goals, motivations of property owners, need for incentives and TDR demand in the receiving zone(s) may also influence this policy decision. Accordingly, the goals of a preservation effort might influence the allocation of credits.

### EXAMPLE OF CREDIT ALLOCATION

Chesterfield is a community in Burlington County that participated in the County's TDR pilot project. This municipality used both base zoning and environmental factors to allocate credits to development potential. Chesterfield allocates TDR credits based on a formula that considers base zoning and the ability of the land to accommodate septic fields (using depth to water table as an indicator).

In Chesterfield, base zoning allows up to one residential unit per 3.3 acres or 0.3 residential units per acre. The allocation formula assigns a greater value, and accordingly more credits, to land that is less constrained and assigns a lesser value to land that is more constrained. Soils with a water table depth of five or more feet have "slight" septic limitations. Soils with a water table of between two and five feet have "moderate" limitations and soils having a water table less than two feet have "severe" limitations. A 1.1 "adjustment factor" incorporates a ten percent bonus factor as an incentive for landowners to transfer their units rather than develop the site.

### Chesterfield's Credit Allocation

#### Formula

$$\text{TDR Credits per Acre} = (\# \text{ acres with slight soil limitations}/2.7) + (\# \text{ acres with moderate soil limitations}/6.0) + (\# \text{ acres with severe soil limitations}/50) \times (1.1)$$

Using this formula, a farm of 100 total acres having 50 acres of "slight" limitations, 10 acres of "moderate" limitations and 40 acres of "severe" limitations will be assigned credits as follows:

$$[(50/2.7) + (10/6.0) + (40/50)] \times 1.1 = 20.98$$

credits per 100 acres = ~0.21 credits per acre

Note: The number of credits is low, even with the 10 percent incentive, reflecting that serious environmental constraints to development exist on a significant portion of the parcel.

### Step 4: Identify Receiving Zones

Three conditions are crucial for selecting appropriate receiving zones:

- availability of sufficient infrastructure,
- community acceptance, and
- developer interest.

First, municipal officials must determine where it is possible and desirable to promote development. An infrastructure capacity analysis will help locate one or more areas having existing infrastructure, including roads, sewers and water lines. If infrastructure is not available, then possible receiving zones might include areas that have failed septic systems and would benefit from a centralized wastewater treatment plant. Extending infrastructure to an undeveloped area might be feasible and appropriate if it were part of planned centers, such as "town centers," "transit villages" or new zones appropriate for growth.

Used with a buildout analysis and ERI, the infrastructure analysis will reveal opportunities for better development patterns. Once suitable areas are identified, the existing zoning pattern must be evaluated for possible changes that could provide more intensive uses and/or densities.

Possible changes in development patterns to consider are:

- upzoning areas near mass transit hubs to allow for greater density and/or mixed use;
- rezoning commercial or industrial areas to allow residential or mixed use development; or
- easing development restrictions such as building height, the amount of impervious cover or parking requirements in areas where appropriate.

### Step 5: Adopt a TDR Ordinance

Municipalities enact a TDR zoning ordinance to designate a receiving zone where higher development densities and/or more intensive uses are allowed. The TDR ordinance will also describe credit allocation in the sending zone and the use formula for delineating how much added density and/or use can be achieved in the receiving area using credits.

The purchase of credits can be mandatory in the receiving zone or be optional to achieve "bonus" density. When use of credits is optional, the TDR ordinance includes an overlay

zone where a developer may purchase credits to increase the density and/or use. The developer retains the option of developing at the pre-TDR ordinance density and uses without purchase of credits. In this case, the “TDR threshold” is the maximum density allowed in the receiving zone without the purchase of credits. The “bonus” is the added density and/or uses that can be achieved in the receiving zone through the use of TDR credits.

In a mandatory program, a developer is required to purchase credits to develop at any density and/or use in the receiving zone. In this case, the TDR ordinance rezones the receiving zone to increased density and/or more intensive uses. Requiring purchase of credits to build in a receiving zone can assure participation in the program and avoid delay of program implementation. One example of a mandatory program is to require a certain percentage of market rate housing to be built using purchased TDR credits.

Ideally, the TDR-enhanced density meets but does not exceed the density that will be acceptable and desirable to developers and residents. The enhanced density must not exceed the capacity of available or planned infrastructure.

### Step 6: Assign a Use Formula to the Credits

Part of the TDR ordinance will be a “use formula” that determines how much and what type of development can be purchased using credits. Often the formula is developed using a real estate market analysis to improve the likelihood of the sale and use of credits.

The manner in which the use formula is developed depends upon the method of assigning and using credits. Earlier versions of TDR programs created a “transfer ratio,” which is the number of transferable development units available from a sending zone property divided by the potential number of development units possible through the use of TDR credits in the receiving zone property. Transfer ratios transfer the same underlying type of development, either residential or commercial, from the sending to the receiving zone.

A one-to-one transfer ratio transfers the development potential of one residential unit in a

sending zone parcel to allow development of one residential unit in a receiving zone parcel. For example, a sending area parcel may allow one residential unit per 5 acres. An owner of a 100-acre parcel zoned for one residential unit per 5 acres will be entitled to a maximum of 20 credits for that parcel. The purchaser of these 20 credits will be able to develop four residential units in the receiving area.

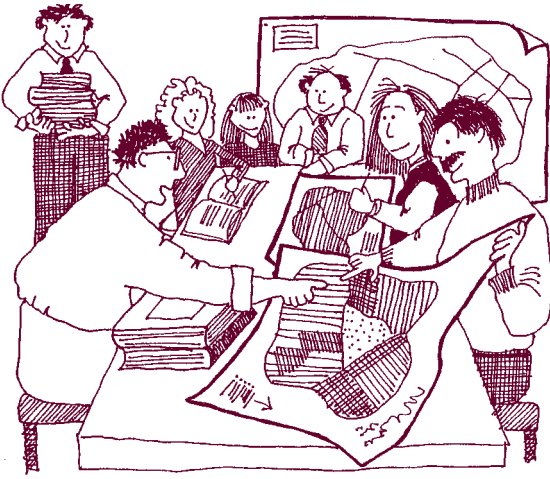
Different ratios are also possible. A 1:4 transfer ratio requires purchase of one credit to build four units. This method of designing a use formula is limited and tends to further sprawl.

More sophisticated mathematical use formulas are also possible. It is also possible to create use formulae that account for transfer between different types and densities of development. A conversion factor can equate credit usage with a variety of types of development, such as commercial or mixed use, allowing credits to be used in the receiving zone for a variety of uses and densities. This gives much more flexibility to the TDR program than a “unit for unit” approach. Accordingly, newer and more sophisticated use formulas allow credits to be available for a variety of development opportunities.

### Chesterfield’s Credit Use Determination

In Chesterfield, the translation of development credits to use is included in a table in its TDR ordinance. The table provides a conversion factor and delineates permitted uses. Excerpts of the table:

Number of Credits Required	Type of Development Permitted
1.0 .....	Detached perimeter village house
0.9 .....	Detached village house
0.75 .....	Triplex dwelling unit
0.5 .....	Apartment units and carriage houses
0.0 .....	Low- and moderate-income housing units
1.0 .....	Retail/office per 2,000 square feet



B. PRETZ

## Step 7: Determine the Initial Value of Credits

Key factors in any successful TDR program are the proper allocation and pricing of credits. To function within the market, a TDR program must strike a balance. A sending zone landowner will be likely to sell TDR credits when the value of the land after credits are severed plus the value of the reserved rights is somewhat comparable to the value of the land before implementing the TDR program. A receiving zone developer will be likely to buy TDR credits when the additional development allowed provides an adequate profit margin, even after purchase of the necessary credits.

Accordingly, an important step in the process of setting up a TDR program is determining the initial value of the credits. Using “development potential” as a guidepost, one method of valuation is to attempt to reflect the sale price of the land based on the maximum number of residential or commercial units allowed on a specified lot (or lots) on a certain date (i.e., date of adoption of a development transfer ordinance). This evaluation must include, as a minimum, consideration of the base zoning for the area and any natural features that would constrain development potential.

In a program where use of credits in the receiving zone is optional, another key factor is the selection of appropriate base and bonus zoning in the receiving zone, which will spur developers to buy credits rather than develop at base zoning densities there. Failure to zone properly and to allocate and price credits can doom a TDR program into remaining a theoretical exercise.

Real estate market analyses can be useful in initial valuation of credits. A market analysis may evaluate real estate trends and other factors to help predict the value of development potential in sending zone parcels and the increase in value of development potential in receiving zones.

A market analysis considers factors that are similar to, but often broader than, those used to perform real estate appraisals. Appraisals must conform to national standards (the “Uniform Standards of Professional Appraisal Practice”). They typically evaluate comparable properties in terms of land area, land attributes, time of sale, location and “highest and best use” to make a value determination of a particular property or properties. Universally accepted determinants for the highest and best use, are:

- physically possible,
- legally permissible,
- financially feasible, and
- maximally productive.

A real estate market analysis adds forecasting to typical appraisal techniques to estimate expected future values based on assumptions and/or trends analyses of the existing market. The forecasts include an explanation of trends, the basis for asserting these trends, as well as a statement as to whether or not these trends are expected to continue. A more fully developed analysis may include market area identification, macro/micro economic forecasts, supply and demand and market share.

The market analysis is intended to inform:

- selection of sending and receiving areas,
- zoning of such areas,
- allocation of credits to sending area lands, and
- pricing of TDR credits.

The analysis is intended to provide some confidence that a balance between supply and demand for TDR credits has been achieved. If market forces are properly accounted for, both the sending zone landowners and the receiving zone developers stand to make a profit. Thus, a properly designed TDR program, informed by a well crafted market analysis, can be “market driven.”

## Step 8: Sale and Purchase of Credits

The method of purchase and sale of TDR credits depends on the program's design. An open market exchange of credits may be possible where credit owners and purchasers negotiate with each other and agree upon a price during negotiation. Some administrative procedure is necessary to record the transaction. When rights are severed from a sending zone parcel, the easement placed on it is recorded on the deed and in the book of deeds (usually maintained in a county recording office). The easement remains "in perpetuity" (is permanent) and applies to all subsequent owners of that parcel.

The TDR ordinance or an accompanying administrative ordinance will usually establish a system for administration of credit transfers. In addition, a TDR ordinance will usually include provisions for establishing a "credit register" or list identifying each property and the number of TDR credits it has been allocated. The register should be updated to reflect the retirement of credits and changes in credit ownership.

Orderly administration of credit transfers argues for establishment of a TDR bank. A TDR bank is a governmental body having authority to purchase and sell credits and to provide administrative assistance related to the transfer of TDR credits. For example, the bank can:

- issue a certificate identifying the number of credits allocated and deed restricted on a sending zone parcel;
- buy and keep the credits or a certificate of purchase of same for later sale; and
- serve as a clearinghouse for interested buyers and sellers.

Often, start-up TDR programs do not generate an immediate interest in or market for sale of credits. In this case, a municipality or regional entity can set up a bank to serve as a pur-

chaser of last resort in the event that a seller has a hardship due to an insufficient market for credits.

## The Municipal Program under the State TDR Act

Of the four TDR programs in New Jersey,<sup>2</sup> only the *State Transfer of Development Rights Act* (the TDR Act), which amends the *Municipal Land Use Law* (N.J.S.A. 40:55D-137 to 163), applies throughout the state. After a pilot project in Burlington County established proof of concept, the legislature made TDR available as a statewide planning tool in 2004. All TDR programs developed under the TDR Act must meet its requirements.

### Initial Viability Determination

Compliance with the TDR Act is likely to be time-consuming and expensive, so from the beginning of the process there should be a high expectation of success. An informal way to assess the program's viability is to form an advisory committee of stakeholders to study whether owners in the intended sending zones are interested in selling rights and whether owners or developers in the intended receiving zones are interested in buying them. A logical first step is to perform community "visioning sessions" to see if consensus can be achieved on a new development pattern. If consensus cannot be reached on the development plan and the potential benefit of using TDR to further that plan, then a TDR program is unlikely to succeed. However, if the municipality determines that a TDR program might be viable, the next step is to develop the relevant supporting materials.

### Funding Assistance

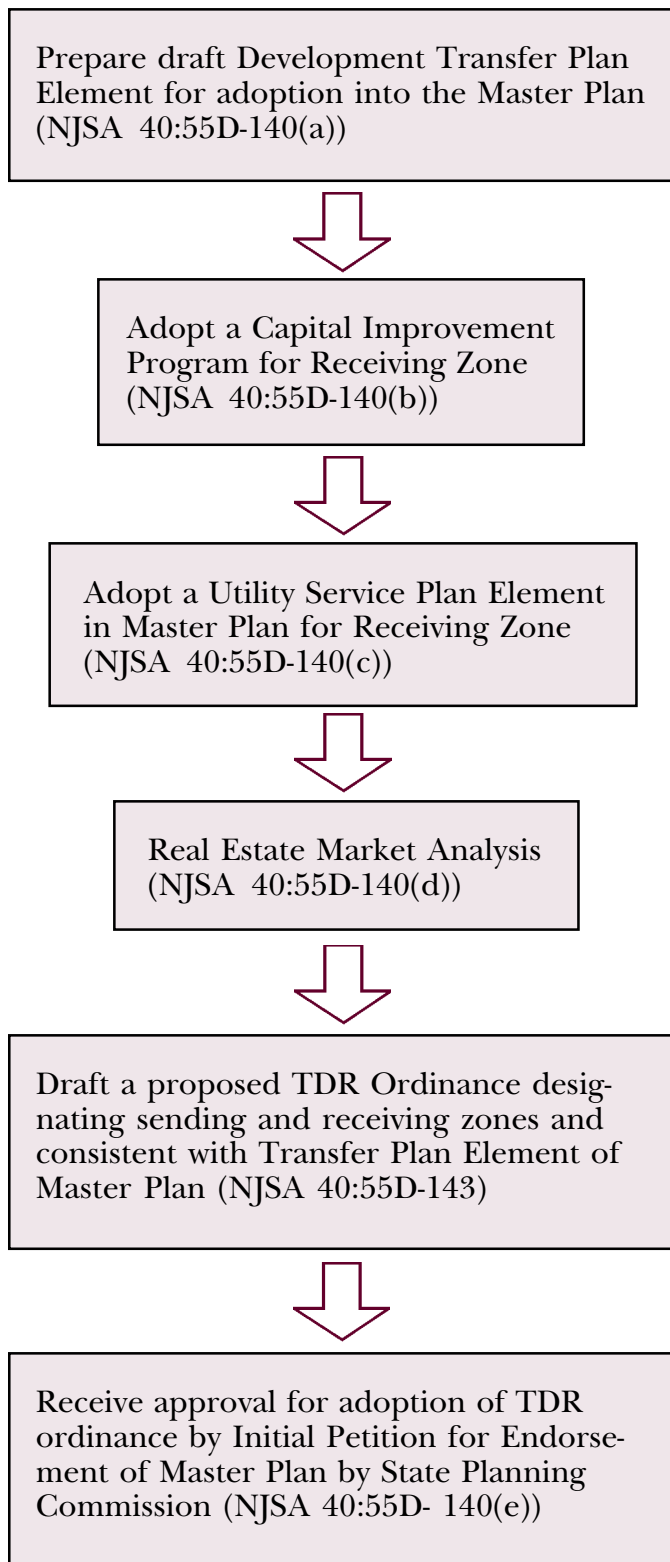
Currently, the state has a number of grant opportunities for communities interested in pursuing TDR programs. The State TDR Bank Board is offering planning assistance grants of up to \$40,000 to cover 50 percent of the cost of preparing the documents the TDR Act requires to initiate a program. Application packages are available at 609-984-2504 or on the TDR Bank website at [www.state.nj.us/agriculture/sadc/tdrbank.htm](http://www.state.nj.us/agriculture/sadc/tdrbank.htm)



<sup>2</sup> Other programs include the Pinelands Commission PDC Program, the Highlands Council TDR Program and the Burlington County Pilot Program.



This flow chart illustrates the required elements of a TDR program that complies with the State TDR Act.



### Development Transfer Element

The development transfer element of the municipal master plan must identify and describe both sending and receiving zones.

The element must include:

- an estimate of growth for the next ten years;
- an analysis of how the estimated growth is expected to be accommodated (particularly within the potential receiving zones);
- an estimate of available infrastructure in the potential receiving zone;
- a procedure and method for issuing instruments to convey development potential from the sending zone to the receiving zones; and
- explicit planning objectives and design standards governing the review of applications for development in the receiving zone.

The transfer element provides a unique opportunity for a municipality to include much more specificity in the receiving zone than typical density and use limitations. The design standards can give extremely thorough details for planned development. Bridging planning and architecture, the standards can predetermine the placement of public walkways, open public areas, and landscaping. Similarly, the standards can stipulate building specifications, including features such as the material, architectural detail and even color of the brick. Interestingly, developers don't resist such municipal control, because from the beginning of the application process they know what the municipality wants and will have some predictability. If they meet the community's expectations, their application will be approved.

Planners are developing new techniques to improve public involvement in developing design standards. For example, Nelessen Associates, a New Jersey planning firm, has developed a public planning process entitled a Visual Preference Survey™, which they refer to as "design by democracy." Images are shown of existing places reflecting the specific planning concern they want to address. Alternative designs are simulated and the public rates the alternatives on a scale of -10 to +10 in response to questions like: "Do I like what I am seeing?" "Do I think this type of development is appropriate here?" A written questionnaire of demographic and policy questions supplements the survey. The ratings are evaluated and compiled to reflect a collective opinion of the survey participants. These results can be used to inform creation of design standards for the receiving zone.

Once the Development Transfer Element is done, the local planning board must develop the relevant supporting materials.

### **Capacity Based Planning**

The capital improvement plan and the utility service plan are required to assure that the planned development in the receiving zone is not going to place excessive demands on the available infrastructure or exceed the land's inherent carrying capacity. A utility service plan element delineates the presence of infrastructure (including roads, sewers, waterlines and the like) and verifies adequate capacity to accommodate the growth. The capital improvement plan includes the location and cost of all new infrastructure and, if appropriate, a method of cost sharing to provide necessary upgrades.

### **Perform Real Estate Market Analysis**

To comply with the TDR Act, a municipal planning board must perform a real estate market analysis to derive the range of possible market values, considering, among other things, constraints to development on the land. Its purpose is to evaluate the current and anticipated future land market and examine the relationship between the development rights anticipated in the sending zone(s) and the likelihood of their use in the designated receiving zone(s). The analysis, which is similar to a land appraisal, must meet the standards outlined in the rules adopted by the Department of Community Affairs.<sup>3</sup> The planning board must hold hearings on the real estate market analysis prior to adoption of a transfer of development ordinance.

### **Draft Development Transfer Ordinance**

Once a municipality satisfies all the requirements above, it may draft a development transfer ordinance to create and establish sending and receiving zones, along with their densities and permitted uses. The TDR ordinance will most likely include a mechanism for assigning credits to the sending zone land and a credit allocation formula indicating the purchase power of the credits. The municipality will assign an initial dollar value to the TDR credits based on the policy considerations it used to drive

development of the program and the findings of the real estate market analysis. It may include incentives for sending zone owners to sell, disincentives for less desirable development in the sending zone or incentives for using credits in smart growth patterns.

The ordinance must also provide that any parcel outside the designated receiving zone that is granted a variance under NJSA 40:55D-70, that increases the development potential of that parcel by more than 5 percent, will be considered a receiving zone. Consequently, the variance will result in purchase of TDR credits to achieve the additional density.

### **Obtain State Plan Endorsement**

To assure that the anticipated development from the TDR program meets state goals, municipalities must obtain State Plan Endorsement of their master plans before final adoption of the development transfer ordinance. If a municipality has already obtained State Plan Endorsement, it must amend the endorsed master plan to include the TDR program.

### **County Planning Board Review**

The municipality must submit the draft TDR ordinance, along with the appropriate supporting materials, to the relevant county planning board for review for:

- consistency with the county's master plan,
- support of regional objectives,
- consistency with reasonable population and economic forecasts for the county, and
- sufficiency of the receiving zone to accommodate the development potential from the sending zone(s).

The county must, within 60 days of submission, submit formal comments and either recommend or not recommend enactment of the ordinance.

### **Adopt TDR Ordinance**

After the county planning board signs off on the development transfer ordinance, the governing body must give notice of zoning district change and hold public hearings for adoption of the ordinance.

### **Arrange for TDR Bank**

The governing body may provide for the purchase, sale or exchange of development

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<sup>3</sup> N.J.A.C. 5:86 et seq., available on the NJ Department of Community Affairs - Office of Smart Growth website at [www.state.nj.us/dca/osg/resources/tdr/index.shtml](http://www.state.nj.us/dca/osg/resources/tdr/index.shtml)

potential from a sending zone by establishing a development transfer bank. Alternatively, the governing body may opt to use the State TDR Bank or a county development transfer bank, if available.

### Periodic Review

The Act requires that once a municipality has adopted a TDR ordinance, it must review it periodically. Annually, the governing body must prepare a report to the county planning board on activity under the development transfer ordinance. After three years, the governing body and the municipal planning board must analyze the ordinance, the market analysis and the transactions of development transfers that have occurred. The municipality must update current conditions as compared to the development transfer plan element and capital improvement program to assess whether the TDR program has met its performance goals.

The municipality must submit its findings to the county Planning Board and the Office of Smart Growth and, if agricultural land is involved, to the county Agricultural Development Board (CADB) for their review and recommendations. The county must submit annual reports with an analysis of the program's effectiveness to the State Planning Commission after the third year and annually thereafter.

The governing body and municipal planning board must perform additional reviews after five years and periodically thereafter. Continued viability of the program will be suspect if at least 25 percent of the sending area credits have not been transferred into the receiving area after five years. The analysis will be based on market factors and unsuccessful programs will be subject to repeal.



## Conclusion

These are challenging times for municipalities seeking to protect their quality of life and environmental resources. Open space acquisition alone cannot get the job done. Although it can be complex and expensive, TDR is a planning tool that can help manage growth and achieve better land development patterns. Developing a TDR program has many additional benefits. Community visioning sessions present an opportunity to get members of the community together to think through and express what they value about the community.

When a municipality unites to examine and evaluate its development pattern and find a new way to grow, it begins to alter the traditional balance of power in land use planning. Rather than reacting to individual development proposals, a municipality can be proactive in planning its future. Defining the receiving zone provides the rare opportunity to decide more than just the density and use of land. It provides the chance for active community involvement in crafting specific design standards, the look and feel as well as the size and shape of the receiving zone development. In this process a municipality evolves to realizing its vision for future land use.

## Resources

### Useful Documents

*Beyond Takings and Givings* (2003), Rick Pruetz, Arje Press, Marina Del Rey, CA  
[www.beyondtakingsandgivings.com](http://www.beyondtakingsandgivings.com)

*Planning for Transfer of Development Rights: A Handbook for New Jersey Municipalities* (1992), Burlington County Land Use Office, Mount Holly, NJ 08060

*Technical Report on TDR* (July 17, 2006), Jeff LeJava, New Jersey Highlands Council, Chester, NJ

*Policy Consideration: Establishment of a Highlands TDR Program* (October 3, 2006) Jeff LeJava, New Jersey Highlands Council, Chester, NJ

*Consensus Revisions to Policy Consideration: Establishment of a Highlands TDR Program* (October 12, 2006) Jeff LeJava, New Jersey Highlands Council, Chester, NJ

## Helpful Web Sites

ANJEC  
[www.anjec.org](http://www.anjec.org)

New Jersey Highlands Council  
[www.highlands.state.nj.us](http://www.highlands.state.nj.us)

New Jersey Pinelands Commission:  
[www.state.nj.us/pinelands](http://www.state.nj.us/pinelands)

New Jersey Pinelands Development Credit Bank:  
[www.state.nj.us/dobi/pinelandsbank.htm](http://www.state.nj.us/dobi/pinelandsbank.htm)

New Jersey State Agriculture Development  
Committee (SADC):  
[www.state.nj.us/agriculture/sadc/sadc.htm](http://www.state.nj.us/agriculture/sadc/sadc.htm)

New Jersey State TDR Bank:  
[www.state.nj.us/agriculture/sadc/tdrbank.htm](http://www.state.nj.us/agriculture/sadc/tdrbank.htm)

New Jersey State Department of Community  
Affairs – Office of Smart Growth  
[www.nj.gov/dca/osg/resources/tdr/index.shtml](http://www.nj.gov/dca/osg/resources/tdr/index.shtml)

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The **ANJEC RESOURCE CENTER** offers the following services to all citizens:

- reference collection of more than 7,000 books, pamphlets, documents and government publications ranging from academic texts to Environmental/Natural Resource Inventories;
- more than 1,200 material files covering topics from acid rain to zoning;
- extensive materials on state and federal laws including current legislation and regulations;
- extensive file of municipal and model ordinances on topics such as light and noise pollution, critical areas protection and stormwater management;
- response and referral for information requests and questions on local, state and national environmental issues, problems and projects.

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environmental commissioners and interested citizens  
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### MIMI UPMEYER RESOURCE PAPER COLLECTION



ANJEC dedicates its collection of Resource Papers to Mimi Upmeyer, who worked for ANJEC for 10 years and later served as a board trustee. As our State Plan project director, she worked with environmental commissioners and local officials in towns across New Jersey and provided them with information and contacts to help implement good land use planning and zoning. To help local officials deal with these issues, she conceived the idea for ANJEC's Resources Papers – and wrote the first three. Packed with concise, practical information on specific topics for local environmental protection, ANJEC's every

expanding stock of Resource Papers, has become a standard element of our educational program. For a list of all our Resource Papers, contact ANJEC at 973-539-7547 or visit the Publications page on [www.anjec.org](http://www.anjec.org).

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